Government of Montenegro

Ministry of Justice

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

23 Judiciary and fundamental rights

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Independence

1. How does legislation provide for the independence of the judiciary and the autonomy of prosecutors? Is independence of judges and autonomy of prosecutors guaranteed by the Constitution? How are the rights of the judiciary protected? Have there been any complaints about the independence of the judiciary and the autonomy of prosecutors? If so, how were they resolved?

The Law on Courts and the Law on Judicial Council elaborate the constitutional principle of autonomy and independence of the judiciary. The Law on Courts prescribe that the judge adjudicates and decides independently and autonomously, that the judicial office must not be performed under anybody's influence and that nobody will influence the judge in performance of the judicial office, while the Law on Judicial Council prescribes that the Judicial Council ensures independence, autonomy, accountability and professionalism of the courts and judges in accordance with the Constitution and law, and that the members of the Judicial Council must be persons of high moral and professional qualities and that they must act independently and impartially in the performance of their duties.

The Law on Public Prosecution Office elaborates the constitutional principle that the Public Prosecution Office is a single and autonomous state body and that, therefore, a public prosecutor must not exercise his/her office under anybody's influence, except in cases provided by that Law.
Basic constitutional principle of judiciary is that the court is autonomous and independent and that the autonomy and independence of the judiciary and judges is ensured by the Judicial Council as an autonomous and independent body. The Constitution prescribes that the Public Prosecution Office is a single and autonomous state body performing the tasks of prosecution of perpetrators of criminal offences and other punishable offences prosecuted *ex officio*, and that the Prosecutorial Council ensures the autonomy of public prosecution office and of public prosecutors.
The Constitution prescribes the permanence of judicial office and conditions for the termination of judicial office as well as reasons for dismissal from office. The judge enjoys functional immunity. Functional immunity means that a judge may not be held responsible for opinion expressed or vote cast during decision-making in court, unless this amounts to a criminal offence, and that, in the proceedings initiated for a criminal offence committed in the exercise of judicial office, the judge may not be detained on remand without the approval of the Judicial Council. The Judicial Council decides on the immunity of judges. When a competent court assesses that there are reasons to order that a judge be detained on remand, it will have a duty to immediately request the Judicial Council to decide whether it approves ordering of detention on remand and the Judicial Council has to take decision within 24 hours from the receipt of request. The Constitution guarantees the principle of incompatibility of judicial office, according to which a judge may not perform the duty of a Member of Parliament or other public office or perform some other activity professionally. The Law on Judicial Council prescribes that a judge may request the Judicial Council to deliver opinion on whether certain activities are incompatible with the performance of judicial office of which the Judicial Council will make decision. If a court president considers that a judge of the court of which he/she is the president performs an activity which is incompatible with the judicial office or which is prohibited, he will inform the Judicial Council thereof which will thereafter make a decision.
The Constitution prescribes that public prosecutors are appointed for a term of five years and the Law on Public Prosecution Office prescribes that the office of a deputy public prosecutor is permanent while a deputy basic public prosecutor is appointed for a term of three years when appointed for the first time. Furthermore, the Constitution prescribes that public prosecutors and

deputy public prosecutors enjoy functional immunity and that they may not be held responsible for opinions expressed or decisions made in the exercise of their offices, unless that amounts to a criminal offence. Public prosecutors and deputy public prosecutors may not perform duties of a Member of Parliament or other public office or perform some other activity professionally.
The President of the Supreme Court and the Supreme Public Prosecutor enjoy full immunity which means that they may not be held criminally responsible or otherwise liable or be detained on remand for opinion expressed or vote cast in the exercise of their office and that criminal proceedings may not be initiated or detention on remand ordered, without the approval of the Parliament, except when found committing a criminal offence punishable by imprisonment for a term exceeding five years.

When the new Constitution was adopted, certain conceptual remarks were raised pointing out that the constitutional provisions regarding the procedure for the election of the President of the Supreme Court, composition of the Judicial Council, and public prosecutors being appointed and dismissed from office by the Parliament do not contribute to the independence of the judiciary and the autonomy of public prosecution service. Such objections have been made even after the Constitution was adopted.

Proceeding from such assessments, when the Law on Judicial Council and the Law Amending the Law on Public Prosecution Office were drafted, the aim was to strengthen the role of judges and public prosecutors in the performance of functions of the Judicial Council and the Prosecutorial Council respectively, and especially as regards the election of judges, appointment of public prosecutors and deputy public prosecutors, concerning the establishing of responsibility of judges and prosecutors and their participation in defining the budget framework.

The above-mentioned laws prescribe primarily criteria for the election of judges and the appointment of prosecutors, while it was left to the Judicial Council and the Prosecutorial Council to elaborate them in more detail and to evaluate these criteria within the prescribed procedure, which predominately involves judges and public prosecutors since judges and public prosecutors make up either all members or most members of the working bodies of the Judicial Council and the Prosecutorial Council (Selection Commission, Disciplinary Committee). Additionally, a particularly important guarantee for impartial determination is the right to legal remedies against decisions of the Judicial Council and the Prosecutorial Council.

An important guarantee for the achievement of independence of the judiciary and the autonomy of public prosecutors is also the authority of the presidents of the two Councils to participate in the work of parliamentary bodies when deciding on the sections of the budget for judiciary and public prosecution service, which already gave positive results in practice.

The autonomy of the public prosecution service is additionally guaranteed by prescribed permanence of office of deputy public prosecutors, selection of the deputy public prosecutor by the Prosecutorial Council and participation of public prosecutors and deputy public prosecutors in the Prosecutorial Council.

The recent practice of the Judicial Council and the Prosecutorial Council to adopt the positions of judges and prosecutors who are members of these Councils when resolving major issues is a positive attitude towards strengthening of the independence of the judiciary and the autonomy of public prosecution service.

2. Please describe the selection, promotion and disciplinary procedures of judges and prosecutors and indicate how they relate to the accountability and independence of the judiciary (autonomy in the case of prosecutors). Have there been any complaints about the procedures? If so, how were they resolved?

The Judicial Council elects and dismisses from office judges, presidents of courts and lay judges. Judges are elected based on public announcement. A vacancy for the position of a judge or a president of court is notified by the Judicial Council to the president of court for a position of judge and to the president of immediate superior court for a position of president of court. The Judicial

Council announces vacancy for the position of judge in the Official Gazette of Montenegro and in one of print media. The candidates' applications are submitted to the Judicial Council no later than 15 days from the date of announcement. The candidates apply for the position on a standard form containing warning that providing incorrect or false information will result in candidate being excluded from consideration or in disciplinary proceedings. The Judicial Council forms the Selection Commission. The Commission has a chairperson and two members and it is appointed for a term of one year, while a member of the Commission may be reappointed upon expiry of the one-year mandate. The chairperson of the Commission is the President of the Judicial Council. A majority of members of the Selection Commission are judges. The Selection Commission checks whether the applications have been filed timely and whether the documentation enclosed is complete. The Selection Commission submits incomplete and late applications to the Judicial Council. The Judicial Council will reject late and incomplete applications. The applicant has the right to file a complaint with the Judicial Council against its decision to reject the application no later than three days from the date of receipt of the Judicial Council's decision. The decision of the Judicial Council on the complaint is final and administrative dispute proceedings may be instituted against it. The Selection Commission conducts an interview with the applicants who meet legal requirements. An applicant does not need to be interviewed if he/she was given negative assessment for a position in the court of the same or higher instance in the last twelve months or was given negative assessment several times when interviewed for a position in the court of the same or higher instance regardless of when he/she was last interviewed. During the interview with the candidate, the Selection Commission checks whether the candidate meets election criteria laid down under the Law on Judicial Council and the Rules of Procedure of the Judicial Council. After interviewing candidates, the Selection Commission will assess each candidate and fill in a standard candidate assessment form. Each member will insert his final assessment and reasons for such assessment at the end of the form. The Commission adopts overall assessment by a majority vote. If the Commission cannot agree on the overall assessment, the overall assessment will be determined by calculating average grade – by adding final grades of each member of the Commission and than dividing the sum obtained in this way by three. The Judicial Council may conduct written testing of the candidates prior to the interview. The Selection Commission will conduct written test when the Judicial Council so decides. Based on the interview, the assessment of candidates and documentation received, the Commission draws up a list of candidates who achieved satisfactory results. The list of candidates contains the assessment of each candidate who was interviewed, and/or who was tested, as well as a short summary of assessment results. The list of candidates is submitted to the Judicial Council which decides on election in closed session. The decision on election must contain a written statement of reasons. The Judicial Council notifies its decision on election to the candidate elected, the court to which the candidate has been elected and the Ministry of Justice. The decision on the election of a judge is published in the Official Gazette of Montenegro. All applicants have the right to examine their own documentation and documentation of other candidates which was formed following the public announcement. Decision on election is final and administrative dispute proceedings may be instituted against it.

A judge is subject to disciplinary proceedings if he/she exercises judicial office in a negligent manner or harms the reputation of judicial office in cases laid down by law. The proceedings for establishing disciplinary responsibility of judges are conducted by the Disciplinary Committee which is appointed by the Judicial Council for a term of one year. The Disciplinary Committee has a chairperson and two members who have their deputies. The chairperson of the Disciplinary Committee and his/her deputy are appointed from among the members of the Judicial Council, and members and their deputies are appointed from among the judges who are not members of the Judicial Council. Disciplinary measures comprise reprimand or salary reduction. The salary reduction may not exceed 20% or a period of six months. A proposal for establishing disciplinary responsibility of a judge is submitted to the Disciplinary Committee. Proposal for establishing disciplinary responsibility of a judge may be submitted by the president of the court, president of the immediately superior court and the President of the Supreme Court. The proposal must be accompanied by written evidence substantiating the proposal. If written evidence is not enclosed to the proposal, the Disciplinary Committee will call upon the submitter of proposal to submit evidence within the specified time limit. The Disciplinary Committee will dismiss the proposal if the submitter of proposal does not submit evidence requested within the specified time limit. Late proposal for

establishing disciplinary responsibility and the proposal submitted by an unauthorised person will be dismissed by the Disciplinary Committee. The Disciplinary Committee will deliver timely and admissible proposal to the judge whose responsibility is examined along with the information that he/she may submit written response and that he/she has the right to retain a defence counsel. The judge whose responsibility is examined in the proceedings has the right to defence counsel who may only be a lawyer. In the response the judge has to propose evidence to be adduced and to enclose documents he/she proposes as evidence to the response. Upon the expiry of the time limit specified for providing response, the chairperson of the Disciplinary Committee schedules oral hearing within 15 days from the date of expiry of the time limit set for providing response. The submitter of proposal and the judge against whom the proposal was submitted, defence counsel, witnesses and expert witnesses, whose hearing was proposed in the proposal to initiate disciplinary proceedings or in response to the proposal, are summoned to the hearing if the Committee found that such evidence should be adduced. The summons to appear at oral hearing must be served on the judge no later than eight days before the date of hearing. If duly summoned submitter of proposal fails to appear at the oral hearing, the proceedings will be discontinued. If duly summoned judge against whom the proceedings have been initiated or his/her defence counsel fails to appear, the proceedings will be conducted in his/her absence. If a party notifies the reasons for failure to appear to the Disciplinary Committee and the Disciplinary Committee finds that such reasons are justified, the oral hearing will be adjourned. Oral hearing is chaired by the chairperson of the Disciplinary Committee.

The proposal to initiate disciplinary proceedings is defended by the submitter thereof and the burden of proof lies with him/her. In the proceedings for establishing responsibility the Disciplinary Committee will hear the judge whose responsibility is examined and adduce such evidence as it deems necessary for proper and complete determination of facts. In the proceedings for establishing disciplinary responsibility of a judge, the Disciplinary Committee may dismiss the proposal as ill-founded; accept the proposal and impose a disciplinary measure; discontinue the proceedings if it finds that there are reasons for dismissal from office and refer the case to the Judicial Council. Decision made by the Disciplinary Committee will be delivered to the submitter of proposal, to the judge whose responsibility is examined and to the Judicial Council.

A complaint against the decision of the Disciplinary Committee may be filed with the Judicial Council within eight days from the date of receipt of decision. The complaint may be filed by the submitter of proposal, the judge whose responsibility is examined or his/her defence counsel. The complaint is delivered to the opposing party who may respond within three days from the date of receipt of complaint. The Judicial Council decides on the complaint at a session and may dismiss the complaint as ill-founded, reverse decision and remand the case to the Disciplinary Committee for reconsideration, and amend the decision of the Disciplinary Committee. The decision of the Judicial Council regarding disciplinary responsibility of a judge is final and administrative dispute proceedings may be instituted against it. The chairperson of the Disciplinary Committee may not participate in the work of the Judicial Council when deciding on complaint. The Minister of Justice, as a member of the Judicial Council, does not vote in the proceedings for establishing disciplinary responsibility of judges. Initiating of the proceedings for establishing disciplinary responsibility of a judge becomes barred by lapse of time upon expiry of three months from the date when one learns of reasons to initiate the proceedings. The proceedings for establishing disciplinary responsibility of a judge become barred by lapse of time upon expiry of three years from the date of emergence of reasons to initiate the proceedings. The submitter of proposal and those members of the Disciplinary Committee and of the Judicial Council in respect of whom there are circumstances which give rise to doubt as to their impartiality may not participate in the Disciplinary Committee and the Judicial Council when deciding on the responsibility of a judge. The President of the Judicial Council decides on disqualification of a member, while the Judicial Council decides on disqualification of the President of the Judicial Council.

A judge is dismissed from office if he/she has been convicted of an offence that makes him/her unfit for judicial office, if he/she exercises judicial office in an unprofessional or negligent manner or loses permanently the ability to exercise judicial office. The proposal for dismissal may be submitted by the president of the court in which the judge exercises his/her judicial office, the president of immediate superior court, the president of the Supreme Court and another member of the Judicial Council. The proposal for dismissal from office is submitted to the judge concerned

along with notification that he/she has the right to retain a defence counsel and to provide his/her response to the proposal for dismissal within eight days. The Disciplinary Committee of the Judicial Council gathers information and evidence for the examination whether the proposal is well-founded. The judge whose dismissal is requested has the right to participate in the work of the Disciplinary Committee. The report on what has been found is submitted by the Disciplinary Committee to the Judicial Council, while a copy thereof is delivered to the judge whose dismissal is requested. On the basis of the report of the Disciplinary Committee, the Judicial Council may dismiss the proposal as ill-founded or pass a decision to dismiss the judge from office. The decision on dismissal from office must contain statement of reasons and the judge has the right to institute administrative dispute proceedings against it. After accepting the proposal to initiate the procedure for dismissal, the Judicial Council may take a decision to suspend the judge until a final decision is rendered.

Public prosecutors are appointed by the Parliament on a proposal from the Prosecutorial Council and deputy public prosecutors are appointed by the Prosecutorial Council. Public prosecutors and deputy public prosecutors are appointed based on public announcement. Vacancies for the positions of public prosecutors and deputy public prosecutors are announced by the Prosecutorial Council. Vacancy announcements are published in the Official Gazette of Montenegro and in a daily newspaper issued in Montenegro.

The candidates' applications are submitted to the Prosecutorial Council no later than 15 days from the date of announcement in a standard application form. The Appointment Commission has a chairperson and two members. The President of the Prosecutorial Council is a chairperson of the Commission. The Appointment Commission is mainly composed of public prosecutors and deputy public prosecutors. The Appointment Commission is formed for a period of one year. A member of the Commission may be re-appointed to the Appointment Commission, upon the expiry of one year from the termination of previous mandate. The Appointment Commission:

- checks the timeliness of applications and whether the documentation enclosed is complete;
- prepares the test and conducts testing of candidates if the Prosecutorial Council decides to conduct written testing of candidates;
- makes proposal for the ranking list of applicants.

The Prosecutorial Council will reject late and incomplete applications. The applicant has the right to file a complaint with the Prosecutorial Council against decision to reject late or incomplete application no later than three days from the date of receipt of decision. The decision of the Prosecutorial Council on the complaint is final and administrative dispute proceedings may be instituted against it. The Prosecutorial Council conducts interviews with the applicants who meet legal requirements. The Prosecutorial Council timely notifies the candidate of the date, time and place of interview. During the interview, it will be examined whether the candidate fulfils the requirements for appointment. Based on the interview and documentation received, the Prosecutorial Council assesses each candidate taking into account the criteria for appointment. The Prosecutorial Council decides by a majority vote of a total number of members on the assessment of candidates. Immediately after the interview, the Prosecutorial Council fills in a standard candidate assessment form which contains the assessment of each candidate and reasons for such assessment. The Prosecutorial Council may conduct written testing of candidates prior to the interview. In that case, based on the test results, the Prosecutorial Council makes a ranking list of applicants which may be modified based on the success the candidates achieve during the interview. Based on the interview, the assessment of candidates and documentation received, the Prosecutorial Council draws up a list of candidates who achieved satisfactory results. The list of candidates contains the assessment of each candidate who was interviewed, and/or who was tested, as well as a short summary of assessment results. The Prosecutorial Council adopts the proposal for the appointment of a public prosecutor in closed session. The Prosecutorial Council submits to the Parliament a reasoned proposal for the appointment of a public prosecutor which contains the list of candidates who achieved satisfactory results. The Prosecutorial Council passes the decision on the appointment of deputy public prosecutors in closed session based on the list of candidates. The decision on appointment of a deputy public prosecutor must contain a

written statement of reasons. The Prosecutorial Council notifies its decision on appointment to the candidate appointed, the public prosecutor's office to which he/she has been appointed and the Ministry of Justice. The decision on the appointment of a deputy public prosecutor is published in the Official Gazette of Montenegro. A candidate has the right to examine his/her documentation and documentation of other candidates and to deliver a written statement thereon to the Prosecutorial Council, within three days from the date of such examination. Decision of the Prosecutorial Council on the appointment of a deputy public prosecutor is final and administrative dispute proceedings may be instituted against it. The Prosecutorial Council decides by a majority vote of all members when adopting the proposal for the appointment of a public prosecutor and when deciding on the appointment of a deputy public prosecutor.

A public prosecutor or a deputy public prosecutor is subject to disciplinary proceedings if he/she exercises his/her office in a negligent manner or harms the reputation of prosecutorial office. Disciplinary measures comprise reprimand or salary reduction. The salary reduction may not exceed 20% or a period of six months. A proposal for establishing responsibility of a public prosecutor or a deputy public prosecutor is submitted to the Prosecutorial Council by the Minister of Justice in case of the Supreme Public Prosecutor, by the Supreme Public Prosecutor, high public prosecutor and basic public prosecutor in case of their deputies, by the Supreme Public Prosecutor in case of high public prosecutors and basic public prosecutors and by high public prosecutor in case of basic public prosecutor, no later than 15 days from the day they learn of reasons and no later than 60 days from the day the reasons for establishing disciplinary responsibility emerge. The Prosecutorial Council delivers the proposal for establishing responsibility to the public prosecutor or the deputy public prosecutor whose responsibility is examined along with the information that he/she has the right to retain a defence counsel. The Prosecutorial Council will dismiss late proposal for establishing responsibility as well as the proposal submitted by an unauthorised person.

The proceedings for establishing responsibility of a public prosecutor or a deputy public prosecutor are conducted by the Disciplinary Committee of the Prosecutorial Council. The Disciplinary Committee has a chairperson and two members appointed by the Prosecutorial Council from among their own number. The submitter of proposal and those members of the Prosecutorial Council in respect of whom there are circumstances which give rise to reasonable doubt as to their impartiality may not participate in the work of bodies conducting disciplinary proceedings. The President of the Prosecutorial Council decides on disqualification of a member of the Prosecutorial Council, while the Prosecutorial Council decides on disqualification of the President of the Prosecutorial Council. A proposal to initiate disciplinary proceedings is defended at the Disciplinary Committee meeting by the submitter thereof. In the proceedings for establishing responsibility the Disciplinary Committee will hear the public prosecutor or deputy public prosecutor whose responsibility is examined and adduce such evidence as it deems necessary for proper and complete determination of facts. Should the submitter of proposal fail to appear at the meeting of the Disciplinary Committee, the proceedings will be discontinued and should the public prosecutor or deputy public prosecutor whose responsibility is established fail to appear without justified reason, the Disciplinary Committee will conduct the proceedings in his/her absence.

In the proceedings for establishing responsibility of public prosecutors or deputy public prosecutors, the Disciplinary Committee may dismiss the proposal as ill-founded, accept the proposal and impose disciplinary measure, and discontinue the proceedings if it finds that there are reasons for dismissal from office and refer the case to the Prosecutorial Council. Decision made by the Disciplinary Committee will be delivered to the submitter of proposal, to the public prosecutor or deputy public prosecutor whose responsibility is examined and to the Prosecutorial Council. A complaint against the decision of the Disciplinary Committee may be filed with the Prosecutorial Council within eight days from the date of receipt of decision. The complaint may be filed by the submitter of proposal and the public prosecutor or deputy public prosecutor whose responsibility is examined or his/her defence counsel. When acting upon complaint, the Prosecutorial Council may dismiss the complaint as late or inadmissible, dismiss the complaint as ill-founded, reverse decision and remand the case to the Disciplinary Committee for reconsideration, and amend the decision of the Disciplinary Committee. The members of the Disciplinary Committee may not participate in the work of the Prosecutorial Council when the latter is deciding on the complaint. The decision of the Prosecutorial Council establishing disciplinary responsibility of a public

prosecutor or a deputy public prosecutor is final and administrative dispute proceedings may be instituted against it. The proceedings for establishing disciplinary responsibility must be completed within three months after the date when the proposal was submitted. If the proceedings are not completed within the mentioned time limit, the proceedings will be deemed discontinued.

A public prosecutor will also be dismissed from office if he/she fails to achieve satisfactory results in managing the prosecutorial functions, if he/she fails to initiate procedure for dismissal from office or establishing disciplinary responsibility of a public prosecutor or a deputy public prosecutor although he/she is so authorised and is aware of or may have been aware of reasons for dismissal or if he/she was imposed a disciplinary measure twice during his/her term of office. The initiative for dismissal from office is submitted to the Prosecutorial Council which, within 30 days from the day of receipt of initiative, decides whether there are grounds to conduct the procedure for establishing the proposal for dismissal from office or for passing the decision on dismissal from office. The public prosecutor or deputy public prosecutor has the right to make oral or written response to the initiative for his/her dismissal from office and may retain a defence counsel in the proceedings conducted before the Prosecutorial Council. If the Prosecutorial Council finds that there are grounds to conduct the proceedings, it will set up the Commission for examination of conditions for dismissal from office. The Commission has a chairperson and two members appointed by the Prosecutorial Council from among their own number. The Commission gathers information and evidence relevant to determination whether or not the initiative is founded and submits a report on its work to the Prosecutorial Council. The submitter of initiative attends the session of the Prosecutorial Council. The public prosecutor or deputy public prosecutor whose dismissal from office is sought has the right to be present at the session of the Prosecutorial Council. When rendering decision on the initiative, the Prosecutorial Council may dismiss the initiative as ill-founded, adopt proposal for dismissal of a public prosecutor from office or pass the decision on dismissal of a deputy public prosecutor from office. The Prosecutorial Council submits a substantiated proposal for the dismissal of the public prosecutor from office to the Parliament of Montenegro within 60 days from the day of receipt of initiative. The decision on dismissal of a deputy public prosecutor from office must be passed by the Prosecutorial Council within three months from the date of submission of initiative. The public prosecutor or deputy public prosecutor is dismissed from office on the day the decision on his/her dismissal is made. The decision of the Prosecutorial Council on dismissal of deputy public prosecutor from office is final and administrative dispute proceedings may be instituted against it. The public prosecutor or deputy public prosecutor may be suspended from office if an order was issued that he/she be detained on remand or is subject to investigation for a criminal offence that makes him/her unfit to exercise his/her office. Decision on suspension is taken by the Prosecutorial Council.

Forming of independent and autonomous Judicial Council which is competent, *inter alia*, to elect and dismiss judges from office, eliminated political influence on election of judges and their dismissal from office, which is one of preconditions for their independence. Furthermore, the principle of independence is also achieved through the manner of decision making of the Judicial Council and implementation of transparent procedures in the exercise of its powers. In the procedures for election and dismissal from office, a judge has the right to legal remedies as a separate element guaranteeing his/her independence. Accurately prescribed reasons for dismissal from office and termination of office and prescribed disciplinary procedures protect the independence of a judge because a judge may not be dismissed from office beyond the reasons laid down under the Constitution, while in disciplinary proceedings a judge has the right to participate and to defence counsel. Additionally, in the procedures for election and dismissal from office, a judge has the right to legal remedies as a separate element guaranteeing his/her independence. Independence of the judges is also guaranteed by the permanence of office, and by enjoying functional immunity and strengthening of their financial position.

The autonomy of public prosecution service is reflected in powers, composition and manner of decision-making of the Prosecutorial Council, and in particular in the fact that deputy public prosecutors are appointed by the Prosecutorial Council and that their office is permanent, with the exception of deputy basic public prosecutors who are appointed for a term of three years when appointed for the first time, and if they are subsequently re-appointed their office is permanent. Public prosecutors are appointed by the Parliament on a proposal from the Prosecutorial Council. In the procedure for appointment and dismissal from office, a public prosecutor has the right to

legal remedies as a separate element guaranteeing his/her independence. Accurately prescribed reasons for dismissal from office and termination of office and prescribed disciplinary proceedings protect the autonomy because he/she may not be dismissed from office beyond the reasons laid down by law, while in disciplinary proceedings he/she has the right to participate and to defence counsel. Furthermore, public prosecutor has the right to legal remedies against the disciplinary measures imposed or decision on termination of office or dismissal from office.

Furthermore, the financial position of judges and prosecutors, as a guarantee of their independence and autonomy, has been strengthened by enacting a separate Law on Salaries and Other Income of Judges and Prosecutors and Constitutional Court Judges and by adopting Decision on Special Quotient for Calculation of Salaries of Judges, as well as by allocating separate funds for the solving of housing needs of judges and prosecutors.

As regards the financial independence of justice the funds for the work of courts and public prosecution service are provided from the separate sections of the Budget. Proposals for necessary funds are independently submitted to the Government by the President of the Supreme Court and the Supreme Public Prosecutor, who have the right to participate in the sitting of the Parliament discussing the Budget.

The accountability of judges is strengthened by conducting disciplinary proceedings, and explicit provision that exercising judicial office unprofessionally and unconscientiously will constitute grounds for dismissal from office. In the practice of the Judicial Council so far, administrative dispute proceedings before the Administrative Court of Montenegro have been instituted against only one decision on the election of judge. This complaint has been dismissed as ill-founded by final and enforceable decision.

3. How is the principle of the natural judge covered in Montenegro's legislation and how is it implemented in practice?

The impartiality of courts is provided for by the Constitution of Montenegro which, in the part relating to individual rights and freedoms, prescribes that everyone is entitled to a fair and public trial within a reasonable time before an independent and impartial court established by law, and that the court rules on the basis of the Constitution, laws and ratified and published international treaties. The Constitution also enshrines the principles of publicity of trial, permanence of judicial office, functional immunity, incompatibility of judicial and prosecutorial offices with the duties of Members of Parliament and other public offices and discharge of other professional activities. The Judicial Council, as an autonomous and independent body, whose members are mainly judges, elects and dismisses judges and presidents of courts.

The principle of impartiality of courts enshrined in the Constitution and the above-mentioned constitutional provisions has been elaborated in more detail under organisational laws.

The Law on Courts prescribes, under basic principles, that judicial office must not be performed under anybody’s influence and that nobody will influence a judge in performance of judicial office; everyone is entitled to an impartial trial within a reasonable time; everyone has the right to have his/her legal matter heard by a randomly selected judge, regardless of the parties to the case and the nature of the case. The Law on Courts elaborates the principle of random allocation of cases in a way that a case is allocated to a judge according to daily order in which requests to initiate court proceedings have been filed, in accordance with the Cyrillic alphabetical order of initial letters of judges' surnames. The cases of removal from the allocated case have also been very strictly defined, namely, only if it has been found that a judge has not been making progress in a case without justified reason, if a judge has been disqualified or if a judge has been unable to attend to his judicial duties for more than three months. The accountability of a president of court has been prescribed if the cases are allocated contrary to law. The method of random allocation of cases has been regulated in detail under the Court Rules and it is applied in practice by the courts while the full implementation of the random allocation of cases in accordance with the above-mentioned legislation will follow after the setting up of the judicial information system.

The Law on Public Prosecution Office prescribes, under the principle of impartiality and objectivity, that the office of public prosecutor is exercised in the public interest in order to ensure the application of law, while ensuring the respect for and protection of human rights and freedoms and that a public prosecutor must exercise his/her office in an impartial and objective manner; that public prosecutors must abide by the Code of Ethics for Prosecutors which is adopted by the Prosecutorial Council. Salaries of prosecutors are regulated by a separate law. The law regulates that the cases are allocated in such manner as to ensure impartiality, independence and efficiency in the performance of duties. Random allocation of cases in the work of public prosecutors is implemented in a way that continuous duty hours and/or standby hours of basic public prosecutors and high public prosecutors are organised to coordinate pre-trial criminal proceedings, to ensure participation in procedural actions and other pre-trial criminal proceedings tasks, and for other necessary actions. Weekly duty hours of public prosecutors are organised according to the list of prosecutorial office holders on duty, and on this basis all criminal offences committed in the particular period of time fall within the competence and are assigned to the prosecutor on duty. This method of organisation of allocation of cases based on duty hours of public prosecutors guarantees, inter alia, the principle of impartiality in the prosecutors' work.

The Law on Judicial Council prescribes that the Judicial Council ensures independence, autonomy, accountability and professionalism of courts and judges in accordance with the Constitution and law; that in performance of its duties, the most important of which include the election of judges, termination of judicial office and accountability, and the control of the work of courts and judges, the members of the Judicial Council act independently and impartially, as well as that the Judicial Council protects courts and judges from political influence. This Law specifies criteria for the election of judges which are elaborated in more detail under the Rules of Procedure of the Judicial Council while the conditions for termination of and dismissal from judicial office are laid down in the Constitution.

As regards a very important guarantee for impartiality of judicial and prosecutorial authorities, the Criminal Procedure Code and the Civil Procedure Law prescribe reasons for the disqualification of a judge or lay judge which mainly relate to the conflict of interest, or that the judge is not a victim of the criminal offence, and a number of reasons including marriage, blood or other relationship between the judge and the parties, previous participation of the sitting judge in the same case, and the case when there are circumstances giving rise to doubt as to impartiality. Apart from detailed reasons for disqualification, the procedural laws also regulate the procedure for disqualification. Namely, as soon as a judge or lay judge learns of any reason for disqualification, he/she has a duty to discontinue all activity on the case and to inform the president of the court thereof who will allocate the case to another judge in a duly prescribed manner, while if a judge subject to disqualification is the president of the court, he/she will be substituted in the case in question by the most senior judge of that court according to the length of service, and if this is not possible, the decision will be made by the president of immediate superior court. Procedural laws also list who may request disqualification and at what stage of proceedings, they lay down that the president of court decides on the motion for disqualification and prescribe the procedure for making decision on disqualification. The ruling dismissing disqualification is subject to appeal. Duties of a judge or lay judge in case when the motion for disqualification has been submitted are also provided for by procedural laws while the disqualification of a public prosecutor and other participants in the proceedings has been regulated separately. The participation in pronouncement of judgment of a judge who has been disqualified or who ought to have been disqualified by final and enforceable decision amounts to a major procedural irregularity. The provisions on disqualification prescribed by the Civil Procedure Law apply to administrative dispute proceedings pursuant to the Law on Administrative Dispute.

Provisions on disqualification of judges and public prosecutors are strictly applied in practice.

The Law on Salaries and Other Income of Judges and Prosecutors and Constitutional Court Judges which has been applied since 2007 has considerably improved the financial position of judges and prosecutors.

The Law on Prevention of Conflict of Interest of 2008 eliminates the conflict of interest as regards judges and public prosecutors as public officials. This Law prescribes restrictions on performance of public offices, imposes obligation on public officials to submit reports on income and property

and other measures for preventing the conflict of public and private interest. The law prescribes that a public official may perform scientific, teaching, cultural, artistic and sports activities and that he/she may earn income from copyrights, patent rights and related intellectual property rights and industrial property rights; that a public official has a duty to report this income to the Commission for Prevention of Conflict of Interest which is established by the Parliament of Montenegro; that a judge or public prosecutor may not be a president or a member of a managing or supervisory body, chief executive officer, member of the management of a public enterprise, public institution or another legal entity and that he/she may not enter into contract on delivery of services to a public enterprise; if a public official in a public authority in which he/she exercises public office participates in discussion and decision-making in a matter in which he/she or a person related to him/her has a private interest, he/she is obliged to inform other participants in discussion and decision-making of his/her private interest by giving a statement thereof prior to his/her participation in the discussion and prior to the commencement of decision-making at latest; public official may not represent legal or natural person for one year following the termination of his/her public office, and he/she may not represent legal or natural person before a public authority in which he/she participated in decision-making as a public official; public official may not accept money, securities or precious metal, regardless of their value, or accept gifts, with the exception of protocol gifts and appropriate gifts of small value, up to EUR 50; public official who has been offered a gift he/she may not accept is obliged to decline the offer and/or to inform the donor that he/she may not accept the gift; gifts received and their value are recorded in the register of gifts which is maintained by the public authority in which the public official exercises his/her office.

The Law on Prevention of Conflict of Interest also prescribes that a public official must submit to the Montenegrin Commission for Prevention of Conflict of Interest a report on his/her property and income and on property and income of his/her spouse and children if they live in the same household, as at the date of election or appointment, within 15 days from the date of taking up office. In the course of exercise of public office, judges and prosecutors submit report: once a year by the end of February of the current year for the preceding year, and in case of change of data stated in the report relating to increase in assets by more than EUR 5 000 within 15 days from the date of change.

The conflict of interest exists when a public official gives private interest precedence over public interest in order to obtain material gain or privileges for himself/herself or persons related to him/her, while the existence of conflict of interest is established and measures to prevent conflict of interest are undertaken by the Montenegrin Commission for Prevention of Conflict of Interest as an independent body. Information on income and property of judges and prosecutors are available to the public.

Pursuant to the Law on Prevention of Conflict of Interest the infringement of that Law found by final, or final and enforceable, decision, is deemed to constitute exercising public office unconscientiously of which the Commission will inform the Judicial Council for possible initiation of procedure for dismissal from office.

In July 2008 the Conference of Judges adopted the Code of Ethics for Judges, while in 2006 the Prosecutorial Council adopted the Code of Ethics for Public Prosecutors and Deputy Public Prosecutors, which will certainly help to resolve the issues of professional ethics and autonomy in decision-making and inform the public of standards that may be expected from judges and prosecutors and contribute to providing guarantees to the public that decisions are made in an independent and impartial manner.

4. Human resources policy:

a) Describe the methods and criteria for the selection, appointment and promotion of candidates for judicial office. How are judges and prosecutors recruited (are there competitive and public exams; systematic interviewing of all candidates; comparison of CVs; etc.)?

A person who is a national of Montenegro, is medically fit and has capacity to exercise rights, has a university degree in the field of law when the normal duration of studies is four years and has passed bar examination may be elected as a judge. In addition to the above-mentioned general requirements, a person may be elected as a judge if he/she possesses work experience of the following duration in the field of law (five years for the basic court, six years for the commercial court, eight years for the high court, ten years for the Appellate Court and the Administrative Court and fifteen years for the Supreme Court) and who possesses professional impartiality, high moral qualities and demonstrated professional competences. The criteria for the election of the judges are professional knowledge, work experience and work results; published research papers and other professional activities; professional training; ability to perform the office for which he/she applies impartially, conscientiously, diligently, determinedly and responsibly; communication skills; relationship with colleagues, conduct outside of work, professionalism, impartiality and reputation.

More detailed criteria for the election of a judge who is elected for the first time are as follows:
Professional knowledge:

- academic results, showed through the length of university studies and average grade,
- written test results,
- information and communication technology skills,
- foreign language skills,
- grade awarded in the final examination of initial training organised by the Judicial Training Centre,
- career advancement.

Work experience:

- length of years of service and position held (court, prosecution service, legal profession, administration, business sector).

Work results:

- career advancement,
- opinion delivered by the bodies where the candidate worked.

Published research papers and other activities:

- papers submitted at seminars held in the country and abroad,
- participation in commissions drafting laws and secondary legislation,
- lectures in the Judicial Training Centre and those organised by the Human Resources Administration,
- mediation.

Professional training:

- master's degree and doctoral degree,
- completed training organised by the Judicial Training Centre and by international organisations,
- attending seminars and other forms of training.

Additionally to the above-mentioned criteria, when a judge is elected to a higher judicial office, special account will be taken of efficiency, responsibility and quality of performance of judicial

duty, if the candidate exercised judicial office. More detailed criteria taken into consideration in case of advancement of judges:

Work experience:

- length of years of service.

Work results**:**

- number of cases resolved (total number during one year and percentage) in the last three years before applying for vacancy announced,
- method of resolution of cases (number of cases resolved in civil judicial proceedings, or criminal proceedings, by settlement, mediation or otherwise),
- quality of work shown by the number of upheld, amended and reversed decisions in the last three years,
- taking cases according to the date of arrival at court,
- complying with legal time limits for procedural actions,
- complying with legal time limits for drafting judicial decisions,
- complying with working hours,
- the number of requests to accelerate the proceedings which have been found justified in accordance with the Law on Protection of Right to Trial within a Reasonable Time by the president of the court,
- number of cases he/she has been removed from pursuant to the Law on Protection of Right to Trial within a Reasonable Time,
- disciplinary measures imposed.

Published research papers and other professional activities:

- participation in commissions drafting laws and secondary legislation,
- mediation,
- lectures organised by the Judicial Training Centre,
- university work within clinics,
- papers submitted at seminars held in the country and abroad.

Professional training:

- completed training organised by the Judicial Training Centre and by international organisations,
- attending seminars and other forms of training.

The Judicial Council will request the opinion on professional and work qualities of all candidates from the institutions in which the candidates worked or work, from the session of judges of the court to which the candidate is elected and the session of judges of immediate superior court. The Judicial Council forms the Selection Commission. The Selection Commission conducts interview with the applicants who meet legal requirements. An applicant does not need to be interviewed if he/she was given negative assessment for a position in the court of the same or higher instance in the last twelve months or was given negative assessment several times when interviewed for a position in the court of the same or higher instance regardless of when he/she was last interviewed. During the interview with the candidate, the Selection Commission checks whether the candidate meets the above-mentioned election criteria. After interviewing candidates, the Selection Commission assesses each candidate and fills in a standard candidate assessment form. The grade for each criterion is on a scale one to five. Each member will insert his/her final assessment and the reasons for such assessment at the end of the form. The Commission adopts overall assessment by a majority vote. If the Commission cannot agree on the overall assessment, the overall assessment will be determined by calculating average grade i.e. by adding final grades of

each member of the Commission and than dividing the sum obtained in this way by three. The Judicial Council may conduct written testing of the candidates prior to the interview. The Selection Commission will conduct written test when the Judicial Council so decides. The test for the written testing of candidates is made by the Commission in a way that the following may be assessed based on test results: knowledge of procedural and substantive legislation, knowledge of case law of Montenegrin courts, knowledge and application of international agreements and case law of the European Court of Human Rights, the level of analytical ability to resolve complex legal and factual issues. The Selection Commission assesses the test results on a scale one to five. The assessment is adopted by a majority vote of the Selection Commission members. Based on the interview, the assessment of the candidates and documentation received, the Commission draws up a list of candidates who achieved satisfactory results. The list of candidates contains the assessment of each candidate who was interviewed, and/or who was tested, as well as a short summary of assessment results. The list of candidates is submitted to the Judicial Council which decides on election in closed session. The decision on election must contain a written statement of reasons.

Public prosecutors are appointed by the Parliament on a proposal from the Prosecutorial Council, while deputy public prosecutors are appointed by the Prosecutorial Council. A person may be appointed as public prosecutor or deputy public prosecutor if he/she:

- is a national of Montenegro;
- is medically fit and possesses capacity to exercise rights;
- has a university degree in the field of law when the normal duration of studies is four years and has passed bar examination. A person may be appointed as public prosecutor or deputy public prosecutor if he/she, in addition to the general requirements, possesses work experience of the following duration in the field of law:
    - for the Supreme Public Prosecutor and his/her deputy – 15 years;
    - for a high public prosecutor and his/her deputy – 10 years;
    - for a basic public prosecutor – six years, and for his/her deputy – three years.

The criteria for the appointment of public prosecutors and deputy public prosecutors are as follows:

- professional knowledge, work experience and work results;
- published research papers and other professional activities;
- professional training;
- ability to perform the office for which he/she applies impartially, conscientiously, diligently, determinedly and responsibly;
- communication skills;
- relationship with colleagues, conduct outside of work, professionalism and reputation.

For the appointment of the public prosecutor, special account is taken of organisational skills.

Public prosecutors and deputy public prosecutors are appointed based on public announcement. The Prosecutorial Council announces vacancies for the positions of public prosecutors and deputy public prosecutors. Vacancy announcements are published in the Official Gazette of Montenegro and in a daily newspaper issued in Montenegro. The Prosecutorial Council conducts interviews with the applicants who meet legal requirements. The Prosecutorial Council timely notifies the candidate of the date, time and place of interview. During the interview, it will be examined whether the candidate fulfils the criteria for appointment. An applicant does not need to be interviewed if an interview which served as a basis for his/her assessment was conducted with him/her in the last twelve months and if he/she was given negative assessment several times when interviewed for a position of a public prosecutor or deputy public prosecutor, regardless of when he/she was last interviewed.

When interviewing a candidate for a position of a public prosecutor, special focus will be placed on issues concerning the manner of organising work, managing public prosecutor's office, prosecutorial administration affairs and ideas how to improve proper and timely work.

More detailed criteria for a deputy public prosecutor who is appointed for the first time are as follows:

Professional knowledge, which includes:

- expertise in the performance of tasks, which is assessed based on autonomy, creativity and quality of tasks performed,
- written test results,
- information technology skills,
- foreign language skills,
- grade awarded in the final examination of initial training;

Work experience, which includes:

- length of years of service and type of jobs the candidate performed previously (court, prosecution service, legal profession, administration, business sector);

Work results, which include:

- expertise, workload and timeliness in performance of tasks,
- assessment of or opinion on previous work of the candidate delivered by the body or another entity where the candidate worked,
- career advancement;

Published research papers and other professional activities, including:

- published papers,
- papers submitted at seminars and other professional gatherings,
- participation in the work of commissions drafting laws, secondary legislation, comments on legislation, expert studies, information papers etc.
- participation in the training as a lecturer;

Professional training, which includes:

- master's degree and doctoral degree,
- completed specialist training and
- attending seminars and other forms of training.

When appointing deputy public prosecutor who is re-appointed or who is appointed to a higher prosecutor's office, additionally to the above-mentioned criteria special account will be taken of:

Work results, which include:

- number of completed cases (total number during one year and percentage) and in particular complex cases in the last three years before applying for the position,
- method of resolution of cases (number of cases resolved in ordinary or summary proceedings and in particular by use of alternative dispute resolution methods),
- quality of work shown by the number of accepted indictments, accepted appeals and accepted extraordinary legal remedies,
- taking up cases according to the order of receipt,
- complying with legal time limits for procedural actions and for bringing charges and filing other acts,

- number of proposed and undertaken financial investigations and motions for temporary seizure of items, property and material gain,
- complying with working hours,
- disciplinary measures imposed;

The ability to exercise office impartially, which includes: performing the office for which the candidate applies conscientiously, diligently, determinedly and responsibly.

Communication skills and professionalism, which include:

- relationship with colleagues,
- ability to work as part of a team,
- written and oral presentation skills,
- cooperation achieved with associates,
- willingness to transfer own knowledge and experience to associates and
- conduct in accordance with the code of ethics for public prosecutors.

Additionally to the above-mentioned criteria, depending on whether the candidate exercised the prosecutorial office previously or not, when proposing the appointment of public prosecutor the following will be taken into account: organisational skills of the candidate (organising work economically and effectively with the aim of faster discharge of duties), coordination of work activities with priority activities of public prosecutor's office, view of the functioning of public prosecutor's office, applying new techniques in operations and willingness to improve work, achieve efficiency and punctuality of public prosecutor's office.

When proposing re-appointment of a public prosecutor, the results achieved in the previous term of office will be also assessed, shown by overall punctuality of public prosecutor's office and achieved quality of work, complying with the deadlines, relationship and cooperation with other bodies in the field of suppressing crime and consistent application of the Law on Public Prosecution Office, the Criminal Code and the Criminal Procedure Code.

Based on the interview and documentation received, the Prosecutorial Council assesses each candidate taking into account the criteria for appointment. The Prosecutorial Council decides on the assessment of candidates by a majority vote of a total number of members. Immediately after the interview, the Prosecutorial Council fills in a standard candidate assessment form which contains the assessment of each candidate and reasons for such assessment.

The Prosecutorial Council may conduct written testing of candidates prior to the interview. In that case, based on test results, the Prosecutorial Council makes a ranking list of applicants which may be modified based on success the candidates achieve during interview. Based on the interview, the assessment of candidates and documentation received, the Prosecutorial Council draws up a list of candidates who achieved satisfactory results. The list of candidates contains the assessment of each candidate who was interviewed, and/or who was tested, as well as a short summary of assessment results. The Prosecutorial Council adopts the proposal for appointment of a public prosecutor in closed session. The Prosecutorial Council submits to the Parliament a reasoned proposal for appointment of public prosecutor which contains the list of candidates who achieved satisfactory results. The Prosecutorial Council passes the decision on appointment of a deputy public prosecutor in closed session based on the list of candidates. The Prosecutorial Council decides by a majority vote of all members when adopting proposal for appointment of a public prosecutor and when passing decision on appointment of a deputy public prosecutor. The decision on appointment of a deputy public prosecutor must contain a written statement of reasons.

b) Is the performance of holders of judicial office assessed? If yes, describe the body in charge as well as the relevant methods and criteria. What type of career system is established in Montenegro (based on merit, seniority, mixed)?

The performance of judges is assessed through reports on individual work of judges regarding the quantity and quality of work. The reports contain information on the number of received and resolved cases in a year and the number of upheld, amended and reversed decisions. The work reports of courts are submitted to the immediate superior court, the Supreme Court, the Judicial Council and the Ministry of Justice. Furthermore, in accordance with the Law on Courts, the courts higher in the hierarchy may have direct insight into the work of lower courts and judges for the monitoring and studying of case law and organisational and professional control over the work of courts. Pursuant to the Law on Judicial Council, the Judicial Council performs control over the work of courts and judges. This is a control performed by the commission formed by the Judicial Council. If that commission finds deficiencies in the work of a judge, disciplinary proceedings are initiated against such judge.

The performance of public prosecutors is assessed through supervision over the work of public prosecutor's office which is carried out by way of annual work reports, special work reports, direct insight into the work of public prosecutor's office or in another appropriate way. The Supreme Public Prosecutor supervises the work of high public prosecutors and basic public prosecutors. High public prosecutor supervises the work of basic public prosecutor. Direct insight into the work of a public prosecutor is carried out, as a rule, once a year by immediate superior public prosecutor.

Criteria for advancement – election to a court superior to the court in which judge works – are the same as for the judge who is elected for the first time. The criteria are professional knowledge, work experience and work results; published research papers and other professional activities; professional training; ability to perform the office for which he/she applies impartially, conscientiously, diligently, determinedly and responsibly; communication skills; relationship with colleagues, conduct outside of work, professionalism, impartiality and reputation. When a judge is elected to a higher judicial office, in addition to the above-mentioned criteria, special account is taken of efficiency, responsibility and quality of performance of judicial office, if the candidate exercised judicial office.

Work experience is assessed through the length of years of serving as a judge.

Work results are assessed through the number of resolved cases in the last three years before applying for the vacancy announced; through method of resolution of cases (number of cases resolved in civil judicial proceedings, or criminal proceedings, by settlement, mediation or otherwise); through the quality of work shown by the number of upheld, amended and reversed decisions in the last three years, through taking up cases according to the date of arrival at court; through complying with legal time limits for procedural actions and for drafting of judicial decisions; through complying with working hours; through the number of requests for review which have been found justified by the president of court in accordance with Article 18 of the Law on Protection of Right to Trial within a Reasonable Time; through the number of cases he/she has been removed from pursuant to Article 19 of the Law on Protection of Right to Trial within a Reasonable Time, and through the number and type of disciplinary measures imposed.

Published research papers and other professional activities are assessed through participation in commissions drafting laws and secondary legislation; work on mediation; lectures organised by the Judicial Training Centre; university work within clinics; through papers submitted at seminars held in the country and abroad.

Professional training is assessed through completed training organised by the Judicial Training Centre and by international organisations, and through attendance at seminars and other forms of training.

When appointing deputy public prosecutor who is re-appointed due to expiry of his/her term of office or who is appointed to a higher prosecutor's office (advancement), special account will also be taken of:

Work results, which include:

- number of resolved cases (total number during one year and percentage), and in particular of complex cases, in the last three years before applying for the position,
- method of resolution of cases (number of cases resolved in ordinary or summary proceedings and in particular by use of alternative dispute resolution methods),
- quality of work shown by the number of accepted indictments, accepted appeals and accepted extraordinary legal remedies,
- taking up cases according to the date of receipt,
- complying with legal time limits for procedural actions and for bringing charges and filing other acts,
- number of proposed and undertaken financial investigations and motions for temporary seizure of items, property and material gain,
- complying with working hours,
- disciplinary measures imposed.

The ability to perform duties impartially, which includes: performing the office for which the candidate applies conscientiously, diligently, determinedly and responsibly.

Communication skills and professionalism, which include*:*

- relationship with colleagues,
- ability to work as part of a team,
- written and oral presentation skills,
- cooperation achieved with associates,
- willingness to transfer own knowledge and experience to associates and
- conduct in accordance with the code of ethics for public prosecutors.

When proposing the appointment of a public prosecutor, depending on whether the candidate exercised prosecutorial office previously or not, the following will be taken into account: organisational skills of the candidate (organising work economically and effectively with the aim of faster discharge of duties), coordination of work activities with priority activities of public prosecutor's office, view of the functioning of public prosecutor's office, applying new techniques in operations and willingness to improve work, achieve efficiency and punctuality of public prosecutor's office.

When proposing re-appointment of a public prosecutor, additionally to the above-mentioned criteria, the performance in the previous term of office will be also assessed, shown by overall activity of public prosecutor's office and achieved quality of work, relationship and cooperation with other bodies in the field of suppressing crime and consistent application of the Law on Public Prosecution Office, the Criminal Code and the Criminal Procedure Code.

c) Is the guaranteed tenure of office set out in legislation? Is there a mandatory legal retirement age?

The Constitution of Montenegro guarantees permanence of judicial office and prescribes conditions for the termination of judicial office of a judge. In accordance with Article 121 of the Constitution, judicial office is permanent except in cases when it is laid down that the judicial office of a judge terminates and when a judge is dismissed from duty to perform judicial office.

The office of a judge terminates on his/her own request, when he/she reaches legal retirement age and if the judge has been sentenced to an unsuspended imprisonment.

The Law on Judicial Council (Official Gazette of Montenegro 13/2008) provides that the Judicial Council will be immediately notified of existence of reasons for termination of office: by the president of court in case of judge and by the president of immediate superior court in case of court president. The decision on termination of judicial office is passed by the Judicial Council no later than 30 days from the date of receipt of notification. Judicial office terminates on the date of adoption by the Judicial Council of decision on termination of office. The decision on termination of judicial office is delivered by the Judicial Council to the judge whose office terminated and to the court in which the judge exercised judicial office.

The office of public prosecutors is not permanent and they are appointed for a term of five years, while the office of deputy public prosecutors is permanent, apart from deputy basic public prosecutors who are appointed for a term of three years when appointed for the first time.

Termination of office of public prosecutors and deputy public prosecutors is prescribed by the Law on Public Prosecution Office (Official Gazette of Montenegro 40/2008):

The office of a public prosecutor or a deputy public prosecutor terminates:

- on the expiry of the term of office;
- on resignation;
- on reaching legal retirement age;
- on termination of nationality;
- if he/she becomes a member of a political party body;
- if he/she exercises office of a Member of the Parliament and other public office or a professional activity incompatible with prosecutorial office;
- if he/she was sentenced to unsuspended imprisonment.

The Law on Pension and Disability Insurance (Official Gazette of Montenegro 79/2008) regulates issues concerning the meeting of requirements for old age retirement, which applies also to judges and public prosecutors.

d) If there is a probationary period for judges:

The Constitution of Montenegro guarantees permanence of judicial office, which means that once judges are elected to judicial office, they will exercise that office until they are dismissed from office in accordance with the Constitution and the law.

The requirements for the election of judges are prescribed by the Law on Courts (Official Gazette of the Republic of Montenegro 5/02, 49/04 and 22/08), while the length of professional experience in the field of law depends on the type and instance of the court to which a judge is to be elected. Apart from the above-mentioned and additionally to fulfilment of general requirements, other special requirements have been prescribed, namely, to possess professional impartiality, high moral qualities and demonstrated professional competences.

When a judge is elected to a higher judicial office, additionally to the above-mentioned criteria, special account is taken of the efficiency, responsibility and quality of performance of judicial duties, if the candidate exercised judicial office.

Probationary period for judges has not been provided for by legislation.

- How long is it?

- Is there a difference in the tasks of probationary period and life-appointed judges?

- Do judges on a probationary period get specific training?

- Are there objective and pre-determined procedures to evaluate the probationary period?

- Is there an independent authority or judicial Council responsible for the evaluation of probation?

- Are the decisions on probation subject to judicial or administrative scrutiny?

e) Is there a higher council of the judiciary? Is it competent also for prosecutors or is there a Prosecutorial Council? If so, describe their composition, role, premises and budget. How are members appointed? How long is their mandate? Can the mandate be renewed and who can renew it? What are their qualifications? Are the judicial council and prosecutorial council deciding on their respective procedural rules? How is accountability ensured? How is potential conflict of interest scrutinised and taken into account? Do ex-officio member of these councils have the right to vote? Are elected politicians part of the judicial council and/or the prosecutorial council and what are their roles and functions? Is the Minister of Justice a member of such Council/s? Has he/she the right to vote and if yes, in what cases?

The Constitution lays down that the Judicial Council is an autonomous and independent body that ensures independence and autonomy of courts and judges, while the Prosecutorial Council ensures autonomy of public prosecution office and of public prosecutors, and that the Prosecutorial Council is elected and dismissed by the Parliament, while the election, term of office, powers, organisation and the manner of work of the Prosecutorial Council are regulated by law.

The Judicial Council has a president and nine members. The President of the Judicial Council is the President of the Supreme Court, and members include four members from among judges, two from among Members of the Parliament, two from among eminent lawyers and the Minister of Justice. The President of Montenegro proclaims the composition of the Judicial Council.

Pursuant to the Constitution, the Judicial Council has the power to:

- elect and dismiss from office judges, presidents of courts and lay judges;
- confirm termination of judicial office;
- determine number of judges and lay judges in a court;
- deliberate on the work report of a court, applications and complaints regarding the work of court and take positions thereon;
- decide on immunity of a judge;

- propose to the Government the amount of funds for the work of courts;

Pursuant to the Law on Judicial Council, the Judicial Council has the power to:

- control the work of courts and judges;
- decide on disciplinary responsibility of judges;
- deliver opinions on draft laws and secondary legislation in the field of justice and initiate adoption of relevant laws and other regulations in this field;
- ensure application, sustainability and uniformity of the Judicial Information System in the part relating to courts;
- take care of training of judges and prosecutors in cooperation with the Prosecutorial Council;
- maintain records containing information about judges;
- deliberate on complaints of judges and take positions regarding threats to their independence and autonomy;
- propose framework criteria regarding necessary number of judges and other court officers and administrative staff;
- adopt methodology for development of work reports of courts and annual allocation of tasks;
- adopt the proposal for the code of ethics which is passed by the Conference of Judges;
- perform also other duties laid down by law.

The Judicial Council has separate premises which are adequately equipped for the performance of its functions and tasks. Funds for the work of the Judicial Council are provided from the separate section of the Budget proposed by the Judicial Council to the Government, while the President of the Judicial Council has the right to participate in the sitting of the Parliament when discussing the Budget.

The Judicial Council adopts the Rules of Procedure of the Judicial Council which regulate issues relevant to organisation of work of the Judicial Council and these Rules are published in the Official Gazette of Montenegro.

The members of the Judicial Council from among the judges are elected and dismissed from office by the Conference of Judges, by secret ballot. The Conference of Judges is composed of all judges and presidents of courts. The members of the Judicial Council from among the judges are: two members from among the judges of the Supreme Court, the Appellate Court of Montenegro, the Administrative Court of Montenegro and high courts and two members from among the judges of all courts. The proposal for the candidates to be elected as members of the Judicial Council from among the judges of the Supreme Court, the Appellate Court of Montenegro, the Administrative Court of Montenegro and high courts is adopted at separate sessions of judges of the Supreme Court, the Appellate Court of Montenegro and the Administrative Court of Montenegro, at which one candidate from each of these courts is proposed, and at the joint session of high courts, at which one candidate from these courts is proposed. The list containing four candidates is made by the President of the Supreme Court and submitted to the Conference of Judges. To adopt proposal for the election of members of the Judicial Council from all courts, the President of the Supreme Court will request each judge and president of court to submit initial proposal, in such manner as to ensure confidentiality of initial proposal. Initial proposal should propose two candidates. On the basis of initial proposals, the President of the Supreme Court will draw up a list of eight candidates who have obtained the greatest number of initial proposals and submit it to the Conference of Judges. This list of candidates may not include a candidate who is included in the list of candidates for members of the Judicial Council from among the judges of the Supreme Court, the Appellate Court of Montenegro, the Administrative Court of Montenegro and high courts regardless of the number of initial proposals.

Members of the Judicial Council from among judges are elected from the lists of candidates. The voting for the candidates proposed in the lists is held separately, by voting first for the list of

candidates from among judges of the Supreme Court, the Appellate Court of Montenegro, the Administrative Court of Montenegro and high courts. If no candidate from the list obtains a required majority of votes, voting will be repeated among three candidates who obtained the greatest number of votes. Two candidates from each of the lists who obtained the greatest number of votes at the Conference of Judges will be elected as members of the Judicial Council.

Judicial Council members from among the Members of the Parliament are elected and dismissed from office by the Parliament; one of them will be from parliamentary majority and the other from parliamentary opposition. Members of the Judicial Council from among eminent lawyers are elected and dismissed by the President of Montenegro, and the Minister of Justice is an *ex officio* member.

The mandate of the Judicial Council is four years. The members of the Judicial Council from among judges may be re-elected as members of the Judicial Council upon expiry of four years from the termination of previous mandate in the Judicial Council. A mandate of a member of the Judicial Council terminates before expiry of the term for which he/she was elected if:

1) his/her office that made him/her eligible for the election to the Judicial Council has terminated;
2) he/she was elected as a judge of court of higher instance or president of court, if he/she is a member of the Judicial Council from among judges;
3) he/she was elected to judicial office (as a judge or president of court), if he/she is a member of the Judicial Council who is not from among judges;
4) he/she resigns;
5) he/she was sentenced to unsuspended imprisonment.

The Judicial Council confirms the termination of term of office of a member of the Judicial Council and notifies thereof the body that elected him/her.

Basic provisions of the Law on Judicial Council prescribe that the members of the Judicial Council must be persons of high moral and professional qualities and that they must act independently and impartially in the performance of their duties. A member of the Judicial Council is dismissed from office if he/she performs his/her duty unconscientiously and unprofessionally and if he/she was convicted of an offence making him/her unfit to perform duty in the Judicial Council. The proposal for dismissal of a member of the Judicial Council is submitted by the Judicial Council to the body that elected him/her.

A member of the Judicial Council will be suspended from duty if an order was issued that he/she be detained on remand, during detention on remand, and suspended from the performance of duties or tasks that made him/her eligible for the election to the Judicial Council.

The President of the Judicial Council or a member of the Judicial Council will be disqualified from consideration of issues and determination of the same relating to:

- himself/herself;
- his/her direct blood relatives;
- his/her relatives up to the fourth degree of collateral line;
- his/her in-laws up to the second degree;
- his/her spouse or common-law partner or adopted children;
- or if there are other circumstances giving rise to doubt as to the impartiality of the President of the Judicial Council or a member of the Judicial Council.

As soon as he/she learns of reasons for disqualification, the President of the Judicial Council or a member of the Judicial Council is obliged to notify the Judicial Council thereof in writing or orally at the session of the Judicial Council. Oral statement will be put on record in the minutes of meeting. The motion for disqualification of the President or a member of the Judicial Council may also be filed by the person whose rights and obligations are decided. The motion is filed in writing. Prior to determination on the motion filed, the response of the person whose disqualification is requested

will be obtained. The President or a member of the Judicial Council whose disqualification is discussed may participate in discussion on disqualification, however he/she may not vote on decision on own disqualification. The decision on disqualification of a member of the Judicial Council is passed by the President of the Judicial Council, and the decision on disqualification of the President of the Judicial Council is passed by a majority vote of the Judicial Council. Member who has been disqualified may not participate in any proceedings or discussion relating to the matter which was the reason for his/her disqualification.

Members of the Judicial Council employed with state bodies have the right to leave of absence for the performance of duties in the Judicial Council. The members of the Judicial Council who receive salaries from the budget are entitled to salary and other benefits arising from employment with the body in which they are employed for the period of leave of absence for the performance of duties in the Judicial Council. The members of the Judicial Council from among judges may, on the basis of decision of the Judicial Council, work for up to 70% of their working hours in a year in the Judicial Council on account of which the workload of their judicial duties will be appropriately reduced. The decision of the Judicial Council will specify duties the members perform in the Judicial Council. The members of the Judicial Council are entitled to remuneration for their work in the Judicial Council in the amount determined by the Judicial Council.

Apart from the above-mentioned rights, members of the Judicial Council have the following rights and duties:

- to attend regularly the sessions of the Judicial Council, except in case of justified absence, of which they will be obliged to notify in advance, to the extent possible, the President of the Judicial Council or the director of the Secretariat;
- to participate in discussion on each issue on the agenda and to vote, at their own discretion, on each proposal decided at the session of the Judicial Council;
- to perform all duties and tasks determined by the Judicial Council, and in particular to participate in interviews, disciplinary cases, meetings of special commissions and expert teams, meetings of working groups etc;
- to provide necessary information to administrative and financial unit of the Secretariat regarding the calculation of benefits they are entitled to;
- to keep confidential information the Judicial Council designated as classified.

All members of the Judicial Council have the right and duty to decide and vote on each proposal which is decided at the session of the Judicial Council. Voting is public. During voting, only the President and members of the Judicial Council may be present in the room where the Judicial Council works. Decision is deemed adopted if a majority of all members of the Judicial Council voted in favour of the decision. Two members of the Judicial Council are from among the Members of the Parliament, one from parliamentary majority and the other from parliamentary opposition, and they are full members who have the right to vote on all issues falling within the competence of the Judicial Council. The Minister of Justice is an *ex officio* member of the Judicial Council and he/she has the right to vote on all issues except in the proceedings for establishing disciplinary responsibility of judges.

The Prosecutorial Council has a president and ten members. The Supreme Public Prosecutor is a president of the Prosecutorial Council by virtue of his/her office. The members of the Prosecutorial Council include six members from among public prosecutors and deputy public prosecutors, one from among the professors of the Faculty of Law in Podgorica, two from among eminent lawyers in Montenegro, one of whom has experience in the field of protection of human rights and freedoms, on a proposal from the President of Montenegro, following a prior opinion from the Protector of Human Rights and Freedoms and one representative of the Ministry of Justice.

The Prosecutorial Council:

- adopts the proposal for appointment and dismissal from office of public prosecutors, appoints, dismisses from office and confirms termination of office of deputy public prosecutors;

- determines the number of deputy public prosecutors;
- conducts the proceedings for establishing disciplinary responsibility of public prosecutors and deputy public prosecutors;
- is responsible for the training of prosecutorial office holders in cooperation with the Judicial Council;
- adopts the proposal for the section of the budget intended for the financing of the work of the Public Prosecution Office and the Prosecutorial Council;
- delivers opinions of draft laws and secondary legislation in the field of justice and initiates enactment of relevant laws and other regulations in this field;
- ensures implementation, sustainability and uniformity of the Judicial Information System in the part related to the prosecution service;
- maintains records containing information about public prosecutors and deputy public prosecutors;
- proposes framework criteria regarding the necessary number of public prosecutors and deputy public prosecutors and of other officers and administrative staff in public prosecutors' offices;
- adopts methodology for development of work reports of the Public Prosecution Office and annual allocation of tasks;
- adopts the Code of Ethics for Prosecutors;
- adopts its Rules of Procedure;
- performs other duties laid down by law.

The Prosecutorial Council has separate premises where its sessions are held and records containing information about public prosecutors and deputy public prosecutors, minutes and other documents related to the work of the Prosecutorial Council are maintained.

Funds for the work of the Public Prosecution Office and of the Prosecutorial Council are provided from a separate section of the Budget of Montenegro, within which the funds for the work of the Prosecutorial Council are stated separately. The Prosecutorial Council adopts the proposal for the section of the budget for the financing of the State Prosecution Office which amounted to EUR 4 982 150.53 in 2009, as well as the funds of the Prosecutorial Council which amounted to EUR 75 435.27 in the same year.

The Parliament elects the members of the Prosecutorial Council from among the public prosecutors and deputy public prosecutors on a proposal from the enlarged session of the Supreme Public Prosecutor's Office; from among the professors of the Faculty of Law in Podgorica on a proposal from the Faculty of Law in Podgorica; from among eminent lawyers in Montenegro on a proposal from the President of Montenegro; and the representative of the Ministry of Justice on a proposal from the Minister of Justice.

The proposal for candidates for membership in the Prosecutorial Council from among public prosecutors and deputy public prosecutors is adopted by the enlarged session of the Supreme Public Prosecutor's Office by secret ballot. The enlarged session of the Supreme Public Prosecutor's Office, in addition to the Supreme Public Prosecutor and his/her deputies, also comprises high public prosecutors. Prior to the adoption of proposal for membership in the Prosecutorial Council from among public prosecutors and deputy public prosecutors, the enlarged session of the Supreme Public Prosecutor's Office will request initial proposals from each public prosecutor and deputy public prosecutor in Montenegro in such manner as to ensure confidentiality of initiative.

The proposal for election of members of the Prosecutorial Council from among public prosecutors and deputy public prosecutors is adopted by a majority vote at the enlarged session of the Supreme Public Prosecutor's Office. Should there be more candidates proposed than the number of vacancies to be filled by way of election, and insufficient numbers have been elected, there is a repeated vote on the candidates who have won the closest number of votes to the number

necessary for election and should a third round fail, the procedure is repeated with new candidates.

The members of the Prosecutorial Council are elected by the Parliament for a term of four years. The members of the Prosecutorial Council may be re-elected. The term of office of a member of the Prosecutorial Council who has been subsequently elected to a vacant position in the Prosecutorial Council expires upon the expiry of the term of office of the Prosecutorial Council. Membership in the Prosecutorial Council will terminate prior to the expiry of the period for which a member was elected, on his/her own request or if prosecutorial office or employment that made him/her eligible for the election has terminated. Termination of membership in the Prosecutorial Council is confirmed by the Parliament, on the basis of a notification by the President of the Prosecutorial Council.

The Prosecutorial Council adopts the Rules of Procedure of the Prosecutorial Council which regulate the issues laid down by the law, the method of work and decision-making of the Prosecutorial Council, and other issues relevant to its work. The Prosecutorial Council also adopts other acts relevant to its work, in accordance with law. The Rules of Procedure of the Prosecutorial Council are published in the Official Gazette of Montenegro and on the web page of the Prosecutorial Council.

The President or a member of the Prosecutorial Council may not participate in the work of the Prosecutorial Council if the matter to be determined concerns himself/herself, his/her spouse, or common-law partner, or his/her blood relative in direct line without limitations and up to the fourth degree of collateral line, his/her in-laws up to the second degree or if there are other circumstances giving rise to doubt as to his/her impartiality. As soon as he/she learns of any reason for disqualification, the President and/or a member of the Prosecutorial Council has a duty to inform the Prosecutorial Council immediately thereof in writing or orally at the session of the Prosecutorial Council. Oral statement will be put on record in the minutes of meeting. The motion for disqualification of the President or a member of the Prosecutorial Council may also be filed by the person whose rights and obligations are determined. Prior to determination on the motion filed, the response of the person whose disqualification is requested will be obtained. The President or a member of the Prosecutorial Council whose disqualification is discussed may participate in the discussion on disqualification, however he/she may not vote on decision on own disqualification. The decision on disqualification of a member of the Prosecutorial Council is passed by the President of the Prosecutorial Council, while the decision on disqualification of the President of the Prosecutorial Council is passed by a majority vote of the Prosecutorial Council. The President or the member who has been disqualified may not participate in any proceedings or discussion relating to the matter which was the reason for his/her disqualification.

Members of the Prosecutorial Council are obliged:

- to attend the sessions of the Prosecutorial Council and participate in its work;
- to participate in disciplinary proceedings, meetings of special commissions and expert teams, meetings of working groups;
- to keep confidential information the Prosecutorial Council designated as classified; and
- to participate in the performance of other activities falling within the competence of the Prosecutorial Council.

Members of the Prosecutorial Council have the right to leave of absence for the performance of duties in the Prosecutorial Council. The workload of prosecutorial duties of the members of the Prosecutorial Council from among public prosecutors and deputy public prosecutors may be reduced on the basis of the decision of the Prosecutorial Council to the extent of their involvement in the work of the Prosecutorial Council. The President, members of the Prosecutorial Council and the secretary are entitled to remuneration for their work in the Prosecutorial Council, including the members of commissions and expert teams. The amount of remuneration is determined by the Prosecutorial Council.

All members of the Prosecutorial Council have the right and duty to decide and vote on each proposal which is decided at the session of the Prosecutorial Council. Voting is public. During

voting, only the President, members and the secretary of the Prosecutorial Council may be present in the room where the Prosecutorial Council works. At the session, the Prosecutorial Council decides by a majority vote of the members present. Exceptionally, when adopting the proposal for appointment of public prosecutor and when adopting decision on appointment of deputy public prosecutor or on suspension, the Prosecutorial Council decides by a majority vote of all members of the Prosecutorial Council. In case of equal number of votes for and against a certain decision, the decision is adopted if the President of the Prosecutorial Council voted for such decision. The results of voting are established by the President of the Prosecutorial Council.

f) Is there an Inspection Service for the judiciary? (What are the internal control mechanisms established?) If so, describe its composition, role, way of functioning, budget and number of cases it is dealing with. What are the possibilities of appeal against any disciplinary measures and who decides on them?

The Ministry of Justice carries out supervision over judicial and prosecutorial administration activities through officers authorised for supervision who must meet requirements prescribed for a high court judge. Supervision activities are organised as a separate Supervision Section within the Department for Judiciary. The Section employs three authorised officers.

The activities of supervision over judicial administration relate to:

- organisation of the work in courts in accordance with the Court Rules;
- handling applications and complaints;
- the work of the Judicial Council Secretariat as regards the part of its activities related to judicial administration;
- the work of registry office and archive office;
- collection of fines, costs of criminal proceedings and confiscated assets;
- handling deposits;
- keeping business books with respect to financial and material operations with parties;
- maintaining appropriate prescribed records;
- other activities relating to proper functioning and discharge of judicial administration activities.

When carrying out supervision, the Ministry of Justice may not undertake actions which would influence decision-making of the court in court cases. If the authorised officer, in the course of supervision, finds irregularities, he/she will issue a warning to the president of court or a judge and give them 15 days to rectify irregularities found. The record of supervision carried out accompanied by the warning will be delivered to the president of supervised court, to the president of immediate superior court, to the President of the Supreme Court and to the Minister of Justice.

The Ministry of Justice carries out supervision over the work of the prosecutorial administration, with respect to:

- organisation of work of the public prosecutor in compliance with the Rulebook on Internal Operations of the Public Prosecution Office;
- handling applications and complaints
- the work of registry office and archive office
- maintaining prescribed official records
- other activities relating to proper functioning and discharge of prosecutorial administration activities.

The work of authorised officers who carry out supervision is funded from the section of the budget allocated to the Ministry of Justice and the authorised officer holds a position and has a status of a civil servant.

In accordance with the Law on Courts, the president of court manages the work of the court. The president of court organises work in the court, allocates tasks and takes measures for the orderly and timely performance of tasks in the court. The president of court is also authorised to control whether the cases are taken up according to the time of their arrival at court, whether the trials are scheduled and decisions processed within time limits prescribed by law. The president of court also examines the merits of representations of citizens regarding the work of judges. When he/she finds deficiencies in the work of a judge, the president of court has the power and duty to initiate disciplinary proceedings against the judge. Disciplinary proceedings are conducted and decision is made by the Disciplinary Committee of the Judicial Council. If the president of court fails to initiate disciplinary proceedings against a judge, the president of immediate superior court has the power and duty to initiate disciplinary proceedings against such president of court.

In accordance with the Law on Judicial Council, the Judicial Council performs control over the work of courts and judges. This is a control performed by a commission which is established by the Judicial Council. If this commission finds deficiencies in the work of a judge, disciplinary proceedings are initiated against such judge.

Each citizen has the right to file complaint about the work of a judge. Such complaint may be filed to the president of the court in which the judge works, to the president of immediate superior court, to the president of the Superior Court, to the Office for Complaints at the Supreme Court, to the Judicial Council or the office for corruption at the Judicial Council. Each complaint is investigated. The complaint filed is delivered to the president of the court in which the judge works. That president has a duty to investigate the allegations from the complaint filed. If he/she finds that the complaint is well-founded he/she has a duty to initiate disciplinary proceedings or the proceedings for dismissal of judge from office. If he/she does not find grounds to initiate proceedings, the president of court has a duty to inform thereof the Judicial Council, or the president of immediate superior court or the President of the Supreme Court, depending on to whom the complaint was filed.

The judge and the submitter of proposal have the right to file an appeal to the Judicial Council against the decision of the Disciplinary Committee of the Judicial Council within eight days from the date of receipt thereof. The judge and the submitter of proposal have the right to initiate administrative dispute proceedings before the Administrative Court of Montenegro against the decision of the Judicial Council about the appeal.

The supervision over the work of public prosecution service is carried out by way of annual work reports, special work reports, direct insight into the work or in another appropriate way.

The Supreme Public Prosecutor submits to the Parliament the annual report on the work of the Public Prosecution Office. The annual work report contains description and the analysis of the situation in the prosecution service, detailed information for each prosecutor’s office regarding the number of the cases received and resolved in the year for which the report is made, as well as problems and deficiencies in their work. The annual work report also contains information on the work of the Prosecutorial Council and proposed measures aimed at improvement of performance of the Public Prosecution Office and the Prosecutorial Council.

The Supreme Public Prosecutor supervises the work of high public prosecutors and basic public prosecutors. High public prosecutor supervises the work of basic public prosecutor. Direct insight into the work of a public prosecutor is carried out, as a rule, once a year by the immediate superior public prosecutor.

Disciplinary responsibility and disciplinary measures of public prosecutors and deputy public prosecutors are prescribed by the Law on Public Prosecution Office and the Rules of Procedure of the Prosecutorial Council.

A public prosecutor or a deputy public prosecutor will be subject to disciplinary proceedings if he/she exercises his/her office in a negligent manner or harms the reputation of prosecutorial office, and on these grounds the disciplinary committee established by the Prosecutorial Council

may impose on a public prosecutor or a deputy public prosecutor a disciplinary measure: reprimand or salary reduction which may not exceed 20% or a period of six months. The decision of the disciplinary committee may be appealed against to the Prosecutorial Council. The members of the Disciplinary Committee may not participate in the work of the Prosecutorial Council when the latter is deciding on appeal. The decision of the Prosecutorial Council regarding dismissal of public prosecutor or deputy public prosecutor and suspension is final and administrative dispute proceedings may be instituted against it.

g) Is the selection of trainees objective and transparent?

According to the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08), a trainee is a person who enters into employment in a state body for the first time, for the purpose of training for independent performance of duties. The recruitment of a trainee by a state body is governed by the provisions of the Law on Civil Servants and State Employees and basic principles contained in this Law guaranteeing equal access to all posts under equal conditions and political neutrality and impartiality in the performance of duties in accordance with public interest. The mentioned Law applies also to the employment of trainees in courts and public prosecutors' offices as state bodies.

The procedure for recruitment of trainees is transparent and open, starting from the procedure of announcement which is carried out by the Human Resources Administration, based on the request of the head of state body in which the trainee is to be employed.

The Human Resources Administration publishes open advertisements on its website, in daily newspapers published in the territory of Montenegro and on the website of the Employment Office of Montenegro. Thus, the transparency and openness in the procedure for vacancy announcement is ensured. In accordance with the Law on Civil Servants and State Employees each open advertisement contains mandatory information (the name of the state body and the place of the performance of duties, title of the post, requirements for employment, supporting documents which the candidate has to enclose to the application, deadline and the name of contact person), while the candidates must meet general requirements contained in Article 16 of the Law on Civil Servants and State Employees and special requirements laid down under the act on internal organisation and job descriptions.

Open advertisement is published in accordance with the general labour legislation, and the deadline for submission of applications may not be less than eight or longer than fifteen days from the date of publication of open advertisement. Based on the applications received, the Human Resources Administration makes a list of candidates who meet the requirements stipulated in the open advertisement and these are the candidates who submitted full and timely documentation confirming that they meet general and special requirements for employment.

Since a trainee is a person who is employed for the first time, for the purpose of training for independent performance of duties, the procedure for testing fitness for duty prescribed by Article 23 of the Law on Civil Servants and State Employees is not obligatory. However, the head of the state body may require providing for testing of special knowledge and skills (foreign language skills, computer literacy etc.) as part of special requirements for employment.

In that case, procedure for mandatory testing of competences is carried out in accordance with the Law on Civil Servants and State Employees and the Rules on Form and Method of Testing of Competences for the Performance of Duties in a State Body adopted by the Human Resources Administration. The procedure for testing of competences may be carried out in several phases in which the number of candidates is gradually reduced, and it may also be carried out through a written test, by way of interview or in another appropriate manner. The procedure for testing of competences is carried out in the presence of the commission for testing of competences whose members include a representative of a state body in which the trainee is to be employed.

Following this procedure, the Human Resources Administration will make a selection list consisting of candidates who achieved satisfactory results in the procedure for testing of competences and

submit it to the head of state body (in addition to this list, the head of state body will also be submitted a report on procedure for testing of competences which will contain the information on testing procedure, results and score awarded to each candidate in the testing procedure) or only a selection list if the request for public announcement did not require testing of special knowledge and skills.

In accordance with Article 25 of the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08), the head of state body is obliged to make a decision on selection within 30 days from the date of delivery of selection list. If he/she fails to make selection among candidates from the selection list, he/she has a duty to inform the Human Resources Administration of his/her reasons for such decision. In that case the open advertisement may be repeated.

An appeal may be filed against the decision on selection on the grounds of procedural irregularity, in accordance with the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08). An appeal against decision on rights and obligations arising from employment and related to employment is decided upon by the Appeal Commission.

After the trainee enters into employment in a state body, a trainee is trained for independent performance of duties in accordance with the Programme adopted by the Human Resources Administration.

h) Is there a legal base for representation of members of national minorities in the judiciary? How are the members of national minorities represented in judiciary in practice? Is there any special recruitment procedure for judges from national minorities?

By constitutional provisions on special minority rights, members of national minorities are guaranteed full protection of national, cultural, linguistic and religious identity and other related rights, right to authentic representation in the Parliament of Montenegro and assemblies of local self-government units in which they make up a considerable portion of population according to the principle of affirmative action, as well as the right to proportional representation in public services, public authorities and local self-government.

The Constitution of Montenegro guarantees that everyone has the right to work, to free choice of occupation and employment, to fair and humane working conditions and to protection during unemployment. The Constitution prohibits any direct and indirect discrimination on any grounds whatsoever.

The 2008 Minority Policy Strategy of the Government of Montenegro, in the part related to the representation of members of national minorities in the judiciary, is based on Action Plan for the Implementation of the Strategy for the Reform of Judiciary (2007-2012), which provides for, as one of the measures that must be implemented by the Judicial Council and the Prosecutorial Council, setting up and continuous updating of the data base on employees in judicial and prosecutorial authorities. The Judicial Council maintains records on judges, but these records do not include statement on ethnic affiliation. The Prosecutorial Council maintains records on prosecutors and deputy prosecutors, however, these records do not include statement on ethnic affiliation.

The Human Resources Administration of Montenegro maintains central human resources records on civil servants and state employees relating also to employees in judicial and prosecutorial administration. The development of the above-mentioned records is ongoing. Central human resources records contain the part relating to statement on ethnic affiliation, however, there is no obligation to fill in this part.

There is no special recruitment procedure for judges from national minorities.

5. Mobility of judges:

a) What procedure governs the allocation of judges to particular courts and regions?

The Law on Judicial Council governs the procedure of selection of judges and lay judges, manner of the establishment of termination of judicial office, disciplinary responsibility and dismissal of judges and lay judges, as well as other issues relevant to the work of the Judicial Council. Judges and court presidents are selected on the basis of public announcements. The following persons inform the Judicial Council of a vacant judicial position or position of court president: for a judge, the court president, and for a court president, the president of the immediately higher court. One can become a judge of a specific court after the procedure of appointment to the court for which the Judicial Council has made a decision on selection has been carried out.

The Constitution of Montenegro provides that the judge may not be transferred or seconded to another court against his will, except on the basis of a decision of the Judicial Council in the case of reorganisation of the courts.

The Law on Judicial Council provides for secondment to another court with the consent of the judge concerned and sets out the procedure for temporary secondment to another court and secondment to another court without the consent of the judge.

Secondment to another court with the consent of the judge - The judge performs his office at the court he has been selected to. The Judicial Council may, with the consent of the judge, second or transfer a judge to another court of the same of lower level, if regular performance of the tasks at the court the judge is being seconded to has been put at risk due to the fact that a judge of that court has been disqualified or prevented from exercising judicial office. The Judicial Council may temporarily second a judge with his consent to a court of higher instance, if the scope of work in that court has increased temporarily or in the case of a large backlog of cases which cannot be resolved by the existing judges. The seconded judge must meet the selection criteria for judges of the court he is being seconded to. Salaries and other costs incurred in connection with secondment of a judge to another court with his consent are borne by the court the judge is seconded to.

Secondment to another court without the consent of the judge – In the case of reorganisation of courts whereby the number of judges is being decreased or a judicial post abolished, the Judicial Council may transfer or second judges to another court without their consent. Salaries and other costs incurred in connection with secondment of a judge to another court without his consent are borne by the court the judge is transferred or seconded to.

b) Can judges be required to move between courts and regions? Who and how is the decision to move a judge made?

The procedure for transfer of judges to other courts, that is, temporary secondment of judges to another court is described in full under reply to question 5a.

With the view to ensuring efficient resolution of cases at specific courts, decisions on temporary secondment of 28 judges to another court were made in 2008. The Judicial Council will, pursuant to its Report on Work, continue to second judges from courts that are under lesser pressure to the courts which have proved inefficient. The priority remains set at resolution of cases with elements of corruption and organised crime and war crimes cases, as well as cases which have been under court consideration for several years. The latter cases will have priority under the new methodology of record keeping. Measures and steps aimed at promoting the implementation of the Law on the

Protection of the Right to Trial within a Reasonable Time will be taken in order to shorten court procedures and ensure swifter resolution of court cases.

6. What are the measures in place ensuring internal independence of the judiciary? Are the ordinary courts independent from the Supreme Court? Is the Supreme Court or another high court prohibited from giving guidance, recommendations, explanations or supervision to ordinary courts? Do judicial leadership posts hold any evaluation, appraisal or disciplinary powers? If so what safeguards exist to prevent the undue influence of the internal judicial hierarchy?

The Law on Courts provides that judges hear and decide cases independently and impartially. Judicial office may not be exercised under anyone's influence nor may anyone influence the judge in the exercise of judicial office.

Pursuant to Article 27 of the Law on Courts, the Supreme Court Bench:

- establishes legal positions of principle and legal opinions of principle with a view to ensuring a uniform application of the Constitution, laws and other regulations within the territory of Montenegro;
- examines issues in relation to the administration of justice, application of laws and other regulations and exercise of judicial office and informs the Parliament thereof.

Every court is entitled to request the adoption of or an amendment to a legal position of principle. Legal position of principle is a rule on a legal issue of general significance to proceedings in relation to legal matters which fall within the competence of the Supreme Court and legal issues which have bearing on equality of persons before the law and observance of other rights and freedoms guaranteed by the Constitution and international treaties. Legal opinion of principle is adopted in relation to a particular legal issue which has arisen in the case law of the Supreme Court or lower courts and which has bearing on the uniform application of the Constitution and laws within the territory of Montenegro.

Therefore, the Supreme Court takes legal positions of principle or legal opinions of principle without issuing instructions as to how to deal with specific cases and what decisions to make. No other court has such an authority.

The court of immediately higher instance to the court in which the decision has been made may take position on the merits of the case only in its decision on a submitted statutory legal remedy. Under procedural legislation, lower instance courts are bound by orders of the appeal courts insomuch as these relate to the examination of evidence and establishment of facts, while they are not bound by a legal standpoint of the higher instance court. An exception in this respect is the provision of Article 57 of the Law on Administrative Dispute, which provides that administrative authorities are bound by such legal standpoint of a court as may be set out in a decision made in administrative dispute procedure.

Courts presidents are authorised to monitor whether cases are dealt with in the order in which they arrived in court, whether trials are duly scheduled as mandated by legal provisions, whether decisions are made in due time and, in general, whether the court administration functions properly. However, the court president does not have any authority over, nor may he exert any influence on the decision making in individual cases.

The court president has the authority to initiate disciplinary proceedings against judges, but the decision on the matter is made by the Disciplinary Committee of the Judicial Council. The judge may make an appeal against a decision of the Disciplinary Committee to the Judicial Council and may initiate administrative dispute procedure against a decision of the Judicial Council.

7. Are the decisions of high courts easily accessible and in what way?

All decisions rendered by the Supreme Court of Montenegro in 2009 are posted on its website (http://www.vrhsud.gov.me) and all decisions rendered by the Administrative Court of Montenegro from its inception in January 2005 onwards are available on this court's website (http://www.upravnisudcg.org).

Starting from 1 September 2009, all decisions of the Appellate Court of Montenegro, two High Courts and Basic Court in Podgorica are available on their respective websites.

Impartiality

8. How does legislation provide for the impartiality of the judiciary?

The impartiality of courts is provided for by the Constitution of Montenegro within its Part dealing with individual rights and freedoms. The Constitution provides that everyone is entitled to a fair and public trial within a reasonable time by an independent and impartial tribunal established by law, as well as that courts hear and determine cases on the basis of the Constitution, laws and ratified and published international treaties. The Constitution also covers the principles of public trial, permanent judicial office, functional immunity, incompatibility of judicial and prosecutorial office, on the one side, and that of Member of Parliament and other public offices as well as professional engagement in another activity, on the other. The Judicial Council, as an autonomous and independent body, composed mainly of judges, selects and dismisses judges and courts presidents.

The constitutional principle of impartiality is regulated in more detail by organisational legislation.

Within its stipulations on fundamental principles, the Law on Courts provides that judicial office may not be exercised under anyone's influence nor may anyone influence the judge in the exercise of judicial office; everyone is entitled to an impartial hearing within a reasonable time; everyone is entitled to have his case decided by a randomly allocated judge regardless of the parties to the case and the nature of the case. The Law on Courts regulates in detail the principle of random allocation of cases by providing that cases are allocated to judge in the daily order in which requests to initiate court proceedings have been filed, in accordance with the alphabetical order of first letters of judges' last names. Furthermore, very strict rules govern withdrawal of allocated case from judges. This can happen when it has been established that a judge has not been making progress in a case without proper justification, but also due to the disqualification or if a judge has been prevented from exercising his office for a period longer than three months. The accountability of the court president is prescribed if the cases are allocated contrary to law. The method of random allocation of cases is regulated in detail by the Court Rules.

Within its stipulations governing the principles of impartiality and objectivity, the Law on Public Prosecution Office provides that the public prosecutor exercises his office in the public interest, in order to ensure the implementation of the law. The exercise of function of the prosecutor must ensure the observance and protection of human rights and freedoms and be impartial and objective. Public prosecutors must abide by the Code of Ethics for Prosecutors, which is adopted by the Prosecutorial Council. Salaries of prosecutors are governed by a special law. The Law on Public Prosecution Office provides that allocation of cases is carried out in a manner that ensures impartiality, independence and efficiency.

Under the Law on Judicial Council, the Judicial Council is tasked with securing the independence, autonomy and professionalism of the courts and judges in Montenegro, in accordance with the Constitution and law. In the performance of its duties, the most important of which include the selection of judges, termination of judicial office and accountability, as well as control over the work

of the courts and judges, the members of the Judicial Council act independently and impartially and the Judicial Council protects the courts and judges from political influence. The Law specifies clear criteria for the selection of judges, which are regulated in more detail by the Rules of Procedure of the Judicial Council. The conditions for termination of judicial office and dismissal of judges are laid down in the Constitution.

With respect to the highly important guarantee of impartiality on the part of judicial authorities, the Criminal Procedure Code and Civil Procedure Law prescribe reasons for disqualification of judges and lay judges. These reasons mostly relate to conflict of interest, which covers the situation where the judge has been injured by the criminal office, but also a series of reasons which include marital, kinship or other relationship of the judge with the parties, earlier involvement of the judge in the same case, as well as the situation where there are circumstances that raise suspicion as to the impartiality. In addition to the clearly outlined reasons for disqualification, the procedural legislation also regulates the procedure for disqualification. Namely, when the judge learns of one of the reasons for disqualification, he is under a duty to discontinue all work on that case immediately and report thereon to the president of the court, who will in turn allocate the case to another judge in the prescribed manner. In the case of the disqualification of a court president, he is substituted by a judge of same court with the longest service, and if that is not possible, the president of the immediately higher court decides on the substitute. The procedural legislation also lists persons who are entitled to seek disqualification, prescribes at which stage of proceedings they may do so, and provides that requests for disqualification are decided upon by the court president. The legislation furthermore regulates the decision making procedure. The ruling rejecting a request for disqualification can be challenged by way of a special appeal. The duties of a judge or lay judge in the case of submission of a request for disqualification are also laid down in the procedural legislation. The disqualification of the public prosecutor and other participants to proceedings are governed by separate provisions. Involvement of a judge who has been disqualified by a final and enforceable decision or who ought to have been disqualified amounts to a substantial violation of procedure. In accordance with the Law on Administrative Dispute, the provisions of the Civil Procedure Law on disqualification are also applicable in administrative dispute proceedings.

The Law on Salaries and Other Income of Judges and Prosecutors and Constitutional Court Judges, applicable since 2007, has substantially improved the material status of judges and prosecutors.

The 2008 Law on Prevention of Conflict of Interest eliminates conflict of interests in relation to judges and public prosecutors as public officials. This Law puts limitations on the performance of public offices and places judges and prosecutors under a duty to submit reports on income and other property and provides for other measures aimed at preventing conflict of public and private interest. The Law provides that the public official may engage in scientific, teaching, cultural, artistic and sporting activity and may generate revenues from copyrights, patent and neighbouring rights of intellectual and industrial property; public official is under a duty to report such income to the Commission for Prevention of Conflict of Interest, which is established by the Parliament of Montenegro; that a judge or public prosecutor may not be the chairman or a member of a managing or supervisory body, executive director, member of the management structure of a public enterprise, public institution or other legal person and that he may not enter into an agreement for the provision of services with a public enterprise; if a public official is involved in discussions and decision-making within the body in which he performs his public office in relation to a matter he or a person associated with him has a private interest in, he is under a duty to inform other participants in the discussion and decision-making process thereof, before he engages in the discussion, and before the decision making starts at latest; within a year after leaving the public office, the public official may not represent a legal or natural person before the authority in which he was involved in the decision making process as a public official; public official may not accept money, securities or precious metals, regardless of their value, nor accept gifts except protocolary and suitable gifts valued less than EUR 50; public official who has been offered a gift he may not accept is under a duty to refuse the offer, i.e. inform the donor that he cannot accept the gift; accepted gifts and their value are entered into gift register kept by the authority at which the public official performs his office.

The Law on Prevention of Conflict of Interest also provides that the public official must submit, within 15 days as of the taking of office, to the Commission for Prevention of Conflict of Interest of Montenegro a report on his property and income, as well as on property and income of his or her spouse and children if they live in the same household. Such reports reflect the status as at the date of election or appointment. During the performance of their public office, judges and prosecutors submit reports once a year by the end of February of the current year for the previous year and in the case that information listed in the report has changed as result of property increase higher than EUR 5 000, the public official must submit a report 15 days as of the day the change arises.

Conflict of interest exists when a public official places his private interest before the public interest in order to obtain material benefits or privileges for himself or persons connected with him. Measures for the prevention of conflict of interest are taken by the Commission for Prevention of Conflict of Interest as an independent body. Information on property and income of judges and prosecutors are available to the public.

Under the Law on Prevention of Conflict of Interest, a violation of its provisions established by way of a final, or final and enforceable, decision is considered a wrongful performance of judicial office, of which the Commission for Prevention of Conflict of Interest informs the Judicial Council, as this may give rise to the institution of procedure of dismissal.

The Conference of Judges adopted the Code of Ethics for Judges in July 2008 and the Prosecutorial Council adopted the Code of Ethics for Public Prosecutors and Deputy Public Prosecutors in 2006. These documents will most certainly help with the resolution of issues of professional ethics and autonomy in decision making and in raising public awareness with regards to standards they may expect from judges and prosecutors, as well as offer guaranties to the public that decisions are indeed made independently and impartially.

9. Accountability and discipline:

a) Is there a code of ethics for members of the judiciary? If so, by whom has it been set up? What is its legal status? How is it being implemented?

In accordance with the Law on Judicial Council, the Conference of Judges adopted the Code of Ethics for Judges on 26 July 2008 (Official Gazette of Montenegro 45/08). The Code of Ethics for Judges lays down ethical principles and rules of conduct for judges which the judges must observe in order to safeguard, promote and improve dignity and reputation of judges and the judiciary. Non-observance of the Code of Ethics may constitute grounds for disciplinary responsibility of a judge.

The Judicial Council established a Commission for monitoring the implementation of the Code of Ethics for Judges and no disciplinary proceedings have been instituted to date for non-observance of the provisions of the Code relating to the promotion of legality, independence, impartiality, expertise, professionalism, their commitment to work, honesty, incorruptibility, dignity of judicial office, responsibility, relations with the public and media and relationship with colleagues and court employees.

On the basis of a decision of the Prosecutorial Council, the Code of Ethics for Public Prosecutors and Deputy Public Prosecutors entered into force on 10 November 2006. Public prosecutors and deputy public prosecutors had previously had an opportunity to give their opinion on the document. The Code lays down the principles and rules of conduct of public prosecutors and deputy public prosecutors and is binding on all public prosecutors and deputy public prosecutors. The Law on Public Prosecution Office provides that public prosecutors and deputy public prosecutors abide by the Code of Ethics for Prosecutors in the performance of their offices. When taking the oath before the Prosecutorial Council, deputy public prosecutors also sign a statement on the acceptance of the Code of Ethics, which reads as follows: “I hereby declare that I agree to the provisions of the Code of Ethics and that I shall abide by it in order to safeguard and further develop the dignity and

reputation of the Public Prosecution Office, as an independent authority". No violation of the Code of Ethics has been recorded.

b) Are judges irremovable from the start of their career? How is such irremovability implemented and respected?

The Constitution of Montenegro provides for permanence of judicial office and sets up the conditions under which office of the judge terminates and conditions for dismissal from office.

The judicial office terminates when judge requests so, when he meets the requirements for retirement and if he has been imposed an unsuspended prison sentence. No proceedings are conducted in relation to termination of judicial office, it is solely noted that conditions for termination of office have been met.

The judge is dismissed from duty if he has been convicted of an offence which renders him unworthy of performing judicial office; if he performs judicial office in an unprofessional or negligent manner or if he has permanently lost the ability to perform judicial office.

During 2008, four proposals for dismissal of judges were submitted to the Judicial Council. The Judicial Council decided to dismiss two judges on the basis of these proposals. One judge submitted a request for termination of judicial office during the course of the proceedings, while in one instance the proceedings were dismissed after the person who had submitted the proposal had withdrawn it.

The Law on Judicial Council (Official Gazette of Montenegro 13/08), lays down the conditions for the suspension of the judge from duty, which are as follows:

1. if detention has been ordered against him, for the duration of detention;
2. if an investigation has been opened against him for a criminal offence which renders him unworthy of performing judicial office.

A judge may be suspended from duty after the Judicial Council accepts a proposal for initiation of proceedings for dismissal. The decision of suspension from duty is rendered by the Judicial Council.

A total of 14 judges have been suspended from duty heretofore.

c) Do the laws guarantee immunity to judges? If so, what does the immunity cover? What is the procedure for lifting the immunity of a judge? What is done to ensure that this is clear and transparent? Give examples of how this has been implemented? What are the possible sanctions?

The Constitution guarantees the right of the judge to enjoy functional immunity. Functional immunity means that judges cannot be held responsible for an opinion expressed or vote cast during deliberation of a court decision, except when this amounts to a criminal offence, as well as that they cannot be detained in connection with proceedings initiated in respect of a criminal offence committed in the performance of judicial office without an authorisation of the Judicial Council. It is the Judicial Council who decides on the immunity of judges. When the competent court is satisfied that there are reasons that warrant detention of a judge, it is under a duty to immediately request the Judicial Council to decide whether it approves the ordering of detention. The Judicial Council is under a duty to render a decision within 24 hours as of the receipt of the request. The work of the Judicial Council is public. Voting is public. While voting is in process, the only persons who may be present in the room where the Judicial Council works are the President and members of the Council. A decision is passed if a majority of all members of the Judicial Council have voted for it. The same rule applies to the procedure for deciding on immunity of judges.

The President of the Supreme Court enjoys full immunity whereby he cannot be held criminally responsible or otherwise liable or detained for an expressed opinion or a vote cast in the performance of his office nor may criminal proceedings be instituted against him, neither may detention be ordered without an authorisation of the Parliament, expect if he has been caught in the commission of a criminal offence carrying a penalty of imprisonment of more than five years.

Heretofore, only in one case has the lifting of immunity of a judge been requested for the purpose of ordering detention. By virtue of a decision of the Judicial Council, immunity has been lifted and ordering of detention granted.

10. What is the salary scale for judges and prosecutors? How does this compare with other professions ((high-ranking civil servants, attorneys, lawyers in private enterprises, etc.) and to the average income? How is the salary of judges and prosecutors set and adjusted in practice? Who is deciding about it?

Salaries and other income

The salary of judges and prosecutors and Constitutional Court judges is governed by the Law on Salaries and Other Income of Judges and Prosecutors and Constitutional Court Judges. During their tenure, judges and prosecutors and Constitutional Court judges are entitled to: salaries and other income in connection with the performance of their office.

For the purpose of determining their salaries, judges and prosecutors and Constitutional Court judges are classified into seven salary grades, depending on their title and complexity, responsibility, importance and conditions of work. The seven salary grades are translated into coefficients as follows:

Salary grade	DESCRIPTION	Coefficient
1	President of the Supreme Court of Montenegro	13.0
	President of the Constitutional Court of Montenegro	13.0
	Supreme Public Prosecutor	13.0
	Special Prosecutor for the Suppression of Organised Crime	13.0
2	Judge of the Supreme Court of Montenegro	11.5
	Judge of the Constitutional Court of Montenegro	11.5
	President of the Appellate Court of Montenegro	11.5
	President of the Administrative Court of Montenegro	11.5
	Deputy Supreme Public Prosecutor	11.5
	Deputy Special Prosecutor for Suppression of Organised Crime	11.5

3	Judge of the Appellate Court of Montenegro	11.0
	Judge of the Administrative Court of Montenegro	11.0
	President of the High Court	11.0
	High Public Prosecutor	11.0
4	President of the Commercial Court	10.7
5	Judge of the High Court	10.5
	Deputy High Public Prosecutor	10.5
	President of the Basic Court	10.5
	Basic Public Prosecutor	10.5
6	Judge of the Commercial Court	10.3
7	Judge of the Basic Court	10.0
	Deputy Basic Public Prosecutor	10.0

The amount of the fixed part of a judge or prosecutor salary is determined by multiplying the coefficient, as given in the above table, with the value of the coefficient for the given month or period, which is fixed by the Government. At the moment, the value of the above noted coefficient is set at EUR 75, which is the same as for state and public officials and higher than the coefficient which forms basis for determination of salaries of civil servants and state employees, which is fixed at EUR 55.

The judge, prosecutor and Constitutional Court judge are entitled to a bonus on office in the amount of up to 30% of the salary determined by this Law.

The salary of judges, prosecutors and Constitutional Court judges is also increased on account of years of service as follows: for each started year up to 10 years of service – 0.5%, for each started year from 10 to 20 years of service – 0.75% and for each started year over 20 years of service - 1%.

A judge, prosecutor and Constitutional Court judge who does not own an apartment, family residential building either alone or together with others and does not live with his parents of his spouse's parents is entitled to partial coverage of monthly rent costs in the amount equal to three months' worth of the minimum wage.

A judge, prosecutor and Constitutional Court judge whose office has terminated on his own request or by virtue of expiry of his term of office, as well as a judge, prosecutor and Constitutional Court judge who has been dismissed from office due to the permanent loss of the ability to perform the office, is entitled to remuneration in the amount equal to the salary he received in the last month before the termination of office, subject to adequate adjustments.

A judge, prosecutor and Constitutional Court judge enjoys the above noted right in the period of one year as of the date of termination of his office or his dismissal and, exceptionally, for another year is he is to become entitled to pension within such period of time.

Judges, prosecutors and Constitutional Court judges are entitled to life insurance.

A decision on the type and amount of insurance is taken by the President of the Supreme Court of Montenegro in respect to judges, President of the Constitutional Court in relation to Constitutional Court judges, and Supreme Public Prosecutor in relation to public prosecutors and deputy public prosecutors.

Comparison of salaries of judges and prosecutors with other professions and average income

Recognising the fact that power in Montenegro is founded on the principle of division into legislative, executive and judicial branch and that power rests on the system of checks and balances, efforts have been made to ensure that holders of all three branches of power have the same salary. Accordingly, the President of the Supreme Court, President of the Constitutional Court and Supreme Public Prosecutor are entitled to the salary in the same amount as the Prime Minister and Speaker of Parliament. Judges of the Supreme Court and Constitutional Court and Deputy Supreme Public Prosecutor are entitled to the salary in the same amount as Members of Parliament and ministers. Compared with managerial posts (Secretaries, Assistant Ministers and Assistant Heads of Public Administration Authority), even Basic Court judges earn 30% higher salaries, not including bonus on office.

It is very difficult to compare salaries of judges and prosecutors with those of lawyers in private companies and law firms. Namely, such salaries are determined by way of employment contracts and are result of an agreement between the employer and the employee. Information on these salaries is oftentimes kept confidential. Information on salaries and earnings of judges and prosecutors is public.

The salary of the Basic Court judge and Deputy Basic Public Prosecutor is around 2.5 times higher than average salary in Montenegro.

Determination of salary

The decision on the salaries of judges is taken by the president of the respective court, by the President of the Constitutional Court for Constitutional Court judges and by the Public Prosecutor for Deputy Public Prosecutors.

The decision on the salary of the court president, President of the Constitutional Court and Public Prosecutor is taken by the competent working body of the Parliament of Montenegro.

Calculation of the part of the salary which is dependant on the years of service is carried out by the competent financial department of the authority in which the judge or prosecutor earns his salary.

11. What is the system for assignment (allocation) of cases? Are there any challenges to the practical implementation of the system?

The Law on Courts provides that cases must be assigned without delay in accordance with the annual schedule of tasks, through the method of random allocation of cases which depends solely on the designation and number of the case; the judge performs his office in one or more areas of law he was assigned to at the beginning of the year through the annual schedule of tasks; if two or more judges have been assigned to a specific area of law, cases are allocated to the judge in the daily order in which requests to initiate court proceedings arrived, according to the alphabetical order of first letters of judges' last names; if more than one request to initiate court proceedings

which have been submitted during one day fall within the same area of law or are related to specific types of cases determined in advance within the same area of law, such cases are previously classified according to the alphabetical order of the first letters of the parties' last or first names, i.e. participants to the proceedings against whom a procedural petition has been filed, and then allocated according to the alphabetical order of first letters of the judges' last names.

- A case allocated as described above may be withdrawn from a judge only under the conditions laid down in the Law on Courts. An allocated case is withdrawn only when it has been established that a judge has failed to act upon the case without justification, due to the disqualification or if a judge has been prevented from exercising his office for more than three months;
- The decision on withdrawal of cases is made by the president of the court;
- A judge may make an appeal against a decision on withdrawal of a case to the president of the immediately higher court, who is under a duty to decide on the appeal within two days;
- A decision of the President of the Supreme Court on withdrawal of a case may be appealed with the Supreme Court Bench, which decides on the appeal within three days as of the day of its receipt.

Cases referred to the High Courts or Supreme Court for the purpose of consideration of a regular or extraordinary legal remedy are allocated in the daily order in which the case files arrived, as described above.

Random allocation of cases, provided by the Law on Courts, is regulated in detail by the Court Rules, which also contain special provisions on the use of computers. The only challenge to the implementation of the rule of random allocation of cases has been the non-functioning of PRIS (Judicial Information System). This system is expected to become operational by the end of 2009 and thereby these challenges will be removed.

12. What are the measures in place to prevent conflict of interest in judiciary? Who can decide on it? How is implementation ensured and what are the practical challenges in the implementation of these measures?

The fundamental measure aimed at preventing conflict of interest in individual cases is the institute of disqualification of judges. The reasons for disqualification and procedure for disqualification are described under reply to question number 3 of this Chapter.

The Constitution of Montenegro provides that the judge and public prosecutor may not perform the office of Member of Parliament or any other public office, nor engage professionally in any other activity. The Law on Courts provides that a judge may request the Judicial Council to deliver an opinion as to whether particular activities are incompatible with the exercise of judicial office, and the Judicial Council takes a decision thereon. If the court president finds that a judge performs activities which are incompatible with judicial office or are prohibited, he notifies the Judicial Council thereof and the Judicial Council takes a decision.

Judges and public prosecutors are amenable to the Law on Prevention of Conflict of Interest which provides that a public official who has accepted to perform another duty or office during his tenure is under a duty to tender a resignation within 15 days as of the start of the performance of the other duty or office; the public official may not accept money, securities or precious metals, regardless of their value, or accept gifts, except protocolary and appropriate gifts of small value (less than EUR 50); public official is under duty to report his property each year and also to submit a report in the case that information listed in the report changes during his term of office as result of property increase higher than EUR 5,000 within 15 days from the date of change; upon termination of public office, the judge and public prosecutor are under a duty to submit a report on property to the competent Commission.

A violation of the Law on Prevention of Conflict of Interest, established by way of a final and enforceable decision, is considered a wrongful performance of judicial office. Conflict of interest

issues are decided upon by a Commission composed of a chairman and 6 members. The Commission is elected by the Parliament of Montenegro.

Procedure to establish whether a judge or public prosecutor has violated the provisions of the Law on Prevention of Conflict of Interest are instituted by the Commission acting on an initiative of the authority in which the office is exercised or of the appointing authority. This procedure is carried out in accordance with the rules of administrative procedure, in which all facts and circumstances relevant to the decision must be established. If the Commission establishes a violation in the exercise of the office by a final and enforceable decision, it notifies the appointing authority thereof, which may institute procedure of dismissal.

13. How is impartiality of prosecutors and judges ensured in the case of domestic war crimes trials? Are statistics available showing breakdown of cases and ethnic origin of defendants in relation to domestic war crimes trials?

Specialised divisions within High Courts have the jurisdiction to try war crimes cases.

The impartiality of judges and prosecutors in the case of domestic war crimes trials is ensured through the consistent application of the Criminal Procedure Code and its provisions on disqualification. The impartial performance of judicial authorities in these cases is demonstrated by the fact that there have been no complaints on their work by the defendants, their defence counsels or the victims and their representatives.

Statistics showing breakdown of cases in relation to domestic war crimes trials are available. The table below gives an overview of the cases dealt with so far:

Cases	No. of persons	Criminal offence	Stage of proceedings			No. of victims
			Investigation	Indictment	Trial	
1	**8**	War crime against civilian population, referred to in Art. 142 paragraph 1 of the Criminal Code of FRY		Indictment brought on 30 July 2008	In process	**22**
2	**6**	War crime against civilian population, referred to in Art. 142 paragraph 1 of the Criminal Code of FRY and war crime against prisoners of war referred to in Art. 144 of the Criminal Code of FRY		Indictment brought on 15 August 2008	In process	**169**
3	**9**	War crime against civilian population referred to in Art. 142 paragraph 1 of the Criminal Code of FRY		Indictment brought on 19 January 2009	Preparations for trial are underway.	**79**
4	**7**	War crime against humanity referred to in Art. 427 of the Criminal Code of Montenegro	Request for investigation made on 11 December 2007 Investigation underway.			**8**

Statistics showing ethnic origin of defendants in relation to domestic war crimes trials are not available.

14. What are the measures to ensure freedom from undue external influence and how are they implemented in practice? Does the law provide sanctions against persons seeking to influence judges? Are judges only criminally liable for offences committed outside their judicial office? Is there a system of civil responsibility of judges for their decisions?

The Constitution provides that courts and Public Prosecution Office perform their functions in accordance with the Constitution, laws and ratified international treaties; judges, public prosecutors and deputy public prosecutors may not be members of political parties; judges, public prosecutors and deputy public prosecutors may not exercise the office of Member of Parliament or any other public office, nor professionally engage in any other activity.

The Law on Courts provides that judicial office may not be exercised under anyone's influence nor may anyone influence the judge in the exercise of judicial office, while the Law on Public Prosecution Office provides that the office of public prosecutor is exercised in the public interest in order to ensure the application of the law; the exercise of the office of public prosecutor must ensure respect for and protection of human rights and freedoms and be impartial and objective; that public prosecutors abide by the Code of Ethics. Under the Law on Judicial Council, the Judicial Council is tasked with securing the independence, autonomy, accountability and professionalism of courts and judges in Montenegro, in line with the Constitution and law. In the performance of its duties, the most important of which include selection of judges, termination of judicial office and accountability, as well as control over the work of courts and judges, the members of the Judicial Council act independently and impartially. The Judicial Council protects the courts and judges from political influence.

The above noted provisions form legislative framework for professional conduct and objective, independent and impartial performance of office, free from any external influence. The Criminal Code establishes *Trading in Influence* as a criminal offence and thus allows punishment of persons who have used their official or social position to cause an official action to be performed or not to be performed. The Criminal Code also establishes *Giving of Bribes* as a criminal offence, which exists when someone exerts influence over an official person to take or refrain from taking an official action by giving or offering a gift.

If the attempts at influencing a judge constitute threats or violence, such conduct amounts to the criminal offence of *Preventing Official Person in Performance of Official Action* and *Attack on Official Person in Performance of Official Duty*. As part of these criminal offences, the Criminal Code specifically criminalises their commission against judges and prosecutors and provides for stricter penalties in such cases. An attempt to commit these criminal offences is also subject to punishment.

The Constitution of Montenegro guarantees functional immunity to judges and public prosecutors, which protects them from being held responsible for an opinion expressed or decision made in performance of their office, except when this amounts to a criminal offence. This constitutional provision therefore provides for criminal responsibility of judges and prosecutors if they commit a criminal offence in the performance of their duties. The President of the Supreme Court and the Supreme Public Prosecutor enjoy immunity and no criminal proceedings may be instituted against them, nor may they be detained without an authorisation of the Parliament, except if they were caught in the commission of a criminal offence carrying a penalty of imprisonment of more than five years.

In addition to criminal responsibility of judges and public prosecutors for criminal offences committed in the performance of their office, there is also disciplinary responsibility of judges and prosecutors, which is described in detail within this Chapter under reply to question number 2. Judges and prosecutors are not criminally responsible for unintentional omissions in the performance of their office since there is a quality control system, whereby immediately higher courts scrutinise the work of lower courts through legal remedies.

Through the application of the general principles of the Law on Obligations it is possible to establish a system of civil responsibility of judges and prosecutors. Namely, the Law on Obligations provides that a legal person, in this case the State, is responsible for damage inflicted to a third party by its authority in the performance or in connection with the performance of its functions. If such damage has been inflicted intentionally or due to a grave oversight, the State is entitled to bring an action seeking reimbursement from the judge or prosecutor who is at fault.

15. Is there a policy, strategy or an action plan to fight corruption in judiciary? If so, what are the practical results of implementation? Can you provide statistics on allegations of corruption in judiciary and convictions?

At its session of 28 July 2005, the Government of Montenegro adopted the Programme of Fight against Corruption and Organised Crime. On 24 August 2006, the Government adopted the Action Plan for the Implementation of the Programme of Fight against Corruption and Organised Crime, which was updated in 2008.

The Government of Montenegro has set up a National Commission to oversee the implementation of the Action Plan. The Commission is composed of representatives of state authorities and representatives of the civil sector.

The Action Plan for Implementation operationalises the priorities set by the Programme of Fight against Corruption and Organised Crime, by way of listing specific measures and activities to be taken by line ministries, administrative authorities and institutions responsible for the prevention and suppression of corruption and organised crime. The Action Plan outlines the timeframes, that is, the dynamics of the implementation of duties, as well as performance indicators and possible risk factors.

The implementation of the Action Plan implies the recognition of the priorities set by the Council Decision on the principles, priorities and conditions contained in the European Partnership (24 January 2006), UN Convention against Transnational Organized Crime (Palermo, UNTOC Convention), requirements of the implementation of the UN Convention Against Corruption (which entered into force on 19 January 2006), European Convention for the Protection of Human Rights and Fundamental Freedoms and other obligations stemming from Montenegro's membership in international organisations and institutions.

Separate Chapters of the Programme are dedicated to the judiciary and Public Prosecution Office. The Chapter which deals with the judiciary outlines special measures aimed at preventing corruption within the judiciary. In this context, specific aims have been set as follows: create conditions for more openness and transparency and swifter administration of justice, create mechanisms of internal control for the prevention of abuse and establish a system to improve professionalism of court staff.

The special measures aimed at preventing corruption within the Public Prosecution Office are identical to the measures that have to be undertaken in courts. Chapter III of the Action Plan is dedicated to specific measures against corruption and organised crime, i.e. efficient prosecution and trial, and this Chapter deals both with the judiciary and Public Prosecution Office.

Also, strategic documents for the reform of the judicial system – the Strategy for the Reform of the Judiciary 2007-2012 and the Action Plan for its implementation deal, within a separate Chapter, with the fight against crime, and particularly organised crime, corruption, terrorism and war crimes, which is facilitated through the enhancement of the legislative and institutional framework required for the realisation of this strategic goal. The following Council of Europe conventions have been ratified: Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Convention on the Suppression of Terrorism and the Second Additional Protocol to the European Convention on International Legal Assistance in Criminal Matters. The Law on Amendments to the Law on Courts has introduced concentration of jurisdiction in relation to cases of organised crime, corruption, terrorism and war crimes within the two High Courts. The Law on Amendments to the Law on Public Prosecution Office has widened

the competence of the Division for the Fight against Organised Crime so as to allow it to deal also with criminal offences of corruption, terrorism and war crimes. In line with the above noted Laws, specialised divisions have been set up within the two High Courts and judges, legal officers and clerical staff members have been assigned to perform the work. In addition, the number of deputies of the Special Prosecutor has been increased in order to reflect the concentration of jurisdiction within the Division headed by the Special Prosecutor. At the moment, the procedure of assignments and recruitment of officers and clerical staff to the Division for suppressing organised crime, corruption, terrorism and war crimes is underway. In addition to the human resources, spatial and technical conditions for the work of the special divisions within courts and Public Prosecution Office are in the process of being created. The Judicial Training Centre and Human Resources Administration deliver training programmes for judges and prosecutors and officers of other state authorities in this field, pursuant to the initial and in-service training programmes. The Ministry of Justice has obtained publications of international treaties dealing with this matter. In addition, personal protection needs of judges and prosecutors have been established and the Police Directorate provides personal protection in order to satisfy such needs.

Within the Public Prosecution Office, at the operational level, the activities of the Action Plan are implemented by the Division for suppressing organised crime, corruption, terrorism and war crimes, set up within the Supreme Public Prosecution Office. Two specialised divisions for adjudication of organised crime, corruption, terrorism and war crimes have been established within the two High Courts.

In the period between 1 January 2006 and 14 August 2009, the Public Prosecution Office brought indictments against seven persons, one of whom is a Basic Court judge who was charged with the criminal offence of abuse of official position referred to in Article 416 of the Criminal Code, one person is a High Court judge who was charged with the criminal offence of acceptance of bribe referred to in Article 423 of the Criminal Code, four are court staff who were charged with the criminal offence of abuse of official position referred to in Article 416 of the Criminal Code – and one court employee who was charged with the criminal offence of wrongful service referred to in Article 417 of the Criminal Code. These cases were accorded absolute priority. As result, sentences were imposed against six persons during the above noted period. The Basic Court judge charged with the criminal offence of abuse of official position referred to in Article 416 of the Criminal Code, was sentenced to one year of imprisonment, of the four court staff charged with the criminal offence of abuse of official position referred to in Article 416 of the Criminal Code, one was sentenced to four years of imprisonment, one to two years and six months of imprisonment and one to 3 months of imprisonment, while the court employee charged with wrongful service referred to in Article 417 of the Criminal Code, was sentenced to probation.

At the moment, investigation is being conducted against 7 judges for the criminal offence of abuse of official position referred to in Article 416 of the Criminal Code and two court employees for the criminal offence of wrongful service referred to in Article 417 of the Criminal Code.

The Office for Reporting of Corruption has been set up within the Judicial Council. As part of its activities aimed at fighting corruption, the Judicial Council has also launched a broad public campaign, which included publication of posters calling upon citizens to report all forms of corruption within the judiciary by calling a telephone number highlighted on the poster. The campaign was also widely promoted through the print and electronic media and posters were displayed in every court.

Professionalism/Competence

16. Educational system:

a) Are internships for law graduates organised within the judiciary? If so, how is this done?

In order to become a court trainee, a law graduate must meet the criteria for the work in state authorities and be admitted to first employment for the purpose of professional training. Courts also offer internships opportunities to law graduates seeking professional training. Training of interns is conducted in the same way as that of court trainees.

Training of trainees is carried out in accordance with a special plan passed by the president of the court at which the trainee works. The court president decides on the assignment of trainees to a specific division or service and takes other measures aimed at their practical training, while having regard that they should familiarise themselves with all court affairs.

Registers are kept in relation to each court trainee. Such registers contain information on the period of time the trainee has spent working in a specific division and service, as well as on the actual tasks performed by the trainee. The information is verified by the judge or the head of the service who supervised the work of the trainee. Court trainees are employed for the period of two years.

One acquires the right to sit for the bar exam after two years of training. If a session of judges is satisfied that a trainee has particularly distinguished himself in the performance of court tasks, his training period may be extended for another year, provided that he passes the bar exam within three months.

In order to become a trainee within the Public Prosecution Office, a law graduate must meet the criteria for the work in state authorities. The trainee is employed for the period of two years. A law graduate can, for the purpose of acquiring knowledge and meeting the criteria required for taking of the bar exam, be admitted to training at a Public Prosecutor's Office as volunteer.

Training of trainees is carried out in accordance with a special plan passed by the public prosecutor. If a prosecutor session is satisfied that a trainee has particularly distinguished himself in the work he performed, his training period can be extended for another year, provided that he passes the bar exam within three months.

b) Is there a special school or institute for the education of judges and prosecutors? If so, give information on its programmes, staff, number of students etc.;

The education in the judicial authorities is carried out within the Judicial Training Centre, which is organised as a separate organisational unit of the Supreme Court of Montenegro.

The Centre is headed by an Executive Director, who is appointed by the President of the Supreme Court of Montenegro in consultation with the Supreme Public Prosecutor and on the basis of a public vacancy notice.

The Centre is tasked with providing education to judges and public prosecutors – providing them with an opportunity to adopt and further develop their theoretical and practical knowledge and skills through programmes that allow an active engagement of judges and prosecutors in the course of education.

The aim of education is the development, maintenance and strengthening of such knowledge, capacities and skills on the part of judges and prosecutors which would allow an independent, impartial, professional and efficient performance of their office, in line with the ethical standards of the profession. Judges and prosecutors have the right and a duty to strengthen their professional capacities.

The Law on Training in Judicial Authorities governs the initial and in-service education, professional advancement of judges and prosecutors and joint programmes of education.

The initial education is organised for expert associates at judicial authorities (courts and prosecutor's offices), as well for law graduates who meet the general criteria for the work in state

authorities and who have passed the bar exam. The initial education is aimed at preparing these persons for the performance of judicial office.

The in-service education is organised for judges and prosecutors and representatives of other state authorities. It is aimed at maintenance and strengthening of knowledge, capacities and skills for the purpose of ensuring a high-quality performance of the judicial and prosecutorial offices.

Mandatory professional development is organised through the delivery of special training programmes to judges and prosecutors in the case of promotion to a higher post, change of the area of law they work in, i.e. change of their portfolio and specialisation, introduction of new procedures and work techniques, as well as in other cases.

Joint programmes of educations are organised for judges and prosecutors and representatives of other state authorities, when it is necessary to organise education which would deal with coordinated approach of several authorities in one specific area of law.

For the purpose of organising and implementing education programmes, special bodies have been set up within the Centre – a Coordination Board, Programme Board and an Examination Commission.

The Coordination Board passes an Annual Programme and a Plan for its implementation under funds allocated; sets up programme boards for the implementation of special programmes of education, selects members of such boards and fixes the number of participants of education programmes; monitors evaluation of the programmes; sets a list of visiting and permanent lecturers; selects members of the Examination Commission; passes its Rules of Procedure and performs other tasks of importance to education.

The Coordination Board has seven members of which two are judges of the Supreme Court, one is a Deputy Supreme Public Prosecutor, one is a representative of the Judicial Council, one is a representative of the Prosecutorial Council, one is a representative of the Ministry of Justice and one is a representative of the Faculty of Law.

The Programme Board has three members. Its members are selected by the Coordination Board from among experts in the subject matter which is the topic of a special programme of education. The Programme Board elaborates and executes a special programme of education and establishes a plan of its implementation; decides on the structure of the participants; establishes a list of lecturers and engages lecturers from the list; submits a report on the implementation of the special programme of education to the Coordination Board, Judicial Council, Prosecutorial Council and Ministry of Justice; keeps records on the implementation of special programmes of education.

The Examination Commission numbers three members. The members of the Examination Commission are selected by the Coordination Board from among lecturers for specific areas which form part of the programme of initial education. The Examination Commission organises taking of the admission and final exam for the initial education, in line with the law.

The Coordination Board is accountable for its work to the Judicial and Prosecutorial Councils, while Programme Board and Examination Commission report to the Coordination Board.

Lecturers are selected from among judges, prosecutors, professors and prominent regional and international experts in specific areas of law.

The Judicial Training Centre keeps records of the implemented programmes of education; structure and number of participants in education programmes; issued certificates; permanent and visiting lecturers and their engagement; structure and number of judicial office holders who have not taken part in the education and other information concerning education.

The Centre submits annual reports to the Judicial Council and the Prosecutorial Council. These reports contain information on the implemented programmes of education; structure and number of participants in education programmes, as well as other information on which records are kept and which are of importance to education.

Apart from the Centre, there is no other specialised body which would deal with education of judges and prosecutors.

c) Is there any other form of pre-service training?

The syllabuses of Law Faculties envisage legal clinics at fourth, specialist year of studies. Legal clinics involve training in practical application of the law. Furthermore, the Government of Montenegro and the Faculty of Law of the University of Montenegro have concluded an Agreement on Internship Programme, which provides final year students with an opportunity to gain an insight into the work and practice of state authorities during a specific period of time. The Parliament and President of Montenegro also offer internships programmes which are attended by *inter alia* law students.

17. Training:

a) Please describe the training system for judges and public prosecutors. Is it compulsory? In the case where an initial training is an obligatory requirement for entering the career of a judge or prosecutor, what are the selection criteria for being admitted to such a training? If there is a requirement to have passed a final examination, how is such an examination organised?

Training of judges and public prosecutors is carried out under the auspices of the Judicial Training Centre, which is organised as a separate organisational unit of the Supreme Court of Montenegro.

The Law on Training in Judicial Authorities governs the initial and in-service education. The initial education is organised for expert associates at judicial authorities (courts and prosecutor's offices), as well for law graduates who meet the general criteria for the work in state authorities and who have passed the bar exam. The initial education is aimed at preparing these persons for the performance of judicial and prosecutorial offices. It is organised on the basis of special programmes. The in-service education is organised for judges and prosecutors and representatives of other state authorities. It is aimed at maintaining and strengthening of knowledge, capacities and skills for the purpose of ensuring a high-quality performance of judicial and prosecutorial offices.

The in-service education is organised on the basis of special programmes for:

1) judges and prosecutors who have been performing their office for less than three years,
2) judges and prosecutors who have been performing their office for more than three years,
3) heads of the judicial and prosecutorial authorities.

Programmes of education are public and available on the websites of the Centre and judicial and prosecutorial authorities, as well as through other means.

In order to ensure organisation and implementation of education, special bodies have been set up within the Centre – a Coordination Board, Programme Board and Examination Commission. Based on the actual needs and judicial vacancies, the Coordination Board fixes the number of judges and prosecutors who will attend initial education during the given year in the Annual Programme.

Candidates for initial education are selected on the basis of a public announcement, which is published during the first half of November of the current year for the following year in at least one of the print media in Montenegro.

Applicants take an admission examination before the Examination Commission, which draws up a ranking list on the basis of results achieved at the admission test. The best ranked candidates are admitted to initial education.

The initial education is implemented through lectures, workshops, roundtables etc. Upon having completed the initial education, candidates take the final exam and receive certificates that they have passed the exam.

The ranking list of candidates who have passed the final exam is submitted to the Judicial Council and the Prosecutorial Council and subsequently strongly taken into account during selection and appointment of judges and prosecutors - Article 34 of the Law on Training in Judicial Authorities.

The final exam consists of a written and oral part. The written part includes drafting of court decisions or of documents falling within the competence of public prosecutors from the area of criminal, civil or administrative law.

During 2007, 17 candidates passed the final exam, while 15 candidates passed the exam in 2008.

In addition to the above mentioned types of education, the Law on Training in Judicial Authorities provides also for professional advancement of judges and prosecutors and for joint programmes of education.

Mandatory professional advancement is organised through the delivery of special programmes to judges and prosecutors in the case of promotion to a higher post, change of the area of law they work in, i.e. change of their portfolio and specialisation, introduction of new procedures and work techniques, as well as in other cases.

Joint programmes of educations are organised for judges and prosecutors and representatives of other state authorities, when it is necessary to organise education which would deal with coordinated approach of several authorities in one specific area of law.

One of the criteria for the first election of a judge is professional advancement, as prescribed by the Law on Judicial Council. This criterion is further elaborated by the Rules of Procedure of the Judicial Council, which provide that the grade received in the final exam of the initial education organised by the Judicial Training Centre is taken into account in the selection process. The criterion of professional advancement also includes an appraisal of completed education programmes delivered by the Judicial Training Centre, as well as attendance at seminars and other types of education.

The criterion of professional advancement is also relevant to carrier advancement. Accordingly, completed education programmes delivered by the Judicial Training Centre and international organisations, attendance at seminars and other types of education, are taken into account in making of the decision.

b) Is there an independent national training centre for the judiciary and how is it established? What is its role? If there is more than one, is the training harmonised? How is the funding for the centre/centres and training ensured?

Within the 1998 Government Project of the Reform of the Judiciary, the Training Centre of Judges of the Republic of Montenegro was set up in June 2000.

The founders were the Ministry of Justice of Montenegro, Association of Judges of Montenegro, Open Society Institute/SOROS – Montenegro and American Bar Association - Central and Eastern Europe Legal Initiative (ABA/CEELI).

The Law on Training in Judicial Authorities was passed in 2006. This Law defines Judicial Training Centre as a separate organisational unit of the Supreme Court of Montenegro.

The Centre is tasked with providing education to judges and public prosecutors and persons preparing for the exercise of judicial and prosecutorial office, providing them with an opportunity to adopt and strengthen theoretical and practical knowledge and skills through programmes which will enable autonomous, independent, impartial, professional and efficient exercise of their office in accordance with the ethical standards of the profession.

Apart from Centre there is no other specialised body for education of judicial office holders.

It should particularly be noted that the Centre has heretofore cooperated with a number of major partners (European Union/European Agency for Reconstruction, Organisation for Security and Cooperation in Europe – OSCE, Council of Europe, Open Society Institute Foundation – Soros, Checchi and Company Consulting, Inc./USAID, UNDP, etc). In the area of human rights and Council of Europe standards education, the Centre has cooperated with organisations specialised for the implementation of human rights programmes. These primarily include the Council of Europe, but also London-based AIRE Centre (Advice on Individual Rights in Europe Centre), Podgorica-based Centre for Democracy and Human Rights (CEDEM) etc.

In addition, the Centre has cooperated with other institutions in Montenegro, such as the Human Resources Administration and Police Academy, in the organisation of joint educational programmes.

The funds required for education are provided from a line of the Supreme Court's budget, as well as through grants, donations and other sources – Article 11 of the Law on Training in Judicial Authorities.

c) Which training facilities and training programmes exist? Do training programmes include both initial training and continuous training?

The premises of the Judicial Training Centre are located in a building owned by the Agency for Reconstruction and Development of Podgorica – Municipality of Podgorica, which also hosts other state authorities. The Centre uses two offices and a small conference hall, the total area of which is 75 m^2, and shares a training hall with the Human Resources Administration.

Training programmes include initial and continuous training.

The education in judicial authorities is organised on the basis of an Annual Programme and special programmes of education, in accordance with the Law on Training in Judicial Authorities.

d) Please describe the training system for lawyers?

Pursuant to Article 5 of the Law on Private Law Practice, one can be entered into the Register of Lawyers, administered by the Bar Association, provided that he has passed the Bar and Lawyer Exam. In order to sit for the Lawyer Exam, one must previously pass the Bar Exam. The Lawyer Exam is aimed at evaluating the knowledge of the legislation governing private law practice, Statute of the Bar Association and Code of Lawyers' Ethics.

The Lawyer Exam is administered by the Commission for Taking the Lawyer Exam, set up by the President of the Bar Association. The Statute of the Bar Association prescribes the manner of work and making of decision by the Commission, while the competent body of the Bar Association decides on the programme and manner of taking of the Exam.

The care for the professional advancement is primarily a duty of each lawyer. Such duty is laid down in the Code of Lawyers' Ethics, as a condition for a professional and conscientious practice of law. Under the Code, the lawyer is under a duty to practice law conscientiously and with such knowledge as he is qualified for. The lawyer must stay abreast of developments in legislation, case law and theory of law and must regularly refresh, improve and widen his legal and general education.

The Bar Association encourages and supports education of its members – lawyers - through organisation of seminars, lectures, roundtables and alike. During the course of this year, the Bar Association co-organised a three-day seminar in Podgorica and one lecture, both attended by a large number of lawyers. In addition, the Bar Association has frequently sent a large number of its members to seminars organised by nongovernmental and international organisations, state authorities and other entities.

The Bar Association is planning to organise linguistic training in the English language for some of its members that are interested and applied for it, including both lawyers and trainees.

The Bar Association has passed a special Programme of trainees' education, which emphasises the role the principals have in such education by providing that they are under a duty to prepare trainees for an independent practice in the shortest possible time.

e) Is linguistic training an aspect of training of judges, public prosecutors or lawyers?

Linguistic training is an aspect of training of judges and prosecutors.

The manner and types of education of Montenegrin judges and prosecutors are governed by the Law on Training in Judicial Authorities. Public prosecutors became a target group of the Training Centre when the Law entered into force on 1 January 2007. Lawyers are not a target group of the Training Centre.

From its inception in 2000, the Centre has organised a number of foreign languages courses.

In 2003, the Centre initiated French language courses for judges and court associates in cooperation with and support of the French Cultural Centre from Montenegro. The courses were organised for the northern and southern region of Montenegro.

In 2005, the above mentioned cooperation continued through the organisation of French language courses for 15 interested judges from the central part of Montenegro.

Between 2004 and 2006, as part of the project "Support to the Judicial Training Centre", managed by the European Agency for Reconstruction, a series of initial English language courses was delivered to judges of all Montenegrin courts. Furthermore, within the same Project, the Centre organised specialised English legal terminology course for the benefit of ten judges and expert associates who speak English fluently.

Montenegrin judges and prosecutors are also provided with an opportunity to attend language courses organised by the Human Resources Administration.

f) Are specific training courses organised for judges in new areas such as company law, cyber crime, financial crime, EU law, ECHR case-law, etc., but also on ethics in justice as well as on fundamental rights? Is there any continued training for judges?

Between 2002 and 2009, the former Training Centre for Judges, now Judicial Training Centre organised trainings in the areas of commercial law, computer crime, financial crime, EU law and ECHR (European Court for Human Rights) case-law.

In February 2003, five judges (from Basic Courts, High Courts in Podgorica and Commercial Court in Podgorica) participated in a seminar on intellectual property in Belgrade, organised by UN Economic Commission.

In March 2003, Centre organised a seminar on money laundering in cooperation with the American Bar Association - Central and Eastern Europe Legal Initiative (ABA/CEELI) in Podgorica. Also in March, a course on EU law was organised as part of TEMPUS Project "European Space of Justice", implemented by University of Bologna -Centro per l'Europa Centro Orientale e Balcanica in cooperation with Ministry of Justice of Montenegro, University of Montenegro and Judicial Training Centre of the Republic of Montenegro.

In May 2003, the Centre organised a seminar for judges of Commercial Courts in Podgorica.

During July 2003, Centre organised two seminars on Articles 5 and 6 of the European Convention on Human Rights in Tivat and Cetinje for judges from the southern part of Montenegro, with the

support of the Council of Europe, as part of the Project “Training of Judges in the Republic of Montenegro on Articles 5 and 6 of the European Convention on Human Rights”.

In September 2003, Centre organised a seminar on money laundering in cooperation with the US Department of the Treasury.

During October 2003, Centre organised two seminars on Articles 5 and 6 of the European Convention on Human Rights in Bijelo Polje for the judges from the northern part of Montenegro with the support of the Council of Europe as part of the Project “Training of Judges in the Republic of Montenegro on Articles 5 and 6 of the European Convention on Human Rights”. Also in October, Centre organised a conference on Article 10 of the European Convention on Human Rights, in cooperation with the Council of Europe and European Agency for Reconstruction.

In November 2003, Centre organised a seminar on Articles 5 and 6 of the European Convention on Human Rights in Bijelo Polje for judges from the northern part of Montenegro in cooperation and with the support of the Council of Europe, as part of the Project “Training of Judges in the Republic of Montenegro on Articles 5 and 6 of the European Convention on Human Rights”.

December 2003 – Centre organised a seminar on Articles 5 and 6 of the European Convention on Human Rights in Podgorica for judges from the central part of Montenegro, in cooperation and with the support of the Council of Europe, as part of the Project “Training of Judges in the Republic of Montenegro on Articles 5 and 6 of the European Convention on Human Rights”.

February 2004 – Centre organised two seminars on Articles 5 and 6 of the European Convention on Human Rights in Podgorica for judges from the central part of Montenegro, in cooperation and with the support of the Council of Europe, as part of the Project “Training of Judges in the Republic of Montenegro on Articles 5 and 6 of the European Convention on Human Rights”.

February 2004 (EAR) – Centre organised a seminar on the European Convention on Human Rights and criminal legislation reform in Igalo, in cooperation with the Council of Europe, Centre for Democracy and Human Rights in Montenegro (CEDEM) and London-based AIRE Centre (Advice on Individual Rights in Europe Centre).

March 2004 – Centre organised the final in the series of seminars on Articles 5 and 6 of the European Convention on Human Rights in Prcanj in Kotor (for the judges of the Supreme Court and Constitutional Court of Montenegro) in cooperation and with the support of the Council of Europe, as part of the Project “Training of Judges in the Republic of Montenegro on Articles 5 and 6 of the European Convention on Human Rights. - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law.

April 2004 (EAR) – Centre organised a seminar on the European Convention on Human Rights and criminal legislation reform in Bečići, in cooperation with Council of Europe, Centre for Democracy and Human Rights in Montenegro (CEDEM) and London-based AIRE Centre(Advice on Individual Rights in Europe Centre). - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law.

May 2004 – Centre secured a lecturer and participation of eight judges at a seminar on the balance between freedom of expression and other human rights, organised by the Council of Europe and European Agency for Reconstruction in Kumbor. - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law.

August 2004 – Centre organised selection and participation of five judges in the Human Rights School in Prague (CEELI Institute-ABA/Ceeli) – an activity organised and supported by the OSCE – European Convention on Human Rights.

September 2004 (EAR) – Centre organised a seminar on the European Convention on Human Rights and new Civil Procedure Law and Law on Enforcement Procedure in Bijela, in cooperation with the Council of Europe, Centre for Democracy and Human Rights in Montenegro (CEDEM) and London-based AIRE Centre (Advice on Individual Rights in Europe Centre).

September 2004 (EAR) – Centre organised a seminar in Podgorica on EU law and European Convention on Human Rights for judges of the Commercial Courts in Montenegro and ten judges, participants in a study visit to the Council of Europe, Strasbourg, also organised by the Centre.

September 2004 (EAR) – Centre organised a study visit to the Council of Europe/European Court of Human Rights for ten judges (2 from the Supreme Court, two from the High Court in Podgorica, two from the Commercial Court in Podgorica and two from the Commercial Court in Bijelo Polje) - European Convention on Human Rights – case-law.

October 2004 – Centre organised a training of trainers in Igalo for lecturers on Articles 5 and 6 of the European Convention on Human Rights from Montenegro and Serbia, with the support of the Council of Europe. - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law.

December 2004 (EAR) – Centre organised a seminar on freedom of thought, conscience and religion and freedoms of assembly and association – standards of the European Convention on Human Rights in Herceg Novi, in cooperation with the Council of Europe, Centre for Democracy and Human Rights in Montenegro (CEDEM) and London-based AIRE Centre (Advice on Individual Rights in Europe Centre). - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law.

December 2004 – Centre organised participation of 15 judges in a seminar on human rights (or rather UN human rights documents) in Herceg Novi. The main organiser of the seminar was UNDP (United Nations Development Program) Belgrade Office. The Centre provided the venue (premises of Herceg Novi Basic Court) and covered organisational aspects. - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law.

December 2004 – Centre organised participation of 6 Montenegrin judges in a seminar dedicated to the European Convention on Human Rights and its criminal aspects in Budva. The main organiser was the Association of Judges of Serbia. - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law.

February 2005 (EAR) – Centre organised a seminar on family law and European Convention on Human Rights in Herceg Novi, in cooperation with the Council of Europe, Centre for Democracy and Human Rights in Montenegro (CEDEM) and London-based AIRE Centre (Advice on Individual Rights in Europe Centre). - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law.

February 2005 – Centre organised participation of 5 judges in a seminar on money laundering and financing of terrorism (practical case studies and exchange of experiences) in Belgrade. The seminar was organised by the Judicial Centre of Serbia and cooperation with European Law Academy from Trier. – MONEY LAUNDERING.

February 2005 – Centre organised participation of 5 judges in a seminar on the balance between freedom of expression and other human rights, organised by the Council of Europe and European Agency for Reconstruction in Igalo, Herceg Novi. - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law

March 2005 – Director of the Centre participated in a workshop held in Podgorica within a regional CARDS 2003 Project, Module 4, Judiciary, under the title “An Introduction into the EU law and EU Judicial System”. – EU LAW

April 2005 (EAR) - Centre organised a seminar in Igalo, Herceg Novi on the European Convention on Human Rights and criminal legislation reform in Montenegro, in cooperation with the Council of Europe, Centre for Democracy and Human Rights in Montenegro (CEDEM) and London-based AIRE Centre (Advice on Individual Rights in Europe Centre) - EUROPEAN CONVENTION ON HUMAN RIGHTS. – case-law

April 2005. – Director of the Centre participated in a workshop under the title “An Introduction into the EU Law and EU Judicial System, Cooperation between EU Institutions and National Courts and Authorities, with Special Emphasis on Preliminary Rulings and EU Competition Law”, held in Belgrade as part of the Regional CARDS 2003 Project, Module 4, Judiciary. This event was a preparation of the sort for the study visit to the Court of Justice in Luxembourg, in which director of the Centre took part together with 3 Supreme Court judges. - EU LAW

April 2005 – Director of the Centre participated in a study visit to the Court of Justice in Luxembourg together with 3 Supreme Court judges. The visit was organised within the Regional CARDS 2003 Project, Module 4, Judiciary. - EU LAW

June 2005 – In cooperation with the Council of Europe, Judicial Centre of Serbia and London-based AIRE Centre (Advice on Individual Rights in Europe Centre), Centre organised a specialised seminar for expert-associates of the Supreme and Constitutional Courts of Montenegro and Serbia and Court of the State Union of Serbia and Montenegro on the European Convention on Human Rights (ECHR) – certain Articles and aspects thereof in Igalo. This seminar was a continuation of a series of seminars on the European Convention on Human Rights, organised with support of the Council of Europe throughout Montenegro for all judges, starting from 2003. - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law

June 2005 (EAR) – Centre organised a seminar on the European Convention on Human Rights and criminal legislation reform in Montenegro in Igalo, in cooperation with the Council of Europe, Centre for Democracy and Human Rights in Montenegro (CEDEM) and London-based AIRE Centre (Advice on Individual Rights in Europe Centre) - EUROPEAN CONVENTION ON HUMAN RIGHTS. – case-law

July 2005 – director of the Centre participated in a workshop organized in St. Stefan, Budva within the Regional CARDS Project 2003, Module 4, Judiciary, the topic was '*Effects and Interpretation of the European Court of Justice's Case-Law and Impact of EC law at National Level and Protection of the Fundamental Rights by the European Court of Justice and European Court of Human Rights'.* - EU LAW

November 2005 (EAR) - Centre organised a seminar on freedom of expression, right to respect for a private life and right to a fair trial under the European Convention on Human Rights, in cooperation with the Council of Europe, Centre for Democracy and Human Rights in Montenegro (CEDEM) and London-based AIRE Centre (Advice on Individual Rights in Europe), in Budva. - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law

December 2005 - Centre provided participation of a group of Montenegrin judges at a seminar organised by the OSCE within '*Project on Combating Organised Crime - Capacity Building of Montenegrin Judiciary'.* The topic of the seminar was '*Cyber Crime and Money Laundering, Investigation Techniques and Processing of the Case'.* This participation was provided through the separate six-month project of support to the Centre by the OSCE. – COMPUTER CRIME AND MONEY LAUNDERING

March 2006 (EAR**)** – Centre organized a workshop on public procurement, competition law and intellectual property rights, in Budva, in cooperation with the EU CARDS Regional Project 2003. The workshop was organised for all the interested judges of Montenegro and focused on the EU legal framework in this area. - EU LAW

May 2006 (EAR) – Centre organised a workshop on environmental law and consumer protection in Podgorica, in cooperation with the EU CARDS Regional Project 2003. The workshop was organised for all the interested judges of Montenegro and focused on the EU legal framework in this area. - EU LAW

June 2006 (EAR) – Centre organised a seminar on substantive and procedural duties under Articles 2 and 3 of the European Convention on Human Rights, in cooperation with the Council of Europe, Centre for Democracy and Human Rights in Montenegro (CEDEM) and London-based AIRE Centre from (Advice on Individual Rights in Europe), in Igalo - EUROPEAN CONVENTION ON HUMAN RIGHTS. – case-law

July 2006 – Centre organised a seminar on Articles 3, 8 and Article 1 of Protocol 1 to the European Convention on Human Rights. It targeted the judges – trainers in the field of the Convention from Montenegro and Serbia, and a number of judges of the Supreme Court of Montenegro. It was supported by the Council of Europe and organised in cooperation with the Judicial Centre from Serbia. - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law

October 2006 – Centre organised a seminar on the right to a fair trial under the European Convention on Human Rights, in cooperation with the Council of Europe, Centre for Democracy and Human Rights from Podgorica (CEDEM) and AIRE Centre from London (Advice on Individual Rights in Europe), in Bečići. - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law

October 2006 - Centre provided participation of a group of Montenegrin judges (5 judges of the Supreme Court of Montenegro and 1 judge from the Basic Court in Herceg Novi) in a refresher seminar on the ECHR, organised by Directorate General of Human Rights of the Council of Europe - EUROPEAN CONVENTION ON HUMAN RIGHTS. – case-law

December 2006 – Centre organised a seminar with the topic '*Maritime Law'* in Podgorica for the judges of the Podgorica Commercial Court and judges of the Appellate Court of Montenegro. It was organised with the support of Checchi and Company Consulting, Inc./USAID.

January 2007 – in cooperation with the AIRE Centre from London (Advice on Individual Rights in Europe) and with the support of Foundation Open Society Institute-Soros, Centre distributed to all the judges and prosecutors of Montenegro January and February issues of a bulletin '*European Convention on Human Rights – Key Cases of the European Court of Human Rights'.* – CASE LAW/ECHR

March 2007 – Centre provided participation of a group of Montenegrin judges at round tables on environmental law and consumer protection, in cooperation with the Regional 2003 CARDS Project. Round tables were organised in Podgorica. - EU LAW

November 2007 – Centre organised a round table on the protection of right to trial within a reasonable time, in cooperation with the Ministry of Justice of Montenegro and OSCE-Mission to Montenegro, in Podgorica. The round table gathered presidents of all the Montenegrin courts, judges of the Supreme Court of Montenegro and a number of public prosecutors. - EUROPEAN CONVENTION ON HUMAN RIGHTS – case-law

December 2007 – Centre provided participation of one Supreme Court of Montenegro judge and one Deputy Supreme Public Prosecutor at an international conference on anti-corruption measures and role of judiciary in this context, in Zagreb, Croatia. The conference was organised by the Judicial Academy of Croatia in cooperation with TAIEX/EU.- CORRUPTIVE CRIMINAL OFFENCES

December 2007 – Centre provided participation of two Montenegrin judges in a seminar organised by the Hungarian Regional Centre for Competition and Hungarian Judicial Academy, in Budapest. The topic was 'Basis Issues related to the European Competition Law'. – EU LAW

February 2008 - Centre provided participation of one judge of the Commercial Court in Podgorica at a regional conference in Banja Luka, Bosnia and Herzegovina. The topic of the conference was bankruptcy law, and it was organised by the Centre for Education of Public Prosecutors and Judges in the Republic of Srpska, with the support of German Agency for Technical Cooperation (GTZ). – COMMERCIAL LAW.

September 2008 – In cooperation with the TRIM MNE Project, funded by the EU and managed by the European Agency for Reconstruction/EU, and the Ministry of Economic Development of Montenegro, the Centre organised a workshop on "Presentation of a New Legal Framework in the Field of Intellectual Property" in Ulcinj. The workshop was aimed at improving understanding of the new legal framework in the field of intellectual property, and targeted representatives of the public administration and judicial system. The main topics of discussion were in direct connection to the Patent Law, Trademark Law, and Geographic Origin Law. – COMMERCIAL LAW.

September/October 2008 – In cooperation with the TRIM MNE Project, funded by the EU and managed by the European Agency for Reconstruction/EU, and the Ministry of Economic Development of Montenegro, the Centre organised a workshop on "The Competition Policy" in Budva/Bečići. The aim was to inform the participants about basic elements of European and Montenegrin competition laws. The event was attended by judges of the Commercial Court in Bijelo Polje along with prosecutors and an adviser from the Basic Prosecutor's Offices in Podgorica, Berane, Bijelo Polje, and Rožaje.

November 2008 – Within the framework of the European Union-funded Twinning Project of support to the Centre (Project title: "Advisory Support to the Training of Prosecutors in Montenegro"), a seminar for prosecutors, judges, and police representatives held in Podgorica, focusing on computer crime. It was attended by the prosecutors and advisers of the following public prosecutor

offices: High Prosecutor's Office in Podgorica, the basic prosecutors' offices in Cetinje, Podgorica, Bar, Rožaje, and Nikšić, and the officers of the Police Directorate. – COMPUTER CRIME

November 2008 – Centre organised a one-day seminar for judges and prosecutors in Podgorica under the topic "The European Union Law/EU Legal System: Instruments, Features and Fundamental principles', in cooperation with the Institute of Public Administration from Luxembourg.

February 2009 – in cooperation with EIPA/ European Institute for Public Administration from Luxembourg, Centre organised a seminar for judges and prosecutors on the topic "Organisation, Functioning, Legal Remedies and Procedure before the European Courts".

March 2009 –In Podgorica, in cooperation with TRIM MNE Project, managed by the European Agency for Reconstruction, and Ministry of Economic Development, Centre organised a seminar on the topic "Case-law on Competition Law". Centre secured participation of judges and expert associates from the Commercial Courts in Podgorica and Bijelo Polje, High Court in Podgorica, Basic Courts in Podgorica and Herceg Novi, and of an advisor from Basic Public Prosecutor's Office in Podgorica. The aim of the seminar was to introduce case-law on competition law to the participants - COMMERCIAL LAW

April 2009 - In Podgorica, in cooperation with TRIM MNE Project, managed by the European Agency for Reconstruction, and Ministry of Economic Development, Centre organised a seminar "Systemic Introduction to Competition Law". Centre provided participation of judges and expert associates from the Commercial Courts in Podgorica and Bijelo Polje, High Court in Podgorica, Basic Courts in Podgorica, Cetinje and Bar, and of advisors from Podgorica Basic and High Public Prosecutor's Offices. - COMMERCIAL LAW

April 2009 – Seminar "EU Law/EU Legal System: Instruments, Features and Fundamental principles", in the organisation of the Centre and EIPA/ European Institute for Public Administration from Luxembourg.

June 2009 - in cooperation with EIPA/ European Institute for Public Administration from Luxembourg, Centre organised a seminar for judges and prosecutors on "Organisation, Functioning, Legal Remedies and Procedures before the European Courts".

February 2009 - seminar for judges and associates of the Commercial Court and Appellate Court from Pogorica on maritime law, as part of the Government of the Kingdom of the Netherlands Project of Support to the Judicial Training Centre. - COMMERCIAL LAW

In addition to the above mentioned events, four training of trainers seminars on ECHR were organised for local lectures (2 in 2008, and 2 in 2009). The participants were five selected judges of the Supreme Court and five selected public prosecutors. – ECHR

July 2009 - seminar on Articles 2, 3 and 5 of ECHR, in Podgorica, targeting prosecutors. The lecturers were local trainers who received training on ECHR.

g) How many and what types of specialised judges and prosecutors are there?

Under the Law on Courts there are two types of specialised courts, namely, two Commercial Courts and Administrative Court. Pursuant to the Decision on the Number of Judges in Courts in Montenegro, there are 24 judges plus courts presidents in the two Commercial Courts, and 8 judges and court president in the Administrative Court.

Within the two High Courts there are specialised divisions for trials for criminal offences of organised crime, corruption, terrorism and war crimes. There are 8 specialised judges and 3 investigating judges in these divisions.

The Annual Schedule of each court determines the areas in which individual judges work (criminal, civil contentious, civil non-contentious or enforcement law). The common practice is that judges work in a particular area on a continuous basis, which allows specialisation of judges.

Specialisation of prosecutors results from the fact that a special Division for suppressing organised crime, corruption, terrorism and war crimes, headed by the Special Prosecutor, has been set up within the Supreme Public Prosecution Office. In addition to this, the Supreme Public Prosecutor's Office has a Division for International Cooperation, as well as a Division which deals with civil and administrative issues. The Special Prosecutor has 5 deputies, who specialise in the suppression of the above noted types of crime. Within the Division for International Cooperation there is one deputy public prosecutor.

h) Is there in-service training? Is it compulsory? Please describe the extent and how often it occurs.

The Training Centre delivers initial and in-service education to judges and public prosecutors during their tenures.

Under the Law on Training in Judicial Authorities, in-service education is both the right and a duty of the judge and public prosecutor.

The in-service education is warranted by a significant volume of new legislation and the need to harmonise Montenegrin case law with that of the European Court of Human Rights and European Court of Justice.

The education is carried out through seminars, workshops, study visits, roundtables and conferences.

i) What percentage of judges, prosecutors and other staff in the judicial sector has received further training over the last 5 years (compared with the profession as a whole)?

Within the Project ''Support to the Judicial Training Centre'', managed by the European Agency for Reconstruction/EU, a research about judges and expert associates and their training was carried out between July and December 2005, with the expert assistance of the Entrepreneurship and Economic Development Centre of Montenegro. The research resulted in a publication which contains the results of the activity and their graphical overview. The data from March 2005 showed that a total of 219 judges (93.59% of the total number of judges in Montenegro) participated in the seminars organised by the Judicial Training Centre, together with 69 expert associates (85.2% of the total number of expert associates in Montenegro).

There has been no similar research which would cover the period 2005-2009. The Centre keeps and regularly updates records on the involvement of judges (and as of January 2007, public prosecutors also) in the activities implemented by the Centre.

At the moment, there are 249 judges and 89 public prosecutors in Montenegro. Of the total number of judges (249), 193 or 77.2 % participated in various activities organised by the Centre between 2005 and 2009.

By virtue of the Law on Training in Judicial Authorities public prosecutors have been included as a target group of the Centre. Since the mentioned Law entered into force, i.e. January 2007, the Centre keeps and regularly updates records on the participation of the public prosecutors in the activities organised by the Centre. In the period 2007-2009, 75 public prosecutors (out of a total of 89 prosecutors), or 84.3%, participated in the training activities of the Centre.

18. Clerical staff:

a) Do they receive particular initial and vocational training (on case management, IT, relations with the public etc.)? Which institution is in charge of offering this training?

The type of education and general criteria which must be meet by civil servants and administrative staff in order to be assigned to working posts are prescribed by the Law on Civil Servants and State Employees and the rulebook on internal organisation and job descriptions in the public prosecutor's office. Civil servants and state employees receive education offered by the educational system of Montenegro. In addition to the required education, civil servants and state employees must pass the civil service exam, administered by a Commission of the Ministry of Justice and aimed at assessing the knowledge required for the performance of tasks within state authorities. Civil servants in courts and prosecution organisation, namely, the Secretaries, expert associates and advisors, must, in addition to the civil service exam, also pass the bar exam administered by a Commission of the Ministry of Justice.

Further professional advancement and specialist training of civil servants and state employees are organised by the Human Resources Administration in accordance with the Programme of Professional Advancement of Civil Servants and State Employees. Every civil servant and administrative staff member is entitled to apply to attend trainings envisaged by the Programme. The clerical staff have mainly attended the following trainings: Time Management, Office management, Communications skills, Workplace Stress Management, Conflict Resolution, Gender Mainstreaming, as well as foreign languages and IT courses. As part of the implementation of the Judicial Information System (PRIS), initial computer education and PRIS software training is being conducted. All users of this information system will be trained to use it by the end of 2009.

b) Which equipment (computers, e-mail, fax etc.) do clerical staff have at their disposal to perform their functions?

Clerical staff in all judicial institutions have at their disposal the equipment required for the performance of their functions (computers, printers, scanners, copy machines, faxes etc.). E-mail communication is possible via dial up connection, while MipNet (broadband) connection is available on the locations specified in the table annexed to the reply. The judicial institutions listed therein make up 80% of the system in terms of the staff. By the end of this year MipNet connection will be provided to all judicial institutions. The implementation of the Judicial Information System Project is underway. The Project aims at securing computer-based performance of the tasks within the Ministry of Justice, courts, prosecution service and Institution for Enforcement of Criminal Sanctions. Depending on the type of the functions they perform, clerical staff, in addition to Judicial Information System (PRIS), also use Accounting Information System (SAP) and Human Resources Information System (KIS).

The implementation of the Judicial Information System within the Ministry of Justice, courts, prosecution service, misdemeanour bodies and Institution for Enforcement of Criminal Sanctions, as part of the overall judicial reform, will increase work efficiency and effectiveness, as well as administrative capacities of these institutions. Through the implementation of the reform activities until the end of this year, the procedure of public procurement will be conducted in order to purchase EUR 700,000 worth of computer equipment required to replace the parts of the existing equipment which are older than five years and new computer equipment. This will allow all 1100 PRIS users to have at their disposal new or less than two years old equipment.

Since judges and their associates, including clerical staff, require prompt access to legislation and case-law, legal databases IngPro and Nespa (Official Gazette) have been installed in courts. IngPro is distributed application software. Maintenance and updating of this system requires direct access to every workstation and CD-based updating. Nespa is also a legal database which does not require significant hardware resources. Where possible, it has been installed centrally (Supreme Court building).

It should also be stressed that clerical staff is actively involved in process of updating of the website of the Ministry of Justice - www.pravda.gov.me which provides information on new developments within the Ministry, strategic documents, legislation falling within Ministry's competence, legislative drafts and proposals, organisation of the Ministry, as well as guides for citizens, surveys, etc., courts' websites www.vrhsudcg.gov.me, www.sudovi.co.me, www.apelacionisudcg.gov.me and www.upravnisud.org, which contain information on new developments within the entire court system, courts, judges as well as work reports and bulletins; Judicial Council website: www.sudskisavjet.gov.me, which provides information on the work of the Judicial Council, new developments, sessions, work reports, regulations and forms; and www.crps.co.me, website of the Central Registry of the Commercial Court in Podgorica, which provides overview of all commercial entities, regulations and guidelines for registration.

Location	Modem	Router	Link Capacity	Note
Supreme Court in Podgorica	Yes	Yes	2Mbps	Building of Supreme Court
Appellate Court in Podgorica			2Mbps	
Administrative Court in Podgorica			2Mbps	
High Court in Podgorica			2Mbps	
Supreme Public Prosecution Office	Yes	Yes	2Mbps	Building of Supreme Public Prosecution Office
High Public Prosecution Office	Yes	Yes	2MBps	
Special Division for Suppressing Corruption and Organised Crime	Yes	Yes	2Mbps	
Commercial Court in Podgorica	Yes	Yes	2Mbps	
High Court in Bijelo Polje	Yes	Yes	512 Kbps	Building of High Court in Bijelo Polje
Basic Court in Bijelo Polje			512 Kbps	
High Public Prosecution Office in Bijelo Polje	Yes	Yes	512 Kbps	
Basic Public Prosecution Office in Bijelo Polje	Yes	Yes	512 Kbps	
Commercial Court in Bijelo Polje	Yes	Yes	512 Kbps	
Institution for Enforcement of Criminal Sanctions in Bijelo Polje	Yes	Yes	512 Kbps	
Basic Court in Kolasin	Yes	Yes	1 Mbps	
Basic Public Prosecution Office Kolasin	Yes	Yes	1Mbps	
Basic Court in Zabljak	Yes	Yes	512 Kbps	

Basic Court in Niksic	Yes	Yes	512 Kbps	
Basic Public Prosecution Office in Niksic	Yes	Yes	512 Kbps	
Basic Court in Danilovgrad	Yes	Yes	512 Kbps	
Institute for Enforcement of Criminal Sanctions in Spuz	Yes	Yes	512 Kbps	
Secretariat of the Judicial Council	Yes	Yes	2Mbps	
Ministry of Justice	Yes	Yes	2Mbps	

c) Are archives well managed and computerised? Is there sufficient and direct access to legal databases?

The archiving, keeping and exclusion of case files is governed by the Court Rules. Closed cases are archived and kept pursuant to an order signed by a judge or an authorised court officer, who certifies that the case is to be archived by signing the stamp on the cover of the case file.

The two types of archives are set up within courts, namely, the reference archive and general archive. The reference archive is located within the Registry Office of the Court and, as a rule, in a separate room. Files of closed cases are in kept in the reference archive for not longer than two years, whereupon they are sent to the general archive. The general archive is common to all types of cases and is kept separate from the Registry Office of the Court, in a separate room. Registers and directories from former years are also kept in the archive in addition to case files. Archived cases are handled by a clerk of the Registry Office (Archivist).

Archives are not computerised at present, but the introduction of the new information system for the judiciary, which is underway, will lead to the computerisation of these affairs as well.

The keeping, selection and exclusion of case files, registers, directories and other auxiliary books is carried out in accordance with the regulations governing keeping, collection and occasional discarding of archived materials.

Software for electronic case management (PRIS) has been designed for the needs of the court system in Montenegro. The installation of this software in courts is underway and it is expected that case management within all courts in Montenegro will be computerised by the end of this year. The implementation of this software will ensure a compatible software at the national level (implementation includes a central, single database with web-oriented application and creation of a secure network infrastructure, for secure work within the network of state authorities (both Intranet and Internet). An ICT and Multimedia Department has been set up within the Secretariat of the Judicial Council with the main aim of assessing the needs, ensuring computerisation and purchase of hardware and software, as well as offering consulting services and providing assistance to the courts.

At present, the following courts have broadband Internet connection through the network of state authorities, which allows access to all databases of other authorities available on their respective websites:

- Supreme Court of Montenegro,
- Appellate Court of Montenegro,
- Administrative Court of Montenegro,
- High Court in Podgorica,
- Basic Court in Podgorica,
- High Court in Bijelo Polje,
- Basic Court in Bijelo Polje,
- Basic Court in Niksic,
- Basic Court in Kolasin,
- Basic Court in Danilovgrad,

- Basic Court in Zabljak.

At the moment, efforts are being made to establish internet connection in other municipalities.

All decisions rendered by the Supreme Court of Montenegro in 2009 are posted on its website and decisions rendered by the Administrative Court of Montenegro are available on this court's website since November 2007 onwards

As of 1 September 2009, all decisions of the Appellate Court of Montenegro, two High Courts and Basic Court in Podgorica will be made available on their respective websites.

Furthermore, as part of the information system, a case-law database is available to all users of the Judicial Information System.

Efficiency

19. What is the annual budget of the judiciary? Please provide a breakdown for the last five years. What is the procedure for deciding the budget? Who is managing the budget in judiciary?

For the needs of the Ministry of Justice, EUR 1 406 052.80 have been allocated in the 2009 Budget, while EUR 20 080 914.22 have been allocated for the needs of the judiciary, EUR 4 538 776.14 has been allocated for the Public Prosecution Office, EUR 3 667 546.14 for misdemeanour bodies and EUR 7 018 171.81 for the needs of the Institution for Enforcement of Criminal Sanctions. All these sums together total EUR 36 711 461.11, or 2.4% of the total State Budget (EUR 1 526 705 864.01).

Budget breakdown for the last five years is given in the table below.

Question 19 Table

Institution	2005		2006		2007		2008		2009	
	Budget	Revised budget	Budget	Revised budget	Budget	Revised budget	Budget	Revised budget	Budget	Revised budget
Ministry of Justice	684,252.1	768,763.6	884,648.7	884,648.7	821,180.1	894,407.6	1,133,387.0	1,133,387.0	1,486,915.2	1,406,052.8
Courts	7,502,383.7	7,812,496.6	8,426,193.4	8,426,193.4	12,708,649.4	13,586,548.5	15,092,026.7	19,779,371.4	20,468,877.0	20,080,914.2
Prosecution service	1,246,117.8	1,452,692.0	1,762,362.2	1,762,362.2	2,715,562.0	2,748,046.4	3,447,279.0	4,998,279.0	4,982,150.5	4,538,776.1
Misdemeanour bodies	1,661,140.2	1,728,070.5	2,091,888.9	2,091,888.9	2,510,783.9	2,501,405.2	4,592,982.7	4,592,982.7	3,991,295.0	3,667,546.1
Institution for Enforcement of Criminal Sanctions	3,608,804.4	3,698,629.3	5,505,010.8	5,505,010.8	4,315,040.6	4,890,245.5	6,298,180.6	6,624,749.5	7,428,426.0	7,018,171.8
Total	14,702,698.1	15,460,652.0	18,670,103.9	18,670,103.9	23,071,216.1	24,620,653.1	30,563,856.0	37,128,769.6	38,357,663.8	36,711,461.1
Total budget/revised budget	491,763,632.2	503,407,631.8	518,912,185.3	531,462,185.3	616,860,519.1	749,088,301.4	730,409,181.0	838,251,649.2	1,623,684,943.6	1,526,705,864.0
Budget share percentage										
Ministry of Justice	0.14%	0.15%	0.17%	0.16%	0.13%	0.12%	0.15%	0.13%	0.09%	0.09%
Courts	1.52%	1.55%	1.62%	1.58%	2.06%	1.81%	2.06%	2.36%	1.26%	1.31%
Prosecution service	0.25%	0.29%	0.34%	0.33%	0.44%	0.37%	0.47%	0.60%	0.31%	0.30%
Misdemeanour bodies	0.34%	0.34%	0.40%	0.39%	0.41%	0.33%	0.63%	0.55%	0.24%	0.24%
Institution for Enforcement of Criminal Sanctions	0.73%	0.73%	1.06%	1.03%	0.70%	0.65%	0.86%	0.79%	0.46%	0.46%
Total	2.98%	3.06%	3.59%	3.49%	3.74%	3.28%	4.17%	4.43%	2.36%	2.40%
Judicial Council								230,000.0		

The procedure of budget planning and preparation is governed by the Budget Law (Official Gazette of the Republic of Montenegro 40/01, 44/01, 71/05 and the Official Gazette of Montenegro 12/07). Funds for the operations of courts and prosecutor's offices are allocated in special section of the budget of Montenegro (Law on Courts (Official Gazette of the Republic of Montenegro 5/02, 49/04 and the Official Gazette of Montenegro 22/08) and Law on Public Prosecution Office (Official Gazette of the Republic of Montenegro 69/03 and the Official Gazette of Montenegro 40/08).

The Law on the Budget of the State for the fiscal year is passed by the Parliament. The fiscal year is identical to the calendar year. The preparation of the budget is based on the projections of economic development, macroeconomic stability, economic policy, laws and other regulations.

In February each year, based on the Government Guidelines for Elaboration of the Capital Budget, the Ministry of Finance issues an instruction on preparation of the capital budget of spending units, which propose capital projects for the next fiscal year.

Spending units which have proposed capital budgets are under a duty to submit requests for allocation of budgetary resources to the Ministry of Justice not latter than 15 April of the current year for the next fiscal year.

At a proposal of the state administration authority in charge of proposing economic policy, the Government sets the strategic priorities of economic policy for the next fiscal year not latter than 30 April of the current year.

In May each year, the Ministry of Finance prepares and submits to the Government a report on the realisation of macroeconomic and fiscal policy for the current year and proposes directives and targets of the fiscal policy, on the basis of which it plans the main categories of income and expenditures and gives an estimate for the next three year period.

In June each year, based on the decision of the Government on targets and guidelines of fiscal policy, the Ministry of Finance issues an instruction for the preparation of spending units' budgets.

The instruction includes: key economic parameters, instructions, guidelines and timeframes for the preparation of the budget, framework amounts of expenditures for each spending unit, as well as a budget projection for the next year, together with an estimate of the current and capital budget spending for the next three years, on the basis of guidelines and targets of fiscal policy adopted by the Government.

As part of the budget planning process, spending units submit requests to the Ministry of Finance for allocation of budgetary funds, not later than end August of the current year for the next year (Ministry of Justice, Misdemeanour Panel, Institution for Enforcement of Criminal Sanctions etc.).

The Judicial Council proposes budgetary allocations for the work of courts and the Prosecutorial Council does the same in relation to the work of the Public Prosecution Office. The Judicial and Prosecutorial Councils submit these proposals to the Government.

On the basis of an estimate of income and submitted requests for allocation of budgetary funds, the Ministry of Finance proposes expenditures for the spending units in a draft Budget Law.

The Ministry of Finance develops a draft State Budget Law and submits it to the Government in October.

The Government adopts a proposal for a State Budget Law and sends it to the Parliament for consideration and adoption. The Presidents of the Judicial Council and Prosecution Council are entitled to participate at the sitting of the Parliament when it discusses the proposal for the budget. There are examples where amendments were made pursuant to the requests of the representatives of judicial institutions and these amendments were adopted by the Parliament.

The Minister of Finance is responsible for the execution of the State Budget.

Spending units use the funds allocated by the State Budget Law in line with the dynamics approved by the Ministry of Finance.

Spending units decide on the allocation of the funds for expenditures within the units which are under their competence.

The budget executor is responsible for lawful disbursement of the funds approved to a spending unit. This role is exercised by the President of the Supreme Court in relation to the courts and by the Supreme Public Prosecutor in relation to the Public Prosecution Office.

The court president is the financial principal at the court.

20. What is the average duration of cases for (a) civil and (b) criminal decisions? In case of delays in handling cases, which problems are they mainly linked with?

Duration of cases:

2005

Court	Type of case	Up to 3 months	Up to 6 months	Up to 9 months	Up to one year	More than one year
Basic Courts	First instance criminal	37.46 %	14.21 %	12.03 %	8.45 %	27.82 %
	First instance civil contentious	26.35 %	16.69 %	13.86 %	11.91 %	31.15%
High Court	First instance criminal	60.65 %	18.44 %	4.09 %	1.22 %	15.57 %
	Second instance criminal	57.19 %	9.15 %	9.34 %	11.54 %	12.75 %
	Second instance civil	48.38 %	19.62 %	9.74 %	10.52 %	11.71 %

2006

Court	Type of case	Up to 3 months	Up to 6 months	Up to 9 months	Up to one year	More than one year
Basic Courts	First instance criminal	24.88 %	16.20 %	11.69 %	10 %	37.19 %
	First instance civil contentious	28.43 %	15.80 %	10 %	11 %	37.74 %
High Court	First instance criminal	33.64 %	21.49 %	9.34 %	8.72 %	26.79 %
	Second instance criminal	74.22 %	11.09 %	4.57 %	3.50 %	6.59 %
	Second instance civil	54.10 %	12.31 %	10.86 %	11.20 %	11.50 %

2007

Court	Type of case	Up to 3 months	Up to 6 months	Up to 9 months	Up to one year	More than a year
Basic Courts	First instance criminal	27.68 %	15.57 %	10.73 %	11.12 %	34.86 %
	First instance civil contentious	24.20 %	19.06 %	11.32 %	9.20 %	36.20 %
High Court	First instance criminal	24.03 %	21.54 %	8.39 %	5.66 %	40.36 %
	Second instance criminal	61.34 %	18.15 %	12.26 %	6.03 %	2.20 %
	Second instance civil	27.26 %	7.26 %	10.88 %	10.03 %	44.54 %

2008

Court	Type of case	Up to 3 months	Up to 6 months	Up to 9 months	Up to one year	More than a year
Basic Courts	First instance criminal	26.31 %	14.24 %	10.31 %	12.43 %	36.68 %
	First instance civil contentious	25.25 %	19.87 %	11.38 %	8.06 %	35.42 %
High Court	First instance criminal	30.22 %	22.51 %	10.14 %	6.69 %	30.42 %
	Second instance criminal	68.21 %	10.52 %	10.27 %	4.57 %	6.41 %
	Second instance civil	21.40 %	6.33 %	7.46 %	10.56 %	54.23 %

Duration of cases depends on:

- the complexity of cases in both legal and factual sense (number of parties, whether one of the parties is out of the country, whether witnesses are out of the country and number of witnesses, number of pieces of evidence, and particularly number and complexity of expert witness testimonies, some of which have to be entrusted to institutions outside Montenegro),
- a lack of discipline on the part of parties, witnesses and expert witnesses,
- problems in service of summons,
- an international element,
- a heavy workload,
- high percentage of appeals to first-instance decisions in civil and criminal proceedings,
- previously, there was a significant turnover of judges, who were replaced by judges with less legal experience,
- also previously, judges were not motivated enough to engage in an efficient and effective work, and there was a lack of efforts to establish responsibility of judges,
- long duration of the procedure of election of judges was a problem prior to the establishment of the Judicial Council on 18 April 2008, when election procedure was removed from the hands of the Parliament.

21. Please provide statistics (separate figures for civil, criminal and administrative cases) on the number of pending cases over the last five years.

Number of unresolved cases[1]

Year	First instance criminal	Appellate criminal	First instance civil	Appellate civil	Administrative
2005	8,4	1,1	15,2	3,9	1,4
2006	8,6	1,4	11,8	5,1	1,4
2007	8,4	1,5	12,6	5,90	1,5
2008	6,1	2,0	11,0	4,9	1,6

[1] Source: Supreme Court of Montenegro

- 2005 Overview of the Work of Courts in the Republic of Montenegro
- 2006 Overview of the Work of Courts in the Republic of Montenegro
- 2007 Overview of the Work of Courts in the Republic of Montenegro

* Source: Judicial Council

- 2008 Report on the Work of Courts

22. What is the rate of appeals compared with the number of first-instance decisions in civil and criminal matters? (please provide global breakdown of pending cases.) What is the rate of successful appeals compared to the total number of appeals?

Rate of appeals

Year	Type of case	Rate of appeals	Rate of successful appeals
2006	criminal cases	39.52 %	46.29 %
	civil contentious cases	20.26 %	32.97%
2007	criminal cases	40.89 %	39.80 %
	civil contentious cases	31.61 %	27.91 %
2008	criminal cases	39.93 %	37.76 %
	civil contentious cases	30 %	39.87 %

GLOBAL BREAKDOWN OF RESOLVED AND PENDING CASES ON APPEAL IN CIVIL AND CRIMINAL MATTERS

CRIMINAL CASES 2006

Court	Number of resolved cases	Number of appeals	Percentage	Amended + reversed decisions	Percentage	Number of pending appeals	Percentage
Herceg Novi	194	47	24%	23	49%	0	0
Bijelo Polje	811	384	47.35%	105	27.34%	109	28.39 %
Cetinje	337	47	19.88	21	44.67%	6	12.44 %
Ulcinj	170	48	28.23%	34	52%	0	0
Rozaje	281	121	43%	36	30%	0	0
Pljevlja	292	93	31.84%	30	31.19%	0	0
Zabljak	60	26	43.33%	4	26.66%	11	42.3 %
Plav	116	99	85.34%	30	54.45%	0	0
Berane	1043	251	24.06	108	43%	0	0
Kolasin	113	41	36.28%	22	51.21%	0	0
Bar	549	328	60%	112	50%	104	32 %
Niksic	568	353	62%	126	22%	350	61 %
Danilovgrad	135	34	25.18%	16	47%	0	0
Kotor	575	193	33.57%	101	52.45%	40	20.73 %
Podgorica	1611	554	34.38%	151	27.25%	0	0
High Court Podgorica	246	152	61.78%	73	45.06%	0	0
High Court Bijelo Polje	75	65	86.67%	34	52.31%	0	0
Total	7176	2836	39.52%	1026	46.29%	620	21.86 %

CRIMINAL CASES 2007

Court	Number of resolved cases	Number of appeals	Percentage	Amended + reversed decisions	Percentage	Number of pending appeals	Percentage
Herceg Novi	262	37	14 %	16	44%	0	0
Bijelo Polje	988	384	38.86 %	113	29.43 %	93	24.22 %
Cetinje	285	66	23.16 %	22	33.33 %	0	0
Ulcinj	222	99	44.59 %	41	41.83 %	1	1 %
Rozaje	268	125	47 %	33	26 %	1	0.8 %
Pljevlja	292	96	32.87 %	40	43.74 %	0	0

Zabljak	74	18	24.32 %	7	29.17 %	3	16 %
Plav	173	87	50 %	23	26.43 %	0	0
Berane	631	397	62.91 %	188	47.34 %	13	3.17
Kolasin	199	67	33.66 %	30	41.79 %	0	0
Bar	646	302	47 %	68	36 %	112	37 %
Niksic	623	378	60 %	60	16 %	267	70 %
Danilovgrad	150	34	22.66 %	12	35.29 %	2	5.88 %
Kotor	692	191	27.60 %	95	49.64 %	18	9.42 %
Podgorica	1795	613	34,15 %	210	34,25 %	0	0
High Court Podgorica	366	210	57.37 %	66	37.28 %	33	15.71 %
High Court Bijelo Polje	75	62	82.67	20	32.26 %	0	0
Total	7741	3166	40.89 %	1044	39.80%	543	17.15 %

CRIMINAL CASES 2008

Court	Number of resolved cases	Number of appeals	Percentage	Amended + reversed decisions	Percentage	Number of pending appeals	Percentage
Herceg Novi	350	55	16 %	13	24 %	11	20 %
Bijelo Polje	873	541	61.97 %	167	30.86 %	76	14.05 %
Cetinje	465	100	21.50 %	39	39 %	0	0
Ulcinj	435	240	55.17 %	98	48.6 %	39	16.25 %
Rozaje	290	145	50 %	31	22 %	5	3.5 %
Pljevlja	275	151	54.90 %	50	29.79 %	0	0
Zabljak	72	37	51.39 %	11	36.66 %	10	27 %
Plav	172	80	46.51 %	31	38.75 %	7	8.75 %
Berane	584	379	64.89	146	38.5 %	42	9,97
Kolasin	340	100	29.41 %	40	40 %	13	13 %
Bar	1244	525	42 %	155	42.5 %	160	30 %
Niksic	923	406	32 %	81	19 %	145	35 %
Danilovgrad	273	59	21.61 %	17	28.81 %	12	20.33 %
Kotor	927	260	28.05 %	108	11.66 %	34	13.08 %
Podgorica	3036	844	33.61 %	268	31.74 %	10	0.15 %
High Court Podgorica	338	248	73.37 %	91	37.44 %	53	21.37 %
High Court Bijelo Polje	155	124	80 %	34	27.42 %	23	18.55 %
Total	10752	4294	39.93 %	1380	37.76 %	640	14.90 %

CIVIL CONTENTIOUS CASES 2006

Court	Number of resolved cases	Number of appeals	Percentage	Amended + reversed decisions	Percentage	Number of pending appeals	Percentage
Herceg Novi	518	229	44 %	36	15 %	120	52 %
Bijelo Polje	1248	358	28.68 %	77	21.51 %	116	32.40 %
Cetinje	333	107	32.13 %	22	20.56 %	19	12.44 %
Ulcinj	312	62	19.87 %	23	40.34 %	0	0
Rozaje	628	114	18 %	50	44 %	0	0
Pljevlja	1699	190	9 %	80	33 %	0	0
Zabljak	274	42	15.69 %	3	15 %	22	52 %
Plav	249	49	19.67 %	14	28.56 %	0	0
Berane	1244	114	9.16	31	27.15 %	2	1.72

Kolasin	219	42	19.17 %	22	54.76 %	1	2.5 %
Bar	935	405	43 %	94	59 %	245	60 %
Niksic	2581	401	15 %	65	16 %	154	38 %
Danilovgrad	272	65	23.9 %	18	27.69 %	0	0
Kotor	1446	330	22.82 %	72	21.82 %	178	53.94 %
Podgorica	4051	737	18.19 %	463	37.44%	0	0
Total	16009	3245	20.26 %	1070	32.97 %	857	26.40 %

CIVIL CONTENTIOUS CASES 2007

Court	Number of resolved cases	Number of appeals	Percentage	Amended + reversed decisions	Percentage	Number of pending appeals	Percentage
Herceg Novi	481	150	31 %	58	39 %	9	6 %
Bijelo Polje	1047	307	28.04 %	83	27.03 %	66	21.49 %
Cetinje	257	41	15.95 %	15	35.98 %	2	1.57 %
Ulcinj	360	95	26.38 %	22	43.13 %	44	46.31 %
Rozaje	628	120	19 %	41	34.5 %	0	0
Pljevlja	900	472	42 %	90	46 %	0	0
Zabljak	265	33	12.45 %	4	20 %	19	57.57 %
Plav	422	85	20.14 %	27	31.75 %	0	0
Berane	786	280	35.62 %	92	36.82 %	17	5.72
Kolasin	238	61	25.63 %	25	37.70 %	4	8 %
Bar	800	631	79 %	77	45 %	461	73 %
Niksic	2420	450	18 %	73	16 %	236	32 %
Danilovgrad	297	69	23.23 %	17	24.64 %	0	0
Kotor	1046	259	24.76 %	65	25 %	98	37.84 %
Podgorica	3355	1153	34.36 %	217	18.80 %	4	0.3 %
Total	13302	4206	31.61 %	906	27.91 %	960	22.82 %

CIVIL CONTENTIOUS CASES 2008

Court	Number of resolved cases	Number of appeals	Percentage	Amended + reversed decisions	Percentage	Number of pending appeals	Percentage
Herceg Novi	831	227	27 %	77	34 %	12	5 %
Bijelo Polje	1047	353	28.35 %	159	45.04 %	0	0
Cetinje	562	67	11.92 %	27	40.29 %	1	0.54 %
Ulcinj	406	95	23.39 %	35	46 %	19	20 %
Rozaje	643	165	26 %	50	30 %	8	5 %
Pljevlja	702	246	30 %	80	38 %	0	0
Zabljak	258	34	13.18 %	8	22.99 %	19	55.88 %
Plav	496	129	26 %	37	28.67 %	14	10.85 %
Berane	1045	314	30.04 %	136	46.3 %	68	17.80
Kolasin	461	106	22.99 %	45	46.22 %	23	21 %
Bar	682	568	83 %	145	40 %	204	36 %
Niksic	1780	680	38 %	187	27 %	50	7 %
Danilovgrad	441	97	22 %	27	27.84 %	3	3.09 %
Kotor	1128	315	27.93 %	120	10.64 %	33	10 %
Podgorica	4460	1088	29.07 %	463	42.55 %	27	2.4 %
Total	14942	4484	30 %	1596	39.87 %	481	10.72 %

Source: Data provided by the Supreme Court of Montenegro.

23. Are there plans to reduce the backlog of cases? If so, please provide details.

When the Strategy for Reform of the Judiciary 2007-2012 was adopted, strategic goals were set for its implementation and these include strengthening independence and autonomy of the judiciary, strengthening efficiency of the judiciary, strengthening access to judicial authorities, i.e. enabling access to justice and strengthening public confidence in the judiciary.

In order to implement the strategic document, an Action Plan for its implementation was adopted. Separate chapter of the Strategy and of the Action Plan has been dedicated to the strengthening of efficiency of the judiciary through the activities of:

- rationalisation of judicial and prosecutorial networks;
- reduction of backlog of cases and shortening length of judicial proceedings;
- reducing workload of the courts by removing cases which are not court cases according to their nature;
- encouraging alternative dispute resolution;
- reorganisation of judicial administration;
- reducing administrative duties of judges in cases;
- uniformity of case law.

Since the justice system in Montenegro was faced with a large backlog of cases and long duration of judicial proceedings for a number of years, a negative image was created in the public regarding the work of judicial and prosecutorial authorities. The reasons of legal security of all those who address the judiciary for the protection of their rights and freedoms, and the need to restore confidence in the judiciary attached priority to achievement of this goal within the reform of the judiciary. Reaching this goal required combination of several measures both through adoption of new legislation and through improvement of the existing legislation governing organisation of judicial institutions and conduct of proceedings in courts. Reducing workload of the courts by removing cases which are not court cases according to their nature, encouraging alternative dispute resolution, development of plans and programmes for resolving of backlogged cases and finally providing funding for the implementation of these activities.

Measures for the implementation of this goal, planned by the Action Plan for the Implementation of the Strategy for the Reform of the Judiciary 2007-2012 for the period until the time of this answer, have been completed to the greatest extent or are in their final stage.

In accordance therewith, the Law on the Amendments on the Law on Courts and the Law on the Amendments on the Law on Public Prosecution Office were adopted. Furthermore, on the bases of these laws, documents determining the required number of judges and prosecutors and clerical staff to work in judicial and prosecutorial authorities were passed. Following that, the acts on internal organisation and job descriptions of judicial and prosecutorial authorities were passed which created preconditions to increase work efficiency through better internal organisation and organisation of work within judicial and prosecutorial authorities. The Law on Salaries and Other Income of Judges, Prosecutors and Constitutional Court Judges (Official Gazette of the Republic of Montenegro 36/2007 and 53/2007) adequately resolved the issue of salaries of judges and public prosecutors, as motivating factor for the stability of judicial and prosecutorial office holders and thereby more efficient resolution of cases.

These activities have been completed by enactment of the Law on the Protection of the Right to Trial within a Reasonable Time (Official Gazette of Montenegro 11/2007). The Law on Courts and the Civil Procedure Law prescribe, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, the right to trial within a reasonable time as a fundamental principle of judicial proceedings, however what these laws did not provide was the protection of that right, namely, an efficient and effective legal remedy which was introduced by the Law on the Protection of the Right to Trial within a Reasonable Time. The provisions of this Law have been

harmonised with Article 6 Right to a fair trial and Article 13 Right to an effective legal remedy of the Convention for the Protection of Human Rights and Fundamental Freedoms since the member states are obliged to ensure legal protection of the rights guaranteed by the Convention. The experts of the Council of Europe evaluated positively the concept of the Law and the choice of system of court protection.

Retroactive effect of this Law is provided in that it relates to judicial proceedings initiated before the entry into force of the Law but after 3 March 2004 when the European Convention for the Protection of Human Rights and Fundamental Freedoms was ratified at the level of the federal state which is the moment from which we have been bound to comply with the Convention as a republic of that state.

The reason for enactment of this Law was to strengthen the efficiency of the courts by prescribing mechanisms for complying with time limits for undertaking procedural actions which have been provided for by procedural laws. The aim of all this is to achieve protection of the citizens' right to fair trial within a reasonable time.

After the legislative, organisational, personnel and financial preconditions were fulfilled, development of plans and programmes for resolving backlogged cases has started.

All courts have adopted plans and programmes to reduce the case backlog. These programmes give priority to old cases.

For the purpose of resolving the case backlog, around 1 000 cases have been delegated from the court under the strongest pressure, namely, the Basic Court in Podgorica, to the courts which are under lesser pressure. By the end of 2008, the courts to which cases were delegated resolved 90% of these cases.

During 2008, the Judicial Council seconded 25 judges to other courts. In addition, retired judges were engaged to work at the High Court in Podgorica, as one of the courts with the largest backlog of cases.

The Judicial Council established commissions, made up mainly of judges of the Supreme Court, Appellate Court and high courts, which visited all courts in Montenegro. These commissions inspected all backlogged cases with the aim of establishing whether such cases were left unresolved due to objective reasons or due to the judges' failure to act upon them. The commissions made records of their findings. The weaknesses in the work and ways to remove them were presented at the meetings with the judges of the lower courts. The records have been forwarded to all judges, court presidents and the Judicial Council. Their contents served as a basis for institution of disciplinary proceedings against judges who were found to have violated statutory provisions on timely handling of cases (timely scheduling of trials, unjustified delays in trials and untimely drafting of decisions).

Overtime work on Saturdays has been introduced in every court.

As a result of all the above noted, the case backlog was reduced significantly during 2008 and the first half of 2009, as witnessed by the statistics given below.

Reduction of backlogged cases originating from 2007 and earlier years in the period 1 January 2008 – 31 December 2008.

Court	Reduction percentage
Supreme Court	100%
Appellate Court	100%
Administrative Court	99%
High Court in Podgorica	78.5%
High Court in Bijelo Polje	92.4%
Commercial Court in Podgorica	69%

Commercial Court in Bijelo Polje	76. 7%
Basic Court in Herceg Novi	64%
- Bijelo Polje	88.2%
- Cetinje	74.4%
- Ulcinj	44.8%
- Rozaje	86.4%
- Pljevlja	89.5%
- Zabljak	97.7%
- Plav	92.5%
- Berane	84.0%
- Kolasin	79.5%
- Bar	61.9%
- Niksic	86%
- Danilovgrad	73.3%
- Kotor	63.3%
- Podgorica	49.6%

The total reduction of the case backlog at the end of 2008 was 66.26%.

During 2009, until 30 June 2009, reduction of backlogged cases from 2008 and earlier years is as follows:

- Appellate Court of Montenegro..…….....88.5%,
- Administrative Court of Montenegro.....85.8%,
- High Court in Bijelo Polje 76.92%,
- High Court in Podgorica.....77.6%,
- Commercial Court in Podgorica.....54.72%,
- Commercial Court in Bijelo Polje 90.54%,
- Total all Basic Courts…….....46%.

The total reduction of old cases at the level of all courts is 53.42%.

Alternative dispute resolution methods have been very important within the activities aimed at reduction of number of cases in courts. As regards mediation, considering the fact that the Centre for Mediation became operational in 2008, we believe that mediation, as an alternative dispute resolution method, will give truly positive results in Montenegro in the period to come and contribute to reduce the number of cases in courts. It is worth mentioning that, in the period from 1 January 2008 to 31 September 2009, 723 mediation proceedings have been entered in the records of the Centre for Mediation, 60% of which were resolved successfully, which is a number greater by 100 cases than the number of cases processed on average by one judge in a year.

The structure of the proceedings is as follows:

- mediation in family matters: 591,
- mediation in pre-trial criminal matters: 80,
- mediation in property and commercial matters: 52.

The value of assets involved in these proceedings have been assessed at more than EUR 7,000,000.

In the opinion of international bodies monitoring mediation, primarily International Financial Corporation (IFC) as a part of the World Bank group, the activities of the Ministry of Justice through the Centre for Mediation concerning organisation and managing of the mediation process in Montenegro have been recognised as the best in the region. The successfulness in the field of mediation in our country had as a result the choice of Montenegro as the next seat of the South Eastern Europe Mediation Forum (SEEMF).

Furthermore, within the efforts to contribute to more efficient resolving of disputes occurring in criminal cases, public prosecutors resolved 240 of such disputes in the Public Prosecution Office by wider application of the institute of postponed prosecution. Thus, they reduced the number of incoming cases to Montenegrin courts by that number, which is approximately the average number of cases completed by one judge in a year, and on this basis they collected around EUR 60,000; a considerable share of this amount has been donated for humanitarian causes and the other share to victims as compensation for damages.

24. What is the rate of enforcement of civil and criminal decisions (in percentage)? How much time elapses, on average, until the enforcement of judgements? Is there any plan to improve enforcement? What part of the backlog is connected with the enforcement of civil judgements?

On average, time required for the enforcement of criminal decisions is four months and for the enforcement of decisions rendered in civil contentious proceedings five months.

At the end of 2008, 29.65% of the decisions made in civil contentious proceedings were not enforced.

With a view to improving the efficiency of the enforcement divisions, the following measures have been taken:

- plans and programmes for the completion of the old case have been developed in each court;
- additional staff was assigned to enforcement divisions;
- work on Saturdays has been introduced in all courts.

Cases	Year	Rate
criminal	2005	73.5%
criminal	2006	75.8%
criminal	2007	72.1%
criminal	2008	71.0%
civil contentious	2005	71.0%
civil contentious	2006	75.0%
civil contentious	2007	62.4%
civil contentious	2008	70.3%

25. Please describe the procedure for executing civil judgements. Is a separate execution decision by a judge normally required?

The procedure for enforcing civil judgements is initiated on a motion of the party – judgment creditor.

In this procedure, the enforcement judge issues a ruling to authorise enforcement, which is made on a stamp-shaped template, as set forth by the Court Rules.

The party may make an appeal against a ruling authorising enforcement.

The appeal must be submitted within five days from the receipt of a ruling.

The appeal is decided upon by the second-instance court. The appeal must be submitted within five days, and the appeal court must decide within 30 days as of the date of receipt of the case files – Article 10 of the Law on Enforcement Procedure.

Once a ruling on execution becomes final, execution is initiated.

Pursuant to Article 57 of the Law on Enforcement Procedure, the judgment debtor may initiate civil contentious or other proceedings in order to declare the execution inadmissible in the case when a specific fact in relation to the claim is not settled between the parties. Such right may be exercised until the completion of the enforcement proceedings.

Pursuant to Article 61 of the Law on Enforcement Procedure, when enforcement has been completed, the judgment debtor may request, by submitting a proposal against the enforcement, that the court orders judgment creditor to return what he obtained through execution, provided that statutory requirements have been met.

Pursuant to Articles 65 to 68 of the Law on Enforcement Procedure, the judgment debtor and creditor may request that execution be postponed.

The enforcement against movables is conducted through making of an inventory and assessment of the goods, their sale and satisfaction of the judgment creditor through sale – Article 75 of the Law on Enforcement Procedure.

The enforcement against a monetary claim is conducted through a ban and transfer of the claim - Article 97 of the Law on Enforcement Procedure.

The enforcement against immovable property is conducted by way of entering the ruling on enforcement in a public book, establishing the value of immovable property, sale of the property and satisfaction of judgment creditors from the amount gained by the sale - Article 144 of the Law on Enforcement Procedure.

The sale of movable and immovable property is carried out through a public oral auction - Article 160 of the Law on Enforcement Procedure.

The enforcement procedure is completed when enforcement has been conducted or dismissed due to the reasons laid down in the Law on Enforcement Procedure.

26. Equipment:

a) Is case management in the courts computerised? Are systems and software compatible across the country? (The need to manage the computerisation on the national level calls for a central capacity to define needs, implement computerisation, including procurement of software and hardware, as well as to advise and help computerised courts.)

An information system (PRIS) has been developed for the needs of the judiciary in Montenegro. It allows electronic case management by the Ministry of Justice, courts, prosecution service and the Institution for Enforcement of Criminal Sanctions. The installation of this software in courts is underway. It is expected that case management in all courts in Montenegro will be computerised by the end of this year.

The implementation of this software will ensure a compatible software at the national level (implementation includes a central, single database with web-oriented application and creation of a secure network infrastructure, for secure work within the network of state authorities (Intranet, as well as Internet). An ICT and Multimedia Department has been set up within the Secretariat of the Judicial Council with the main aim of assessing the needs, ensuring computerisation and purchase of hardware and software, as well as offering consulting services and providing assistance to the courts.

b) Is there a Supreme Court database with case law accessible to courts, legal and judicial professions?

All judgments rendered by the Supreme Court of Montenegro in 2009 are posted on its website (http://www.vrhsudcg.gov.me).

In addition, as part of the IT system there is a case-law database accessible to all users of the Judicial Information System.

c) Are databases of other law enforcement agencies accessible by courts?

At the moment, courts in six municipalities (Podgorica, Bijelo Polje, Niksic, Kolasin, Danilovgrad and Zabljak) have broadband Internet connection provided though the network of state authorities, which allows judges to have access to all databases of other authorities which are posted on their websites.

At the moment, efforts are being made to establish internet connection in other municipalities. These activities will be completed by the end of 2009 and thereby access to the existing databases of other authorities will be enabled to judges of all courts in Montenegro.

d) How is the penal register updated with information on new sentences in penal cases and on execution of imprisonment including conditional paroles?

Under the new Criminal Procedure Code (Official Gazette of Montenegro 57/09), which entered into force on 26 August 2009 and which will become applicable a year after its entry into force, the penal register on persons sentenced for criminal offences committed within the territory of Montenegro, as well on persons sentenced for criminal offences by foreign courts, is maintained by the ministry responsible for judicial affairs, while the manner of maintaining such register is prescribed by the Government.

The secondary legislation envisaged by the Criminal Procedure Code is to be passed within nine months as of the Code's entry into force.

Until the start of the implementation of the new Criminal Procedure Code and enactment of a relevant piece of secondary legislation on keeping of penal register, such register will be kept in accordance with the existing Rulebook on Penal Register, which was passed on the basis of Article 198 of the Criminal Code.

Until the Code becomes applicable, the body responsible for keeping of penal register is the police authority in the sentenced person's place of birth (for nationals and foreigners born in Montenegro) or police authority in the place where the court which rendered the first instance judgment has its seat (for nationals and foreigners born outside of Montenegro) – Article 2 of the Rulebook on Penal Register.

In accordance with the Rulebook, the penal register is kept in the form of a card-file, where individual files contain information on sentences imposed, according to the place of birth of the sentenced person, in all regional and local units of the Police Directorate.

Officers assigned to these tasks perform administrative and expert tasks connected with the keeping of the register of persons sentenced by final judgments and register of sentences and all changes in sentences, issuing of certificates, confirmations and extracts on information from the registers, expunging of sentences, conduct of administrative procedure for rendering the ruling on rehabilitation.

The tasks of penal register keeping are organised within the Criminal Police Department in all regional and local units. Within Podgorica Regional Unit, the organisational entity for keeping of the penal register is located within the Criminal Police Branch as the Office for Analytics, Informatics and Registers. In other regional and local units, the tasks of penal register keeping are organised as penal register desk office.

The basis for entries in the penal register and possible amendments thereof are court decisions, judgments and rulings.

The type of data entered in the register is set forth in Article 123 paragraphs 1 and 2 of the Criminal Code of Montenegro.

The performance of these tasks is connected with electronic data processing. Entry of data for the purpose of electronic processing is done at a regional level and data are forwarded to the Information System Section for the purpose of their unification at the central level.

The electronic equipment used for the performance of these tasks is part of the single information system of the Police Directorate. These registers are updated in their electronic format – applications – directly at all regional and local units (21).

The disclosure of data from the penal register is governed by Article 123 of the Criminal Code. Namely, data from the penal register are not accessible to everyone, as otherwise reintegration of sentenced persons into society would be rendered difficult. The limitation on disclosure of data from the penal register applies when sentence is expunged. In the case of the so called statutory rehabilitation, the body in charge of keeping the penal register will issue an appropriate ruling (*ex officio* rehabilitation, Article 547 of the Criminal Procedure Code). Under Article 551 of the Code, it is prohibited to disclose data from the penal register which relate to decisions on rehabilitation and cessation of legal consequences of sentences. At their own request, citizens may be issued data on their sentencing or lack thereof solely if they require this for the purpose of exercising their rights outside the country.

For criminalistic purposes, the register is primarily used to ascertain whether the person in question is a recurrent offender.

Under the Law on Enforcement of Criminal Sanctions (Official Gazette of the Republic of Montenegro 25/94, 29/94, 69/03 and 65/04), during admission to the serving of an imprisonment sentence, the sentenced person is entered into the register and a personal sheet is opened. The contents and manner of keeping, as well as template of the register and personal sheet are set out in secondary legislation, i.e. Instruction on the Contents and Manner of Keeping of the Register and Personal Sheet for Sentenced Persons, Persons Imposed Punishment as Result of Misdemeanour Procedure and Detained Persons (Official Gazette of the Republic of Montenegro 68/06).

In accordance therewith, the following data are *inter alia* entered into the Register: name of the criminal offence or misdemeanour, name of the sentencing authority (number and date of the decision) and type and duration of penalty, date and time of admission, time spent in pre-trial detention, beginning of the serving of sentence, expiry of sentence, name of the authority which rendered a decision changing the sentence (amnesty, pardon, etc.) or imposing a new sentence, legal basis and date of release.

The personal sheet also contains data on the sentence, which include: type of the penalty and its duration, name of the criminal offence, judgment (number, date, name and seat of the court), pre-trial detention, beginning of the serving of the sentence (date and hour), expiry of sentence, changes and termination of the sentence, basis for and description of the change, basis for release (regular expiry, conditional release, pardon, amnesty etc.), transfer.

These registers are kept by the body responsible for enforcement of the prison sentence.

Under the Law on Enforcement of Criminal Sanctions, data from the personal sheet and other data on the sentenced person serving a prison sentence, to which authorised official persons become privy to are an official secret. Access to such data is allowed to authorised official persons pursuant to their job descriptions, persons responsible to perform supervision over the work of the

organisation or organisational unit, as well as to the sentenced person, who, however, may not access data contained in specific professional observations and opinions of authorised persons.

27. General working conditions:

a) Do judges and prosecutors have sufficient and separate offices, do they have computers, printers, fax machines, secretaries, law clerks?

In several courts, several judges share an office. Every judge has a computer, printer, e-mail account and an official phone. Investigating judges have fax machines, while other use shared fax machines; located on the premises of the management or administration of the court. Judges in first-instance and investigation divisions have their assistants – court reporters, whereas for judges in second-instance divisions typists' bureaux have been formed.

Under the Rulebook on the Framework Criteria for Determination of the Required Number of Judges, Officers and Administrative Staff in Courts there is one typist for each two judges.

Under the Rulebook on the Framework Criteria for Determination of the Required Number of Judges, Officers and Administrative Staff in Basic and Commercial Courts, there is one advisor for each two judges, and in the High Courts, Appellate Court, Administrative Court and Supreme Court there is one advisor per each judge.

As at 26 August 2009, the total number of advisors at courts was 104.

Deputy public prosecutors do not have enough separate offices at their disposal. Most often, the same office is shared by two or more deputies. Public prosecutors and deputies have computers with printers. However, deputy public prosecutors do not have fax machines and secretaries at their disposal. Under the rulebooks on internal organisation and job descriptions, within public prosecutors' offices there are 19 expert associates who assist public prosecutors and deputy public prosecutors in their work.

b) Do judges and prosecutors have access to the archives and legal databases?

At the moment, courts and public prosecutor's offices in six municipalities (Pogorica, Bijelo Polje, Niksic, Kolasin, Danilovgrad and Zabljak) have access to broadband internet connection through the network of state authorities. Accordingly, judges and public prosecutors have access to web pages which contain decisions of the Supreme Court, Appellate Court, Administrative Court, High Court and Basic Court in Podgorica. All judges and public prosecutors from Podgorica, Bijelo Polje, Herceg Novi, Cetinje, Pljevlja, Niksic, Kotor and Kolasin have locally (on their computers) installed legal databases. Once internet connection is established at judicial and prosecutorial institutions in other municipalities, which is planned by the end of this year, judges and public prosecutors at all courts and public prosecutors' offices, respectively, will have access to all databases and legislation.

28. Clerical staff:

a) Give the number of clerical staff. How does this compare with the number of judges and prosecutors? Who is responsible for deciding about the number of the clerical staff;

There are 1073 officers and administrative staff members at Montenegrin courts. Among them, 104 are expert associates and 171 are court trainees. Judicial office is exercised by 252 judges, whereas the Decision on the Number of Judges fixes the number at 270.

The number of clerical staff members at a court is fixed on the basis of the number of judges who perform their office at that court, as provided by the Rulebook on the Framework Criteria for Determination of the Required Number of Judges, Officers and Administrative Staff at Courts, which is proposed by the Judicial Council. Thus, at Basic and Commercial Courts there is one typist per each judge, and one advisor and one trainee for each two judges, while at the High Courts there are one advisor and one trainee for each judge. In these courts, there is one typist for each judge, except in appeal panels, where there is one typist for each two judges.

A total of 140 officers, administrative staff members and trainees (3 secretaries, 19 expert associates, 77 administrative staff members and 41 trainees) are employed in the public prosecution service. The number of public prosecutors and deputy public prosecutors totals 86. The Prosecutorial Council proposes the framework criteria for the required number of public prosecutors and deputy public prosecutors and other officers and administrative staff at prosecutors' offices.

Under the Law on Civil Servants and State Employees (Official Gazette of the Republic of Montenegro 50/08), clerical staff at courts and public prosecution service have the status of civil servants or state employees.

b) Do they have concrete job descriptions?

The Law on Courts (Official Gazette of the Republic of Montenegro 05/02, 49/04, 22/08) and the Law on Public Prosecution Office (Official Gazette of the Republic of Montenegro 69/03, 40/08) define the basis for adoption of internal organisation and job descriptions in courts and public prosecution service. Courts and Public Prosecution Office have a necessary number of advisors, other officers, administrative staff members and trainees and they perform their duties in accordance with law and the act on internal organisation and job descriptions, which is an act defining job descriptions for individual posts.

The Law on Courts lays down requirements for the performance of duties and scope of activity of advisors, court secretary, administrative staff members and court trainees as follows:

Advisor - may be a person who graduated from the law faculty, passed bar exam, satisfying general and special requirements prescribed for the performance of certain duties in accordance with law and the court's act on internal organisation and job descriptions. Advisors assist the judge in work, make draft judgments and perform other expert tasks prescribed by law or regulations adopted on the basis of law either independently or under the supervision of or on the instructions of a judge.

Secretary – a court may have a Secretary who satisfies the requirements prescribed for the position of an advisor.

Administrative staff members – a head of the Registry Office of a court may be a person who graduated from the faculty of law. A person who meets general and special requirements prescribed for the performance of certain duties in accordance with law and the court's act on internal organisation and job descriptions may be employed to perform administrative and other tasks in the court.

Court trainee – may be a law graduate satisfying general requirements prescribed for admission to employment in state bodies. He/she is employed for a period of two years. Trainees are trained in accordance with a special programme passed by the president of the court. Should a trainee distinguish himself/herself through outstanding performance during the course of the training,

his/her employment may be extended after the expiry of the training period for an additional year, provided that he/she passes bar exam within three months.

The Law on Public Prosecution Office lays down requirements for the performance of duties and scope of activity for advisors, secretary, expert assistants, administrative staff members and trainees as follows:

Advisor - assists public prosecutor or deputy public prosecutor in their work, drafts documents, makes record of citizens' complaints, petitions and statements, perform other specialised tasks prescribed by law and regulations adopted on the basis of the law, independently or under the supervision of and on the instructions of the public prosecutor or deputy public prosecutor.

A person who meets general and special requirements for a specific post in state bodies, in accordance with law and the act on organisation and job descriptions is eligible for the position of an advisor. By way of exception, a basic public prosecutor may authorise the advisor to represent bills of indictment in judicial proceedings.

Secretary - The Supreme Public Prosecutor's Office has a secretary who assists the Supreme Public Prosecutor in the performance of prosecutorial administration tasks. High public prosecutor's office and basic public prosecutor's office, having at least ten deputies, may have a secretary who assists public prosecutor in the performance of prosecutorial administration tasks. The secretary must meet the same requirements as those prescribed for the advisor.

Expert assistants - A public prosecutor's office may have officers with associate's degree or university degree in defectology, sociology, pedagogy, economics, accounting and finance or other relevant discipline and having prescribed experience in those disciplines. These officers assist public prosecutor or deputy public prosecutor in the work in matters requiring specific expertise.

Trainee – may be a law graduate meeting general requirements for work in state bodies. Trainee is employed for a period of two years. Trainees are trained in accordance with a special programme adopted by the public prosecutor. Should a trainee, as evaluated by the prosecutor session, distinguish himself through outstanding performance during the course of the training, his/her employment may be extended after the expiry of the training period for an additional year, provided that he/she passes the bar examination within three months.

The rulebooks on internal organisation and job descriptions of the courts and prosecutors' offices which are passed by the president of court or public prosecutor on the basis of the Law on Courts and the Law on Public Prosecution Office, with the consent of the Government of Montenegro, lay down in more detail internal organisation and job descriptions for the officers and administrative staff members in courts and public prosecutors' offices; these rulebooks contain detailed job descriptions for individual posts of officers and administrative staff members.

Rulebooks on internal organisation and job descriptions of courts which are currently in force were given the consent of the Government of Montenegro on 12 February 2009, while the rulebooks on internal organisation and job descriptions of public prosecutors' offices currently in force were given the consent of the Government of Montenegro on 9 June 2005, and these documents contain concrete job description for each employee.

c) Which equipment (computers, e-mail, fax etc.) do clerical staff have at their disposal to perform their functions? Are archives well managed and computerised? Is there sufficient and direct access to legal databases?

Detailed answer provided under Questions 18 (b) and 18 (c) of this Chapter.

Judicial reform

29. What is the basis for the reform of the judiciary (a strategy, an action plan, etc.)?

The reform of the judiciary in Montenegro was launched in 2000, when the Government of Montenegro adopted a strategic document – Project of the Reform of the Judicial System in Montenegro. More than twenty laws were passed on the basis of this document, the most important of which include: Law on Courts, Law on Public Prosecutor, Criminal Code, Criminal Procedure Code, Civil Procedure Law, Law on Enforcement Procedure, Law on Amendments to the Law on Enforcement of Criminal Sanctions, Law on Witness Protection, Law on Expert Witnesses, Law on Notaries, Law on Mediation, Law on Court Fees, Law on Non-Contentious Procedure, Law on Private Law Practice, Law on Training in Judicial Authorities, Law on Criminal Liability of Legal Persons, Family Law, Law on Salaries and Other Income of Judges, Prosecutors and Constitutional Court Judges.

Additionally, a set of secondary legislation was passed for the implementation of the above noted laws, including the Court Rules and the rulebook on internal organisation of the public prosecutor's offices. At the same time, institutional mechanisms were developed and special efforts invested in capacity building of all staff of the judicial and prosecutorial authorities.

Although a majority of the activities planned under the Project of the Reform of the Judicial System, which expired at the end of 2005, had been realised, laying solid foundations for the successful functioning of the Montenegrin judiciary as an independent, impartial and efficient authority, further judicial reform activities had to be undertaken. It should also be highlighted that the undefined state status and legal status of Montenegro at the time did not allow judicial reform to gain full momentum, mostly due to constitutional and legal limitations.

The proclamation of Montenegro's independence and sovereignty laid foundation for radical and profound changes in all areas of social life, particularly that of the judiciary.

A comprehensive reform of the judiciary warranted the adoption of a new strategic document for the area of the judiciary, which would outline further directions and goals to be achieved with a view to strengthening the independence and efficiency of the judiciary.

It was therefore decided to engage in the development of a Strategy for the Reform of Judiciary 2007-2012. Representatives of judicial and prosecutorial authorities and international organisations took part in the process. It should particularly be noted that the draft Strategy was subject to scrutiny of the Council of Europe experts within the CARDS 2003 Project for the area of the judiciary.

This document sets four strategic goals: enhancing the independence and autonomy of the judiciary, enhancing the efficiency of the judiciary, enhancing the accessibility of judicial bodies, that is, access to justice and enhancing the public confidence in the judiciary. The Strategy is divided into 11 Chapters, as follows: 1. Enhancing the Independence and Autonomy of the Judiciary; 2. Enhancing the Efficiency of the Judiciary; 3. Enhancing the Accessibility of Judicial Bodies, that is, Access to Justice; 4. Enhancing the Public Confidence in the Judiciary; 5. Training in Judicial Authorities; 6. Enhancing International and Regional Judicial Cooperation; 7. Alternative Dispute Resolution; 8. Fight against Crime, Particularly Corruption, Terrorism and Organised Crime; 9. Case-law; 10. Prison System and 11. Judicial Information System.

Chapter Enhancing the independence and autonomy of the judiciary, envisages the following tasks: revise the Constitution and laws relating to the election of judges and prosecutors; widen the powers of the Judicial Council and Prosecutorial Council to shape human resource management policy in the judiciary; define clear and objective criteria for the election of judges and prosecutors; define criteria for the promotion and appraisal of judges and prosecutors; achieve greater independence in defining the judicial branch's budget; revise the existing legal framework which regulates disciplinary responsibility of judges and prosecutors, termination of office and dismissal from office and take actions towards its consistent application.

Chapter Enhancing the efficiency of the judiciary, envisages the following tasks: ensure the effective protection of the right to trial within a reasonable time; revise the Criminal Procedure Code with respect to the concept of investigation; revise juvenile justice legislation by adopting a separate law; encourage alternative methods for resolution of criminal, civil and commercial

disputes; delegate certain competences of courts to other bodies and services; prepare a programme to eliminate the case backlog in all courts; strengthen human resources in the judiciary (specialisation and education of judges and prosecutors, officers and administrative staff in the judiciary and redefining their role with respect to the performance of certain tasks in relation to cases); strengthen management in the judiciary by placing emphasis on case progress, backlog, complaints and the like, with a view to raising quality of case work; establish an adequate system of bailiffs with a view to accelerating proceedings, enhancing legal discipline and reducing the number of decisions which are not enforced; improve judicial statistics methodologies and make continuous analyses of judicial and prosecutorial bodies' operation in all segments.

The following tasks have been planned in order to enhance the accessibility of judicial bodies, that is, access to justice: create legal framework for the establishment of a system of free legal aid and provide funds to render the system sustainable; enable parties to obtain information about taking of certain actions in court proceedings and advise them in advance of the costs of such actions (booklets, information leaflets, price lists and the like); courts and public prosecutors to adopt special rules and practices which will apply to vulnerable categories (juveniles, victims of rape, terrorism, domestic violence, disabled persons, etc.); adopt mechanisms for the protection of judicial and prosecutorial information and enhance the security of judicial and prosecutorial facilities; improve working conditions and equipment in judicial and prosecutorial bodies as well as physical access to judicial and prosecutorial bodies for special categories of persons; improve orientation in judicial and prosecutorial bodies' buildings and specify the code of conduct for all persons entering these buildings.

Chapter Enhancing public confidence in the judiciary, mandates the following: ensure better information about the role and place of judicial and prosecutorial bodies in the legal system; establish different channels of communication between judicial and prosecutorial bodies and citizens, so that citizens become fully acquainted with court proceedings and all actions required for the completion of proceedings; enable participants in court proceedings and citizens to make certain objections and suggestions towards the improvement of the work of the judiciary; make the practical aspect of the principle of equal treatment by judicial and prosecutorial bodies in equal situations accessible to the public; improve accessibility of judicial decisions to the expert and wider public.

In line with Chapter V, training in judicial authorities should be improved by: implementing the law with a view to achieving top quality training of judges and prosecutors with special emphasis on initial training; strengthening the capacity of special bodies in charge of providing training, as well as of administrative and technical capacity of the Centre; improving cooperation with the European Network for the Exchange of Information Between Persons and Entities Responsible for the Training of Judges and Public Prosecutors (Lisbon Network of the Council of Europe); establishing adequate transparent procedures for the development of programmes for providing training, selecting lecturers, etc.

International and regional judicial cooperation should be enhanced through the implementation of the following activities: creation of an adequate legislative framework for more efficient and effective international judicial cooperation; reinforcing regional cooperation through accession to and active participation in relevant regional and international associations and networks; organising in-service education in the area of international judicial cooperation and strengthening the capacities of the Ministry of Justice in the area of harmonisation of legislation with the EU law and international legal assistance and cooperation with international judicial institutions.

In order to encourage the use of alternative dispute resolution methods the following tasks should be implemented: organise education of judges and lawyers and present mediation and its advantages to citizens; monitor and analyse development of alternative dispute resolution methods and take measures for their further strengthening; encourage management structures in business entities to settle their disputes by arbitration; encourage further implementation of legal provisions in alternative dispute resolution.

For a more successful fight against crime, particularly organised crime, corruption, terrorism and war crimes, the following activities should be implemented: ratify international conventions and conclude bilateral agreements; analyse compliance of national legislation with international

standards; analyse human resources and employ additional professional staff; consistently apply the Code of Ethics and provide continuous education on ethical principles to employees in judicial and prosecutorial bodies; ensure in-service education and specialisation; improve working and living conditions and the financial status of judges and prosecutors; depoliticise judges and prosecutors; ensure protection of integrity of judges and prosecutors; implement concentration of jurisdictions in judicial and prosecutorial bodies for offences of organised crime and corruption; introduce efficient investigative mechanisms for the fight against corruption; introduce mechanisms for efficient seizure and confiscation of assets and proceeds from crime and ensure more efficient protection of the injured party (victims) in criminal proceedings.

Having regard to the importance of the unification of case-law and publication of court decisions, it is necessary to: publish decisions of importance to case-law so that the wider public may become more acquainted with the work of courts; post excerpts from the judgments of the European Court of Human Rights on a webpage; familiarise judges and prosecutors and the wider public with the most important judgments of the European Court of Justice; ensure education of judges about the EU law and the role of the European Court of Justice and make the legal positions of principle and legal opinions of principle of the Supreme Court accessible to all judges and prosecutors and the general public.

With a view to improving prison accommodation facilities, that is, increasing accommodation capacity for convicted persons and detainees, it is necessary to perform the following tasks: create conditions for separation of convicted persons and detainees, and especially for the separation of juvenile convicts or detainees, and ensure accommodation and human resources for the enforcement of juvenile imprisonment as well as for enforcement of institutional measures against juvenile offenders; ensure continuity in activities on the reconstruction and renovation of the existing facilities, as well as the construction of new ones; equip the Special Hospital and create special conditions for psychiatric observation and expertise of persons charged with the commission of a criminal offence, as well as for the enforcement of security measures in respect of mandatory psychiatric treatment and guarding and mandatory treatment of alcoholics and drug addicts; improve the security system through the purchase of modern technical equipment, especially video surveillance devices; organise continuous professional education, development and evaluation of knowledge of the staff of the Institution for Enforcement of Criminal Sanctions; improve the treatment of convicted persons through the introduction of diverse educational, work, cultural, sports and other programmes.

Having regard to the complexity of the implementation of the PRIS Project and its full implementation, as well as the fact that this is a system which must be tailored to the needs of the users and which is affected by amendments to the laws and secondary legislation, establishment of new institutions, new processes and process frameworks, the implementation of the Strategy for the Reform of the Judiciary in this context will lead to: modern and integrated IT technology-based operations; enhanced management in judicial and prosecutorial authorities and the Institution for Enforcement of Criminal Sanctions; improved accessibility of judicial and prosecutorial authorities to the users (citizens, institutions, business entities, banks etc.); enhanced administrative capacities of judicial and prosecutorial authorities; accessibility of the case-law to the expert and general public; greater efficiency and higher quality of work in judicial and prosecutorial institutions and, consequently, reduced administration costs. The attainment of the basic goals of the Project has been made possible by an adequate concept and standards, which are as follows: unification and centralisation of data; defined jurisdiction; standardisation of data entry and printing of records; keeping of all entries and data changes etc.

With a view to facilitating the attainment of the set strategic goals, the Government of Montenegro adopted an Action Plan for the Implementation of the Strategy for the Reform of the Judiciary, accompanied with a Budget in late 2007. The Action Plan outlines specific measures for the attainment of the set goals, lists responsible authorities for each activity, sets timeframes for their implementation and offers performance indicators.

The judicial and prosecutorial institutions which bear special responsibility in relation to the implementation of the measures and attainment of the set strategic goals are the Ministry of Justice, Supreme Court, Supreme Public Prosecutor, Judicial Council and Prosecutorial Council, together with almost 30 other institutions and organisations.

The Commission for Execution of the Action Plan for the Implementation of the Strategy for the Reform of the Judiciary 2007-2012, set up by the Government, is tasked with executing, coordinating and monitoring the reform.

30. What impact did the reform had on the above mentioned principles? Are there any further reform plans?

A number of measures aimed at strengthening institutional and legislative framework have been implemented during 2008 and first half of 2009 for the purpose of enhancing the independence and autonomy of the judiciary.

The Law on Judicial Council has been passed in order to reflect the new role of the Judicial Council, to which the Constitution assigns the role of an independent and autonomous authority which secures the independence and autonomy of the courts and judges. This Law regulates the method of selection and termination of office of the members of the Judicial Council, organisation and work method of this body, procedure of selection of judges, manner of establishment of termination of judicial office, disciplinary responsibility and dismissal of judges and other issues of importance to the work of the Judicial Council. The Judicial Council has been established and in the short period of its work it engaged in intensive activities in the exercise of its competence. It passed the Rules of Procedure, which define in more detail issues of importance to its work; set up working bodies in order to provide for a more efficient performance of its tasks; passed a Rulebook on Organisation and Job Descriptions of the Secretariat of the Judicial Council, as a unit for the provision of logistical assistance; appointed Director of the Secretariat and initiated procedures for the selection of judges and determination of their responsibility. In the second half of 2008, 36 judges were selected in accordance with new criteria and procedure, and first actions were taken with a view to strengthening the accountability of judges. Thus, the presidents of courts submitted six proposals for institution of disciplinary procedures against judges: two of these have been dismissed as ill-founded, one procedure has been instituted, in two instances disciplinary measures of salary reduction of 20% for three months and one month respectively have been imposed, while a reprimand has been issued in one instance. Four proposals for dismissal have been submitted: two judges have been dismissed; the office of one judge has been terminated on his own request, while one proposal for dismissal from office has been withdrawn.

Furthermore, the Law on Amendments to the Law on Courts has been enacted in order to ensure compliance of that Law with the Constitution, which has introduced novelties in the area of the judiciary.

The Law on Amendments to the Law on Public Prosecutor, which vests new competences and powers in the Prosecutorial Council, has been passed. The organisation of the Prosecutorial Council and its method of work are defined similarly to the Judicial Council. The Prosecutorial Council became operational on 30 August 2008. Secondary legislation has been passed and working bodies set up in order to ensure more efficient performance of tasks. The Rules of Procedure of the Prosecutorial Council regulate in more detail the criteria and procedure for appointment of public prosecutors, the procedure for dismissal, disciplinary proceedings and suspension procedure, organisation and method of the Council’s work.

As result of different competencies of the Public Prosecution Office introduced through the new Constitution, representation of the State in property matters has been removed from this authority and entrusted to a new authority, namely, the Agent of Montenegro in civil and commercial matters.

Preconditions for swifter resolution of cases and reduction of the case backlog are in the process of being created with a view to enhancing the efficiency of the judiciary.

The Law on the Protection of the Right to Trial within a Reasonable Time has been enacted. This Law provides for the creation of mechanisms for the protection of this right during the trial itself (control request for acceleration of the trial) and upon its completion (an action for just satisfaction), in accordance with the standards of the European Convention for the Protection of Human Rights

and Fundamental Freedoms. This created conditions for the use of effective legal remedy for the protection of this right at national level and to reduce thereby the number of cases brought before the European Court for Human Rights. The Law is being implemented and the implementation and effectiveness of the legal protection are monitored through the envisaged legal remedies. Funds have been allocated within the section of the national budget earmarked for courts to allow payment of just satisfaction awards. Seminars on the implementation of this Law have been organised for presidents of courts, as part of the training programme. Also, trainings have been delivered to the President and judges of the Supreme Court on the case-law of the European Court, as the implementation of the Law on the Protection of the Right to Trial within a Reasonable Time draws heavily from its standards. The courts act upon the legal remedies introduced by this Law and make decisions in this area in an urgent procedure.

The new Criminal Procedure Code has been adopted. It provides for a better division of competences in criminal proceedings between the judicial and prosecutorial authorities, as well as for a better division of roles in the investigation, but also for a more efficient and effective clarification of the criminal event and more effective cooperation with the judicial systems of other countries, particularly in the area of trans-border crime. The draft of this Code was offered to public discussion and it was also subject to scrutiny of the European Commission experts. Also, a draft plan of implementation of the new Criminal Procedure Code has been developed.

The Law on Obligations harmonised with the relevant European standards has been enacted.

The Law on Amendments to the Law on Notaries has been enacted, secondary legislation has been passed, whereupon the Commission for the Notary Exam will be set up, the exam organised and first notaries in Montenegro appointed.

Efforts have been invested in the promotion of alternative dispute resolution methods and the Centre for Mediation has been established.

Significant efforts have been invested in the resolution of the case backlog through the implementation of the annual framework programme for the resolution of the case backlog in the judiciary. Under this programme, judges have been seconded from efficient to inefficient courts and backlogged cases have been delegated to less burdened courts. Public Prosecution Offices observe time limits in the criminal proceedings and thereby contribute to the efficiency of proceedings and avoiding of unnecessary delays.

Judges are being seconded from one court to another and additional judges are being recruited.

Education on court management has been delivered to presidents of courts. Court management includes monitoring and more efficient management of case flow in judicial authorities. Presidents of courts are under a duty to monitor the work of expert associates and trainees in their courts.

The Strategy for the Reform of the Misdemeanour System in Montenegro and the Analysis of the Work of Bodies Responsible for Misdemeanour Proceedings have been adopted. A working group for the drafting of a Law on misdemeanour proceedings has been set up.

The final version of the draft Law on the Protection from Domestic Violence is in the process of being developed, as part of the efforts aimed at enhancing the accessibility of judicial authorities. The provisions of this Law will be a result of a cooperative effort of the Ministry of Justice and the Ministry of Health, Labour and Social Welfare.

The Ministry of Justice has made an Analysis of the need for enactment of legislation in the area of free legal aid. The Analysis was adopted in December 2008 by the Government, whereupon Ministry established a working group for the drafting of a Law on Free Legal Aid.

The Government adopted an Information on State of the Buildings of the Judicial Institutions, the Status of their Equipment and Security and tasked the Ministry of Justice with elaborating, in cooperation with the Supreme Court, Supreme Public Prosecution Office, Misdemeanour Panel, Ministry of Finance, Directorate of Public Works and Administration for Joint Affairs of State Authorities, an Action Plan in relation to the needs for construction, reconstruction and adaptation of buildings of judicial and prosecutorial institutions and with preparing an updated information on the structure of the security equipment required for the needs of judicial and prosecutorial authorities.

Measures and activities aimed at increasing the transparency of the judicial and prosecutorial authorities' work and informing the public about the results of their work are regularly implemented with the view to enhancing the public confidence in the judiciary.

Regular press conferences are organised in relation to annual reports on the work of the courts. The Supreme Public Prosecutor informs the public on a regular basis about the activities of the public prosecutors in relation to important and topical cases through public releases and the website. However, these activities are not implemented as fully as envisaged by the Action Plan. Namely, the position of a public relations officer in the Secretariat of the Judicial Council is still vacant. The Prosecutorial Council has appointed a public relations officer.

The Administrative Court compiles and publishes collections of court decisions on its website www.upravnisudcg.org. The preparations for publication of 2008 decisions have been carried out in all courts, whereas collection of the Supreme Court decisions is in the process of being prepared.

With a view to improving training in the judiciary, measures for improvement of initial and continuous training, as prescribed by the Law on Training in Judicial Authorities, are being implemented as planned. The nature of the demanding process of training of judges and prosecutors warrants mainly its continuous form, with less time-bound measures.

The bodies of the Judicial Training Centre have adopted the programme and plan of training in 2008 and 2009. The candidates for the initial training have been selected through a transparent and merit-based process. The number of lecturers for each area has been determined and their training in the European Convention on Human Rights has been organised. Also, a public call has been issued to interested lecturers to take part in the implementation of the training programme, while university professors have been engaged as lecturers, as have a number of lecturers from the European Union, region and other countries. Reports on the implemented training activities have been submitted to the Judicial Council and the Prosecutorial Council. Representatives of the Judicial Council and the Prosecutorial Council sit on the Coordination Board, since education in judicial authorities is the responsibility of the Judicial Council and the Prosecutorial Council, which must cooperate closely.

Some of the trainings delivered to judges and prosecutors and other civil servants and clerical staff was co-organised by the Judicial Training Centre and Human Resources Administration. In the future, stronger commitment to professional advancement of civil servants and clerical staff in judicial authorities is expected in line with the Programme of Professional Advancement and Training Plan of the Human Resources Administration.

The enhancement of international and regional judicial cooperation is a strategic goal of critical importance for the achievement of functionality and credibility of the Montenegrin judiciary, particularly in the field of harmonisation of national legislation with generally recognised international standards. Against this background, the Action Plan defines measures for the attainment of this goal.

The Law on International Legal Assistance in Criminal Matters, which is harmonised with the international standards in this area, has been enacted. The Law has a subsidiary character, as its provisions are implemented only when there is no international treaty or when specific issues are not covered by such a treaty. State authorities have already started implementing this Law.

The Law on Cooperation with the International Criminal Courts has been adopted.

A proposal for a Law on Ratification of the Second Additional Protocol to the European Convention on the Mutual Assistance in Criminal Matters has been developed.

The Ministry of Justice of Montenegro has entered into Memoranda of Cooperation with the Ministries of Justice of the Republic of Albania, Bosnia and Herzegovina and Macedonia.

Three treaties on international legal assistance have been concluded between Montenegro and the Republic of Serbia. These are: Treaty on Legal Assistance in Civil and Criminal Matters, Treaty on Extradition and Treaty on Mutual Execution of Court Decisions in Criminal Matters.

The capacities of the Ministry of Justice required for the full implementation of international judicial cooperation and performance of competences in the area of international legal assistance and international cooperation have been strengthen through the recruitment and training of new staff.

Measures aimed at encouraging the use of alternative dispute resolution mechanisms are being implemented, thus creating grounds for amicable resolution of disputes between parties and reduction of backlogged cases pending in courts.

The Centre for Mediation has been set up and is running as a non-for-profit institution, which plans and delivers trainings and in-service education to mediators, provides technical assistance for the implementation of the process of mediation and raises awareness with regards to the benefits of meditation in dispute resolution. Centre's branch offices have been set up in Cetinje, Bijelo Polje and Kotor. The Ministry of Justice keeps a register of mediators.

In the process of implementation of the above described measures cooperation has been forged with non-governmental associations and international organisations, with a view to developing programme documents of importance for the development of mediation. Technical assistance and support in the organisation of the procedure of mediation has been ensured with the result that mediation is being practiced on a daily basis in the premises of the Centre for Mediation in Podgorica.

The Centre for Mediation has published and disseminated the Guide to Mediation (targeting citizens) and Mediators' Training Handbook.

We note that 433 mediations were carried out in 2008, 255 of which were successfully resolved, which amounts to 58.89% success rate.

The fight against crime, particularly corruption, terrorism and organised crime is facilitated through the strengthening of legislative and institutional framework for the attainment of this strategic goal.

The following Council of Europe conventions have been ratified: Convention on Laundering, Search, Seizure and Confiscation of the Proceedings from Crime and on the Financing of Terrorism, Convention on the Suppression of Terrorism and the Second Additional Protocol to the European Convention on International Legal Assistance in Criminal Matters.

The Law on Amendments to the Law on Courts has introduced the concentration of jurisdictions in relation to cases of organised crime, corruption, terrorism and war crimes within the two High Courts. The Law on Amendments to the Law on Public Prosecution Office has widened the competences of the Division for the Fight against Organised Crime, which now also cover criminal offences of corruption, terrorism and war crimes. In accordance with the above noted Law, specialised divisions have been set up within the two High Courts and judges, legal officers and administrative staff members have been assigned to perform the work. In addition, the number of deputies of the Special Prosecutor has been increased in order to reflect the concentration of jurisdictions within the Division headed by the Special Prosecutor. At the moment, the procedure of assignment and recruitment of officers and administrative staff to the Division for suppressing organised crime, corruption, terrorism and war crimes is underway. In addition to human resources, spatial and technical conditions for the work of the special divisions within courts and Public Prosecution Office are in the process of being created.

The Judicial Training Centre and Human Resources Administration deliver training programmes from this field to judges and prosecutors and officers of other state authorities, in accordance with the initial and in-service training programmes.

Cooperation between the judicial and prosecutorial authorities and the Police Directorate in the implementation of the institution of the protected witness is satisfactory.

The Ministry of Justice has obtained publications of international treaties dealing with this area.

Also, needs of personal protection of judges and prosecutors have been established and the Police Directorate provides protection in accordance therewith.

With regards to the prisons system, a comprehensive examination of the opinions and comments of the Council of Europe experts and Recommendation of the Committee of Ministers of the Council of Europe on Community Sanctions and Measures is being carried out in an attempt to

bring, to the greatest extent possible, the text of the Law on Amendments to the Law on Enforcement of Criminal Sanctions in line with the above referenced recommendations and opinions and define the supervision over suspended sentence, conditional release and community service accordingly.

Within the Institution for Enforcement of Criminal Sanctions, implementation of the measures aimed at improvement of prison conditions is continuing. Project documents have been developed for reconstruction and adaptation of the prison unit in Podgorica. Furthermore, project documents have been developed and a public tender announced for construction of a new building within the prison unit in Bijelo Polje. Reconstruction and adaptation works are underway in the former prison restaurant, which is to be turned into a prison kitchen. Project documents have been developed for the construction of a facility for serving of long prison sentences and facility for the religious needs of inmates, as well as for the construction and equipping of a prison unit for the southern region, which would, in addition to offering space for serving of detention and short prison sentences (up to 6 months), provide conditions for the execution of security measures, namely, mandatory psychiatric treatment and guarding and mandatory treatment of drug and alcohol addicts. Video surveillance equipment has been purchased, installed and put into operation. Trainings are delivered on regular basis. At the moment, talks are underway with Danilovgrad Police Academy in relation to education of prison staff. Project documentation for construction of a sports hall is in the process of being developed. Talks are underway with the Adult Education Centre and Ministry of Education and Science to ensure that certificates issued to sentenced persons for the knowledge acquired during prison treatment have the same validity as if such knowledge were acquired by free persons.

With the view to ensuring the recording, classifying and providing the public with access to the case-law, a case-law division has been set up within the Supreme Court and funds have been allocated for the maintenance and publication of case-law. Summaries of the Supreme Court decisions are published in the Supreme Court Bulletin, whereas a collection of the Supreme Court decisions is in the process of being prepared. In the future, in addition to the Judicial Information System (PRIS), the availability of all decisions important to the case law should be ensured by way of their posting on the website of the Supreme Court and through other means. A positive example in this context is the Administrative Court of Montenegro, which has made its decisions available to the public via its website.

With a view to enhancing the efficiency of judicial and prosecutorial authorities, their accessibility and restoring the confidence in judicial and prosecutorial institutions, the Government of Montenegro has set the full implementation of the Judicial Information System (PRIS) as a strategic goal and defined the implementation dynamics and allocated financial resources through action plans and strategies aimed at the attainment of this goal. The implementation of PRIS is given a prominent place in the Action Plan for the Implementation of the Strategy for the Reform of the Judiciary 2007-2012 with a view to securing that all processes in the Ministry of Justice, judiciary and the segment of enforcement of criminal sanctions become based on a modern and integrated IT system.

The implementation of the Judicial Information System program solution includes a centralised single database and secured access of all users to applications and data, in accordance with their statutory powers.

The Government of Montenegro has set up a Council for the Implementation of the Judicial Information System Project, which has its Expert and Implementation Team.

The Project will be implemented by 31 December 2009 and production will be launched on 1 January 2010.

31. Who is responsible for the implementation, coordination and monitoring of the reform?

The Government of Montenegro has set up a Commission for Execution of the Action Plan for Implementation of Strategy for the Reform of the Judiciary 2007-2012.

The Chairman of the Commission is the Minister of Justice and its members are as follows: President of the Supreme Court, Supreme Public Prosecutor, Minister of Finance, President of the Misdemeanour Panel, President of the Association of Judges, President of the Association of Prosecutors, President of the Bar Association and Director of the Institution for Enforcement of Criminal Sanctions. Administrative and technical tasks for the needs of the Commission are performed by the Ministry of Justice.

The task of the Commission is to organise and coordinate the activities of the public administration authorities, state bodies and other relevant institutions in the implementation of the Action Plan; to monitor priorities, dynamics and timeframes of implementation, evaluate the results achieved in the implementation of the Action Plan; and submit to the Government of Montenegro reports outlining the status, evaluation results and proposed measures, at least twice a year.

The Commission has an Expert Team, which collects individual reports from the stakeholders responsible for the implementation of activities envisaged by the Action Plan and prepares biannual reports for the Commission. The Commission submits the reports outlining the status, evaluation results and proposed measures to the Government of Montenegro for adoption.

The Commission has its Rules of Procedure, which govern the issues of organisation, work method and decision-making.

32. What is the administrative capacity envisaged in order to succeed with the implementation of the reform?

Under the National Plan of Integration, an adequate number of positions of public prosecutors and their deputies will be fixed in line with the Law of Amendments to the Law on Public Prosecution Office and new Criminal Procedure Code, in order to ensure efficient investigations under the management of the Public Prosecution Office. The capacities of the Special Prosecutor will be strengthened through an increase in the number of Deputies of the Special Prosecutor and their specialisation in specific types of organised crime and corruption. The services of court bailiffs will be reorganised in line with the amendments to the Law on Enforcement Procedure.

A new authority for defence of property interests of Montenegro will be set up and provided with human resources, premises, equipment and financial resources.

The capacities of the Ministry of Justice for the performance of European integration tasks and harmonisation of legislation with the *acquis communautaire* will be strengthened, which will require recruitment of additional staff and training of the existing staff.

By the end of 2009, the Judicial Information System project will be fully implemented, human resources secured and monitoring of the functioning of the judicial information system will be centralised.

At the beginning of 2010, first notaries will be appointed and Notary Chamber set up.

A Law on Amendments to the Law on Training in Judicial Authorities and Law on Amendments to the Law on Bar Exam will be enacted.

The following activities will be implemented in the period 2010-2012: new Law on Courts and Law on Public Prosecution Office will be enacted in order to rationalise the judicial and prosecutorial networks, in terms of subject-matter and territorial jurisdiction and specialisation in specific areas of law. Amendments to the Law on Private Law Practice are also planned with a view to ensuring its harmonisation with the Directives 31977L0249 and 31998L0005 in the part relating to the creation of conditions for an unimpeded appearance of foreign lawyers before the judicial authorities. Furthermore, a Law on the Protection of Victims in Criminal Proceedings will be enacted in line with the Directive 32004L0080.

The courts and Public Prosecution Office will be reorganised in line with the amendments to the Law on Courts and Law on Public Prosecution Office. A trust fund for compensation of victims of

crime will be established, while authorities responsible to conduct misdemeanour proceedings will be reorganised in line with the new Law on Misdemeanours.

With regards to staffing plans, by 2012, the Ministry of Justice will have a total of 55 employees, the Judicial Council will number 10 standing members, courts will have 255 judges and 890 staff members, Public Prosecution Office will number 103 prosecutors and 110 staff members, while the number of misdemeanour judges and employees in misdemeanour bodies will depend on the reform of the misdemeanour system, which is in process of being implemented.

B. Anti-corruption

Policy and domestic institutions

33. Is there a national anti-corruption strategy? What is its status? Does it cover both law enforcement and preventive measures? Was this the subject of broad consultation at all levels (e.g. interdepartmental at national, regional, local level, among stakeholders in the private sector and civil society, media etc.)? Is the strategy being implemented and, if so, how is this being done and what are the results? How is monitoring of the anti-corruption ensured?

a) National strategy

After the process of establishment of new anti-corruption bodies and special units for combating corruption within the existing authorities, as well as the adoption of an entire set of anti-corruption laws (the period from early 2001 until the mid of 2005), the development and endorsement process of strategic anticorruption documents was initiated. Thus, in July 2005, the Government of Montenegro adopted the Program of Fight against Corruption and Organized Crime. In order to implement the Program, the Government adopted an Action Plan, in August 2006, as a medium-term document designed for a period of three years (2006-2008). The Action Plan makes the Program of Fight against Corruption and Organized Crime operational, and it does so by laying down concrete measures, competent authorities and institutions, periods, indicators for measuring success and risk factors.

As of December 2005, the drafting of the Action Plan was carried out by an inter-agency committee formed by the Ministry of Interior and Public Administration, whose members were representatives of the Police Directorate, Ministry of Justice, Administration for Anti-Corruption Initiative, Ministry of Culture and Media, Ministry of Finance, Administration for Prevention of Money Laundering and Financing Terrorism, Ministry for European Integration, Supreme Public Prosecution Office, Basic Court, Ministry of Foreign Affairs and a representative of NGO MANS. Two experts of the Council of Europe also participated in the Action Plan drafting.

The Commission for Political System and Internal Policy was introduced to the first draft Action Plan, in April 2006. It forwarded the draft to the competent authorities and institutions so as to get introduced to its contents and give suggestions and comments, both regarding the proposed measures, and the periods for their implementation.

After that, the Commission has prepared a second draft that was presented at the roundtable, in June 2006 in Podgorica, with the participation of representatives of competent authorities and institutions of Montenegro, representatives of international organizations, NGO sector, private sector and parliamentary political parties.

While working on the Action Plan log-frame, the Commission considered the importance of international obligations of the Republic of Montenegro, and in particular the following documents:

- EU Council Decision on the principles, priorities and conditions contained in the European Partnership (24 January 2006);

- United Nations Convention against Transnational Organized Crime (Palermo Convention);
- United Nations Convention against Corruption (entered into force on 19 January 2006);
- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Council of Europe Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption;
- Ten principles for improving the fight against corruption and organized crime in acceding, EU candidate and other third countries.

The Programme defines corruption as all forms of abuse of an official position in view of a personal or collective benefit, whether in public or private sector.

The Action Plan has three chapters, which also cover law enforcement measures, measures for preventing corruption, as well as other measures related to improvement of institutional and administrative capacities.

I. Political and international obligation to act

II. General objectives

- Efficient prosecution for suppressing corruption and organized crime
- Prevention and education
- The public, civil society (including private sector) and the media
- Local government

III. Specific measures against corruption and organized crime

- Efficient prosecution and trial

  A1 - Prosecution Office

  A2 - Police

  A3 - Judiciary
- External and internal Budget audit
- Privatization Council
- Administration for Prevention of Money Laundering
- Commission for Control of Public Procurement Procedure
- Committee for Establishing the Existence of Conflict of Interest
- Tax Administration
- Customs Administration
- Administration for Anti-Corruption Initiative

The Action Plan was revised in May 2008, when the implementation period was extended until the end of 2009, while simultaneously increasing the number of measures and the number of entities that are obliged to implement measures laid down.

b) Strategy implementation and monitoring

The Action Plan is implemented by authorities and institutions which are defined as entities subject to the obligation to implement it (a total of 54), i.e. by the competent authorities for certain measures and activities from all sectors of society, both public, private and NGO.

National Commission for monitoring the implementation of the Action Plan for the Implementation of the Programme of Fight against Corruption and Organized Crime was established by the Decision of the Government of Montenegro on 15 February 2007 (Official Gazette of the Republic of Montenegro 15/07).

Members of the National Commission are: Minister for European Integration (President of the Commission), Minister of Interior and Public Administration (Deputy President of the Commission), Minister of Finance, Minister of Justice, Presidents of the Committee for Economics, Finance and Budget as well as of the Committee for the Political System, Judiciary and Administration in the Parliament of Montenegro, President of the Supreme Court, Supreme Public Prosecutor, Director of Police Directorate, Director of the Administration for Anti-Corruption Initiative, Executive Director of the NGO MANS and Executive Director of the NGO CEMI. At the constituent sitting, the National Commission has adopted Rules of Procedures (Official Gazette of the Republic of Montenegro 39/07).

Monitoring the implementation of the Action Plan was arranged as follows:

- 54 entities subject to the obligation to submit reports to the National Commission are to submit quarterly reports on the measures realized;
- A professional body for the preparation of reports, consisting of representatives of the Police Directorate, Administration for Anti-Corruption Initiative, Ministry of Justice, Supreme Public Prosecutor and the Cabinet of the Minister for European Integration analyzes reports of competent authorities and prepares draft summary reports for the National Commission;
- The National Commission, after examination, adopts the semi-annual report on the implementation of the Action Plan, with recommendations for further improvement of activities;
- The Government of Montenegro examines and endorses recommendations of the National Commission.

Semi-annual National Commission reports are published on the website of the Administration for Anti-Corruption Initiative, together with a translation into English, and with individual reports of competent authorities and institutions (entities subject to the obligation to submit reports). The reports are also submitted to the Parliament of Montenegro for examination.

National Commission has drafted 5 semi-annual reports so far on the implementation of the Action Plan, sent to both the international community and the diplomatic corps in Montenegro.

Statistics:

In the period from September 2006 until May 2007 (National Commission's I report), 51% of the measures from the Action Plan were realized (the sum of realized measures and measures that are implemented continuously), 20% of measures was partially realized, and 29% of measures were not realized.

In the second reporting period (National Commission's II report), 46% of measures from the Action Plan were realized (the sum of realized measures and measures continuously realized), 37% of measures was partially realized, 16% of measures were not realized.

In the period from January 2008 until June 2008 (National Commission's III report), 52% of measures from the Action Plan were realized (the sum of realized measures and measures that are continuously realized), 16% of measures was partially realized, and 32% of measures were not realized.

In the period from July 2008 until December 2008 (National Commission's IV report), 71.9% of measures from the Action Plan were realized (the sum of realized measures and measures that are implemented continuously), 11.1% of measures were partially realized, and 17% of measures were not realized.

In the period from January 2009 to June 2009 (National Commission's V report), 66.5% of measures from the Action Plan were realized (the sum of realized measures and measures continuously realized), 13.2% of measures was partially realized, and 20.3% of measures were not realized.

	Percentage of realized measures and measures realized continuously	Percentage of partially realized measures	Percentage of unrealized measures
NC's I report	51	20	29
NC's II report	46	37	16
NC's III report	52	16	32
NC's IV report	71.9	11.1	17
NC's V report	66.5	13.2	20.3

Finally, since the Programme and (Revised) Action Plan are time framed until the end of 2009, activities are planned on the development of new strategic documents (2010-2012) in the field of anti-corruption policy. Analytical assessment of the institutional framework for the application of policy in this area is expected, as well as priority law enforcement, having regard to the institutional and legislative framework being mostly completed in the previous period.

34. Are there particular priority areas in which corruption is more prominent? If so, how were these priority areas identified and what extra measures are taken?

Reference: Question No. 59, Political Criteria

Prior to the adoption of the Programme for Fight against Corruption and Organized Crime in July 2005, there were no valid indicators of the degree of corruption in Montenegro. The data in possession of competent authorities were: statistics on criminal offences with elements of corruption, corruption perception expressed through the Transparency International CPI (back then for Serbia and Montenegro) and, finally, public opinion research conducted by the agency "Damar" in 2004. Therefore, the Programme adopted a systematic, comprehensive approach in suppressing corruption, which is also reflected in the Action Plan (adopted in 2006, revised in 2008) which made the Program operational.

The application of the Action Plan, i.e. of individual measures that the plan contains, indicated that all measures are not equally efficient, i.e. they do not have the same effect in suppressing corruption. During the work of the National Commission, i.e. the body competent for monitoring the implementation of the Action Plan, the need was noted to revise the Action Plan, so as to continue the progress in suppressing corruption, prolong the time of implementation, include an increased number of entities into this process and, finally, adopt additional measures to suppress corruption. Also, a more active participation of the NGO sector in the monitoring of policies for the prevention of conflicts of interest, free access to information, funding of political parties, spatial development, etc, contributed to some of the areas being marked as priority ones.

So, after the National Commission concluded that the Action Plan needs to be revised, the Minister of Interior and Public Administration formed an inter-agency working group, whose members were also representatives of the NGO sector, with a task to make the necessary amendments of certain measures from the Action Plan. On the basis of proposals of this working group, a Revised Action Plan was drafted, adopted by the Government of Montenegro in May 2008. The number of entities subject to the obligation to submit reports was increased from 32 to 54, which created a wider circle of entities participating in the fight against corruption, and the number of measures was also increased. The priority areas which were singled out are:

- health care and social security,
- education system and training,
- spatial planning.

The development and adoption of sectoral action plans was envisaged, so as to apply to these areas targeted and effective measures. In the field of education system and training, Ministry of Education and Science has prepared and published an Action Plan for Fight against Corruption in the Field of Education System and Training (2009-2012). In order to introduce the public with the contents of this document, several round tables were organized for parents and a campaign in cooperation with youth sports clubs.

When it comes to health care field, the Action Plan was adopted by the Government of Montenegro, at its sitting held on 10 September 2009. In the field of spatial planning, the action plan is in draft stage and is expected to be examined and adopted at one of the next sittings of the Government of Montenegro.

Another direction of action when it comes to defining priority areas are corruption researches. Administration for Anti-Corruption Initiative has a mandate (from the end of 2007) to conduct researches on the manifestations, causes and mechanisms of corruption. In cooperation with the Ministry of Finance, the Administration opted for sectoral researches in the field of judiciary, local government, private sector and public administration, so as to reach in these four important fields, valid indicators on corruption and its forms. In October 2008 the results of research, "Evaluation of Integrity and Capacity of the Judicial System in Montenegro" were publicized, and in June 2009, the research, "Evaluation of Integrity and Capacity of Local Governments in Montenegro" was publicized. This research indicated that the development and spatial planning is the most serious problem in the work of local government bodies. While ranking sectors in which corruption is most prominent citizens single out those in connection with construction of facilities, issuing of building permits, building inspections and town planning. Therefore, the researches conducted confirmed the importance of the obligation envisaged by the Revised Action Plan, to adopt a sectoral action plan for this area.

Other state bodies as well, as a rule, with the assistance and support of international partners, conduct researches in order to examine problems in a particular area; so the Ministry of Health commissioned a research on corruption in health care system. Other state bodies, such as Tax Administration and Customs Administration carry out researches in relation to matters within their competence. Non-governmental organizations conducted a research on corruption in education.

The aim which we are trying to achieve with the research of corruption in some areas is a strategic one: deep system scan and recommendations that accompany researches allow for the design of targeted measures that can have an effect on reducing levels of corruption. Thus, for example, recommendations and taken measures concerning the greater efficiency of judicial authorities exerted influence on the significantly increased efficiency of courts in the first half of 2009.

Keeping in mind that the Revised Action Plan will apply until the end of 2009, and that it is necessary to adopt new strategic documents in this field, researches conducted will serve as a starting basis as they provide insight into the current status in the specified areas.

Also, it is planned that all researches conducted be repeated after two to three years, so as to measure the results achieved in the implementation of recommendations accompanying these researches.

In defining priority areas, attention is also given to international organizations` reports that are analyzed at the thematic sittings of the National Commission, on the occasion of which recommendations for further work of the competent authorities and institutions are defined, particularly in relation to the annual Progress Reports.

35. Do specialised anti-corruption services exist? If so, please describe these indicating their legal and institutional status, composition, functions and powers. How is the independence of and resources for these services ensured?

Within the general democratic processes in Montenegro, which include changes in political, economic and legislative system, anti-corruption efforts are an important part. Efforts of more

serious nature started in 2000, when Montenegro signed the Agreement and Action Plan of Stability Pact Regional Anti-Corruption Initiative (SPAI).

These efforts implied legislative and institutional reforms. As a central anti-corruption body in Montenegro does not exist, we began creating special anti-corruption institutions with preventive, repressive or combined competencies. These are institutions that are established under special laws or governmental decrees, and which through their competencies, from their special fields of operation contribute to the fight against corruption. They are the following institutions:

Administration for Anti-Corruption Initiative was established by a Decree of the Government of Montenegro, in 2001. In accordance with the amendments of the ***Decree on Public Administration Organisation*** and ***Manner of Work*** in Montenegro from 2007 (Official Gazette of Montenegro 16/07) it was entrusted with the following competences:

- advertising-preventive action, such as raising the level of public awareness about the problem of corruption and conducting researches on the extent, manifestations, causes and mechanism of corruption occurrence;
- cooperation with competent authorities for the purpose of developing and implementing legislative and program documents of importance for the prevention and suppression of corruption;
- cooperation with non-governmental and private sector for the purpose of suppressing corruption;
- cooperation with government bodies in proceedings under charges of corruption that the Administration receives from citizens and other entities;
- proposing to the Government to conclude and apply European and other anti-corruption and international standards and instruments;
- monitoring the implementation of the recommendations of the Council of Europe Group of States for the Fight against Corruption (GRECO);
- coordination of activities resulting from application of the United Nations Convention against Corruption,
- performance of other affairs arising from membership in the Stability Pact for South Eastern Europe, in other international organizations and institutions, and other affairs delegated to its competence.

The Ministry of Finance is a supervisory authority regarding the legality and efficiency of the Administration's work.

In addition to the competences laid down by the Decree, activities, goals and objectives of the Administration for Anti-Corruption Initiative are defined in the Revised Action Plan for implementing the Programme for Fight against Corruption and Organized Crime. Also, an important part of the activities are conducted in relation to the application of the UN Convention against Corruption, and the analysis of harmonization of domestic legal framework with the provisions of this Convention. Furthermore, clearly defined activities of the Administration result from the membership of Montenegro in GRECO and the process of mutual evaluation conducted by this body. The role of the Administration for Anti-Corruption Initiative is coordination among public administration entities in order to estimate the application of the Council of Europe standards.

An important part of the AACI (Administration for Anti-Corruption Initiative) activities derives from membership in regional initiatives, primarily the Regional Anti-Corruption Initiative (RAI), as the body competent for monitoring the implementation of the Declaration on 10 Joint Measures to Curb Corruption in South Eastern Europe. AACI submits annual reports to the RAI as regards the implementation of the political declaration signed in 2005.

Furthermore, by means of cooperation with international partners, AACI applies for various projects which imply new tasks and periods for their implementation. Project ideas are developed in order to enable or enhance the implementation of international conventions of which Montenegro is a signatory.

In terms of providing funds on an annual level, AACI with reference to the planned objectives and tasks submits a proposal to the Ministry of Finance for approval of funds. Ministry of Finance approves and monitors the spending of funds approved to all consumer units in the state administration system in Montenegro. AACI has its own funds approved within the budgetary support.

There are three organizational units within the Administration for Anti-Corruption Initiative: Department for Advertising-Preventive Activity, Division for International Cooperation and Service for General Affairs and Finances, with a total of 17 jobs.

Administration for Prevention of Money Laundering and Financing Terrorism was formed by the Decree of the Government of Montenegro of 15 December 2003 (Official Gazette of the Republic of Montenegro 67/03) pursuant to the Law on Prevention of Money Laundering (Official Gazette of the Republic of Montenegro 55/03). The new Law on Prevention of Money Laundering and Financing Terrorism (Official Gazette of Montenegro 14/07) entered into force on 29 December 2007.

Pursuant to the Law on Prevention of Money Laundering and Financing Terrorism and international standards, the Administration is organized as an administrative type financial-intelligence unit. The Administration is an independent body whose work is supervised by the Ministry of Finance regarding the legality and effectiveness of work.

The Rulebook on Internal Organisation and Job Descriptions of Administration for Prevention of Money Laundering and Financing Terrorism laid down organizational units and classified 34 civil servant positions. Affairs from the competence of the Administration are performed within those positions, as follows:

1. Department for Reception, Processing and Analysis of Data:
    a) Section for Analytical Affairs
    b) Section for Suspicious Transactions
    c) Section for Information Technologies and Data Reception
2. Department for Control, International and Internal Cooperation:
    a) Section for Taxpayers Control
    b) Section for International and Internal Cooperation
3. Unit - Conducting First Instance Misdemeanour Procedure
4. Service for General Affairs, Finances and Public Relations.

Administration for Prevention of Money Laundering and Financing Terrorism performs affairs relating to detecting and preventing money laundering and terrorism financing related to: collecting, analyzing and delivering to the competent authorities, data, information and documentation necessary for the detection of money laundering and terrorism financing; checking transactions and persons in cases of existence of grounds for suspicion of money laundering or terrorism financing; temporary suspension of transactions, establishment of international cooperation with authorized authorities of other countries and international organizations; supervision over the implementation of the Law on Prevention of Money Laundering and Financing Terrorism within the laid down competences, initiation and conducting of first instance misdemeanour procedure for violation of provisions of the Law on Prevention of Money Laundering and Terrorism Financing and other affairs under its jurisdiction.

In addition, Administration for Prevention of Money Laundering and Financing Terrorism is authorized to:

- submit an initiative for amendments of regulations relating to the prevention of money laundering and terrorism financing;
- prepare and unify a list of indicators to identify clients and transactions for which there are grounds for suspicion of money laundering and terrorism financing;

- participate in training and professional development of authorized persons employed by the taxpayers and competent state bodies;
- initiate the publication of the list of countries that do not apply standards in the field of preventing and detecting money laundering and terrorism financing;
- prepare and issue recommendations and guidelines for a uniform implementation of this law and regulations enacted thereunder, on the part of entities subject to the obligation to implement it.

Funds for the operations of the Administration for Prevention of Money Laundering and Financing Terrorism are provided in the Budget of Montenegro.

Public Procurement Directorate performs affairs of state administration in the area of public procurements. In this area, both the Commission for Control of Public Procurement Procedure (in the field of protection of rights) and the Ministry of Finance as the line ministry in the field of public procurements have competence. The Ministry also supervises the legality and effectiveness of the Directorate`s work. Judicial control of legality of public procurement procedures is ensured through the administrative dispute, before the Administrative Court of Montenegro.

Public Procurement Directorate was established by means of the Decree on Amendments to the Decree on Organization and Manner of Work of State Administration (Official Gazette of the Republic of Montenegro 72/06), which laid down in Article 42A the competences of the Directorate. Also, Article 17 of the Law on Public Procurements laid down the competences of the Directorate.

The Directorate is authorized to participate in the preparation of laws, secondary legislation and other regulations on public procurements; to lay down appropriate standard forms for the implementation of the Law, monitor and analyze the realization of the public procurement system, from the standpoint of harmonization with *acquis communautaire* and propose measures to ensure such harmonization; give prior consent to contracting authorities to the selection of types of proceedings in cases stipulated by the Law; provide advisory and consulting services for the area of public procurements to contracting authorities, when they ask so; participate and cooperate in organizing training of personnel for the exercise of public procurement affairs; publish ***calls*** for tenders and the decisions on awarded contracts on the website in the cases stipulated by this law, improve the system of informing contracting authorities and bidders about the regulations on public procurements and publish and distribute appropriate professional literature; prepare the model of tender documents and contracts for typical public procurements; initiate and encourage the development of electronic procurement practice and communications in the field of public procurements, exercise international cooperation with institutions and experts in the field of public procurements; inform the State Audit Institution and submit charges to other competent authorities on cases of violations of public procurement procedures that it encounters in the performance of affairs under its competence; collect data from contracting authorities of public procurements and keep appropriate records; prepare, publish and update a list of parties subject to the implementation of the Law on its website, prepare uniform bases for the establishment of records and official lists of bidders, based on the data on signed and enforced contracts on public procurements, monitor public procurement procedures and secure public interest in these proceedings; publish bulletins on public procurements, submit to the Government an annual report on public procurements in Montenegro and perform other affairs in compliance with the law.

Rulebook on the Internal Organisation and Job Descriptions from November 2008 envisaged that the Directorate has 15 civil servants and state employees classified within the Department for Public Procurement Affairs and Service for General Affairs and Finances.

Commission for Control of Public Procurement Procedure is an autonomous and independent body which decides on appeals lodged in public procurement procedures in Montenegro. The decisions of the Commission are final, binding and enforceable. Decision of the State Commission is final in administrative procedure, but in order to determine its legality, an administrative dispute may be initiated against it by means of an action before the Administrative Court of Montenegro.

The Commission was first established by means of the Law on Public Procurements in 2001. The Commission for Control of Public Procurement Procedure was established on the basis of the valid Law on Public Procurements from 2006 (Official Gazette of the Republic of Montenegro 46/06),

and it consists of three members: the President and two members, appointed by the Government for a period of four years as follows: the President, upon a proposal of the ministry competent for judicial affairs, one member, upon a proposal of the ministry competent for financial affairs and one member upon a proposal of the Union of Municipalities.

The President and members of the Commission cannot be: members of the Parliament, members of municipal assemblies, heads of state bodies, organizations and institutions which are beneficiaries of the Budget of the Republic, heads of organizations for mandatory social insurance, the chief administrator and head of local administration authorities, as well as directors of public enterprises and other legal entities who are entities subject to the obligation to implement this law.

The Commission is competent to:

- examine complaints of bidders to public procurement procedures and make decisions thereon,
- examine the regularity of the application of the Law on Public Procurements and propose and take measures to correct the identified irregularities, to ensure competitive behaviour of bidders and transparency of public procurement procedures,
- lay down positions of principle in view of a uniform implementation of the law,
- perform other affairs in compliance with the Law on Public Procurements.

The Commission issues decisions and conclusions in writing at its sittings, on matters within its competence. Decisions are taken in sessions by a majority vote of the present members, and a member of the State Commission cannot abstain from voting. The manner of work of the Commission is regulated by Rules of Procedure. Funds for the work of the Commission are ensured in the budget of the Republic.

In order to achieve a greater degree of transparency, after each sitting of the Commission, all decisions taken are published on the web page.

State Audit Institution, in compliance with Article 144 of the Constitution of Montenegro (Official Gazette of Montenegro 1/07) is an independent and supreme authority of state audit. Law on State Audit Institution (Official Gazette of the Republic of Montenegro 28/04, 27/06, 78/06 and Official Gazette of Montenegro 17/07) laid down the rights, obligations and manner of work of the State Audit Institution, in order to ensure the control of regularity and efficiency of operations of auditing entities (bodies and organizations that manage the budget and state property, local government units, funds, the Central Bank of Montenegro and other legal entities partly owned by the state), and in view of professional and objective control of budgetary funds spending and state property management in Montenegro.

State Audit Institution (hereinafter referred to as SAI) as an autonomous and independent state body that works in compliance with the principles contained in the Lima Declaration adopted at the IX INTOSAI Congress held in Lima in 1977, as the basic international document on legal organization, position and work of public sector auditing. It is a legal person having its seat in Podgorica.

At the XIX Congress of the International Organization of Supreme Audit Institutions (INTOSAI), held in November 2007, SAI has acquired the status of a fully-fledged member. The audit is conducted in compliance with INTOSAI International Standards on Auditing, and all the Audit Institutions which are INTOSAI members have an obligation to apply them consistently.

State Audit Institution is the highest body for the control of budget and state property management, local government units, funds, Central Bank of Montenegro and other legal persons partly owned by the state.

SAI independently decides on auditing entities, subject, scope and type of audit and on an annual basis performs audit of the final account of the budget of Montenegro. SAI controls the regularity (legality), good management, effectiveness and efficiency of budgetary funds spending and state property management. SAI reports to the Parliament of Montenegro on the results of audits performed by filing annual reports that are submitted to Parliament and Government by the end of October.

The institution is obliged to submit, without delay, a criminal charge, if it determines in the process of audit that there are grounds for suspicion that a criminal offence was committed.

Regarding the internal organization, SAI is organized into departments; the departments are divided into divisions and special service is formed for the performance of administrative and professional affairs.

Bodies of the Institution are the Senate and Board. The Senate has five members and the Senate member is the Head of Department. Members of the Senate are appointed and removed from office by the Parliament upon the proposal of the competent working body. The Parliament appoints the President from among the members of the Senate for a period of nine years and the said person cannot be re-appointed President of the Senate. The Senate member office is permanent. Members of the Senate cannot be members of Parliament and exercise other public office, nor perform any other professional activity. Members of the Senate may not be members of a body of a political party. The Senate decides by majority vote of the total number of members.

The competences of the Senate are to: adopt an annual report and special reports; adopt the annual audit plan; issue decisions, if they were not issued in compliance with Article 44, paragraph 3 of this Law (when the Board fails to make a decision related to a certain audit); issue an instructions on the work methodology (auditing standards); review, upon a proposal of the Board, decisions it issued previously and the Board decisions; adopt Rules of Procedure of SAI; adopt an act on internal organisation and job descriptions; adopt the final account of SAI and perform other affairs provided for by this Law and general SAI acts.

The Board manages and monitors some audits and is responsible for the result of that audit. Board consists of two members of the Senate, one of whom is the Head of the Department who conducted the audit. If the Board fails to make a decision, it is issued by the Senate.

The auditing affairs are performed by the state auditor. The auditor is employed on the basis of public advertising. In auditing procedures the SAI may engage external experts, particularly if the audit requires specialist knowledge. External experts are obliged not to disclose business and other secrets.

Administrative, professional and other affairs are performed by civil servants and state employees. More detailed conditions for employment are laid down in the act on internal organisation and job descriptions.

Funds for SAI's work are provided in the budget. Request for allocation of budgetary funds is submitted by the Parliament working body responsible for financial affairs, upon a proposal of the SAI.

In addition to the control function, SAI performs advisory and administrative functions. Internal SAI act were adopted: Rules of Procedure, Instructions on the Work Methodology (Official Gazette of the Republic of Montenegro 02/05) and the Rulebook on Internal Organisation and Job Descriptions. SAI has its own Code of Ethics.

Commission for Prevention of Conflict of Interest is an independent body established by the Parliament of Montenegro in 2004 by the adoption of the Law on Conflict of Interest (Official Gazette of the Republic of Montenegro 42/04, 12/05 and 17/05) which was adopted in view of a fair and just organization of authority, to ensure impartiality in the exercise of public office, eliminate the least doubt in objective exercise of power, raising the level of trust, spread of democratic political culture, adherence to ethical norms and codes of conduct, etc.

The new Law on Prevention of Conflict of Interest (Official Gazette of Montenegro 1/09) entered into force on 17 January 2009. On its basis, the Parliament of Montenegro, at its sitting of 29 July 2009 issued a decision on the election of the President and six members of the Commission for the Prevention of Conflict of Interest whereby the Commission has commenced work under the provisions of the new Law.

This Commission is competent to:

- conduct proceedings and issue decisions on the violation of the Law on Prevention of Conflict of Interest (Commission is thereat both a first and second instance authority since it decides on requests for review of first instance decisions);
- give opinions on the existence of conflict of interest;
- determine the value of gifts referred to in Article 14, paragraph 6 of the Law on the Prevention of Conflict of Interest (public officials may not receive gifts, in exceptional cases they can receive protocolary gifts - which public officials receive from representatives of other states or international organizations and appropriate gifts of small value – the value of which does not exceed the amount of EUR 50);
- adopt rules and Rules of Procedure of the Commission, upon a proposal of the President of the Commission;
- gives opinions on the draft laws, other regulations and general acts, if it considers it to be necessary to prevent conflicts of interest;
- provide initiatives for amendments of laws, other regulations and general acts, to harmonize with European and other international standards from the field of anti-corruption initiative and transparency of business transactions;
- submit a request for initiation of misdemeanour procedure to the regional misdemeanour authorities;
- perform other affairs in compliance with the Law on Prevention of Conflicts of Interest.

Rules of Procedure of the Commission regulates in more detail the manner of work and other issues of importance for the work of the Commission. Regarding the final decisions of the Commission, a dissatisfied party may initiate an administrative dispute before the Administrative Court. All decisions on the existence of conflict of interest are published on the website of the Commission (www.konfliktinteresa.me) and in the media.

The President and members of the Commission for the Prevention of Conflicts of Interest may not be members of bodies of political parties and the President of the Commission exercises his/her office professionally and has the right to earnings in the amount that is determined for the Protector of Human Rights and Freedoms, while the members are entitled to compensation determined by the Administrative Committee of the Parliament of Montenegro.

For the performance of professional and administrative affairs, the Commission forms an Administrative and Professional Service which is managed by the secretary of the Commission, whereas the Act on Internal Organization and Job Descriptions of the Administrative and Professional Service is adopted by the Commission with prior opinion of the competent working body of the Parliament. The rights, duties and responsibilities of employees in the Administrative and Professional Service are subject to regulations on civil servants and state employees. The work of the Commission for the Prevention of Conflict of Interest is funded from the Budget of Montenegro.

Apart from special anti-corruption institutions, institutional reform also implied the creation of special divisions within the existing institutions and state bodies, primarily those concerning the detection, prosecution and punishing of perpetrators of corruptive criminal offences, and thus within the Police Directorate, Supreme Public Prosecution Office and High Courts special divisions were established that deal with these issues. Establishment of new bodies or special organizational units within the Supreme Public Prosecutor's Office, High Courts and Police Directorate, required continuous training and education of personnel, which for several years now has been conducted by the Judicial Training Centre and the Human Resources Administration, in cooperation with the Administration for Anti-Corruption Initiative and other state bodies with expert and technical assistance of international agencies and organizations.

Police Directorate was formed after the adoption of the Law on Police (Official Gazette of the Republic of Montenegro 28/05) of 28 April 2005, which envisaged a complete reorganization of the police, which is now a separate body within the state administration. Ministry of Interior and Public Administration supervises the work of Police Directorate.

On the basis of the Rulebook on Internal Organisation and Job Descriptions of Police Directorate (adopted in December 2006), a Section for Combating Organized Crime and Corruption was established within the Criminal Police Department, instead of the former Division for Suppressing and Preventing Organized Crime. A group was established within the section to fight corruption, whose main task is to have a preventive and repressive effect against all the manifestations of corruptive criminal offences, together with operating structures of the Police Directorate and other competent state bodies, institutions and the civil society. In the reorganization of the Section for Fight against Organized Crime and Corruption, Police Directorate achieved progress regarding the increase of the number of employees, through the new job descriptions. In taking measures and actions on the plane of opposing corruptive criminal offences, the Police Directorate has achieved full inter-agency cooperation, as follows: Administration for Anti-Corruption Initiative, National Security Agency of Montenegro, Customs Administration, Tax Administration, Real-Estate Administration, Administration for Prevention of Money Laundering and Financing Terrorism as well as other institutions and NGOs.

Public Prosecution Office performs affairs of prosecution of offenders. Status and competences of the Prosecution Office are prescribed by Article 134 of the Constitution which states that the Public Prosecution Office is a single and independent body that performs affairs of prosecution of offenders and other punishable acts which are prosecuted ex officio.

Public Prosecutors and Deputies exercise their office in the public interest, impartially and objectively, to ensure the implementation of law, while respecting human rights and freedoms provided for in the European Convention for the Protection of Human Rights and Freedoms and the Constitution (Chapter II, Personal Rights and Freedoms Art. 26-46) and the Criminal Procedure Code.

Independence and impartiality are prescribed by the Constitution and the Law on Public Prosecutor, which in Article 3 prescribes that the function of the Public Prosecutor must not be exercised under anyone's influence and that no one must influence Public Prosecutors in the exercise of their office. Independence and impartiality are ensured through the Prosecutorial Council, which ensures independence of the Public Prosecution Office and Public Prosecutors. Prosecutorial Council members are elected and removed from office by the Parliament. Law on Public Prosecutor (Chapter VII, Art. 83-90) prescribed the election, mandate, competence, organization and manner of work of the Prosecutorial Council. Article 84 of the Public Prosecution Office envisaged that the Prosecutorial Council is to have a President and ten members. Supreme Public Prosecutor is also the President of the Prosecutorial Council. Six members from among Public Prosecutors are elected for the Prosecutorial Council, so they represent the majority in that body. Independence is achieved through the allocation of cases in the manner prescribed by the Rulebook on Internal Operations of the Public Prosecutor.

Authorizations of Public Prosecutors and Deputies, including the Special Prosecutor, are laid down in the Law on Criminal Procedure (Chapter IV, Art. 44-50) which provides that they are to:

- manage pre-trial proceedings and direct the course of preliminary criminal proceedings,
- require investigation to be conducted,
- bring indictments and represent prosecution,
- lodge appeals against non final-and-enforceable judicial decisions and extraordinary legal remedies against final-and-enforceable judicial decisions.

For affairs of suppression of corruption, the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes was established within the Supreme Public Prosecution Office, headed by a Special Prosecutor. In addition to the Special Prosecutor, there are five Deputies and four state employees in the division. Specialization of prosecutorial office holders was carried out within the division, by entrusting the suppression of this form of crime to prosecutorial office holders with years long work experience in the Prosecution Office, which had previously passed the necessary professional trainings and development.

The subject-matter jurisdiction of Special Prosecutors is laid down in Art. 48 of the Law on Public Prosecutor. Special Prosecutor takes actions which he/she is authorized to before the court having

subject-matter and territorial jurisdiction or other state authorities before which he/she proceeds in compliance with the law. Article 18, paragraph 1, item 3 of the Law on Courts lays down criminal offences with elements of corruption which require to be handled by the Special Prosecutor, and they fall under the jurisdiction of High Courts in which there are specialized divisions for corruption:

- Money Laundering,
- Violation of Equality in the Conduct of Business Activities,
- Abuse of Monopolistic Position,
- Causing Bankruptcy,
- Causing False Bankruptcy,
- Trading in Influence,
- False Balance,
- Abuse of Appraisal,
- Disclosing a Business Secret,
- Disclosing and Using Stock-exchange Secrets,
- Passive Bribery,
- Active Bribery,
- Disclosure of an Official Secret,
- Abuse of an Official Position, Fraud in the Conduct of an Official Duty and Abuse of Authorizations in Economy punishable by an imprisonment sentence of eight years or a more severe one.

Funds for performing the Special Prosecutor's affairs were laid down and envisaged in the budget of Montenegro, in a separate allotment for Public Prosecution Office.

After the adoption of the Law on Amendments to the Law on Courts in March 2008 (Official Gazette of Montenegro 22/08), High Court became competent for trial in cases of organized crime, corruption, terrorism and war crimes. Within the two High Courts in Podgorica and Bijelo Polje, specialized divisions were established (Article 99) to work on these cases, which have been active as of 1 September 2008. Specialized division for trying for criminal offences of organized crime, corruption, terrorism and war crimes within the High Court in Podgorica has five judges and three investigative judges, while the Division of the High Court in Bijelo Polje has three judges.

Independence and resources for the work of specialized divisions are ensured so that the judges who adjudicate in a specialized division for crimes of organized crime, corruption, terrorism and war crimes are entitled to the amount of monthly salary in the amount of monthly salary of Supreme Court judges and the right to a special allowance for difficult working conditions and specific nature of work performed by them (Article 99).

The basic constitutional principle of the judiciary is that courts are autonomous and independent and that autonomy and independence of the judiciary and judges are provided by the Judicial Council as an autonomous and independent body, as its position and jurisdictions are defined by the Constitution. Constitution provides permanency of judicial office and lays down the conditions for the termination of judicial office and reasons for removal from office. It also states that the judge enjoys functional immunity, all of which are constitutional guarantees of independence of judges. Furthermore, Law on Judicial Council (Official Gazette of Montenegro 13/08), inter alia, regulates the procedure of election of judges and lay judges, the manner of determining the termination of judicial office and disciplinary responsibility and removal from office of judges and lay judges. This Law also provides for the objective criteria for the election of judges: professional knowledge, work experience and work results; published scientific papers and other professional activities; professional development; ability to impartially, conscientiously, diligently, decisively and responsibly exercise office; communication skills; relation with colleagues, conduct outside of work, professionalism and reputation, and organizational abilities.

36. To what extent and from which sources are statistical data available on corruption cases (investigations, cases in court, convictions and sanction level), international co-operation in corruption cases, the link between corruption and organised crime and the link between corruption and money laundering?

Pursuant to Art. 101 (a) of the Law on Courts, the President of Court is obliged to prepare a report on the work of the court in which s/he must indicate the number of pending cases per structure, the number of completed cases, the number of cases that remained unfinished. Such report is drawn up for each year and submitted to the Judicial Council and the Ministry of Justice no later than 10 February of the current year for the previous year.

Upon the request of the Judicial Council the President of the Court is obliged to provide special reports or periodic ones within the time specified by the Judicial Council.

The President of the Court is responsible for accuracy of data in the report.

Based on reports submitted by all courts in Montenegro, the Judicial Council draws up the annual report - Art. 26 of the Law on the Judicial Council. That report contains data on the work of the Judicial Council, a description and analysis of the situation in the judiciary, detailed data for each court, related to the number of received and resolved cases during the reporting year, problems and shortcomings in their work, as well as measures to be taken to eliminate the identified shortcomings.

The annual report of the Judicial Council is submitted to the Parliament, Government and President of Montenegro, no later than 31 March of the current year for the previous years, and it is published on the website of the Judicial Council.

The President of the Judicial Council gives a detailed explanation of the annual report in the Parliament.

A Tripartite Commission was established in October 2007 at the state level, with a view of establishing a single methodology for processing data for criminal offences with elements of corruption and organized crime and monitoring trends in this area. This committee consists of representatives of Police Directorate, the Supreme Public Prosecution Office and the Supreme Court of Montenegro. The Tripartite commission is obliged to prepare and submit on monthly, quarterly and semiannual basis, a report to be delivered to the National Commission on the number of submitted bills of indictment and completed cases for these criminal offences.

1. Detection of criminal offences

Statistical data on cases of corruption are also given in the reports of the Tripartite Commission for 2006-2009 ending with 30 June 2009. This report includes the following criminal offences as corruptive ones:

- violation of equality in the conduct of business activities referred to in Article 269 of the Criminal Code;
- abuse of monopolistic position referred to in Article 270 of the Criminal Code;
- causing bankruptcy referred to in Article 273 of the Criminal Code;
- causing false bankruptcy referred to in Article 274 of the Criminal Code;
- abuse of authorizations in economy referred to in Article 276 of the Criminal Code;
- false balance referred to in Article 278 of the Criminal Code;
- abuse of appraisal referred to in Article 279 of the Criminal Code;
- disclosing a business secret referred to in Article 280 of the Criminal Code;
- disclosing and using stock-exchange secrets referred to in Article 281 of the Criminal Code;
- abuse of an official position referred to in Article 416 of the Criminal Code;

- unconscientious performance of office referred to in Article 417 of the Criminal Code;
- trading in influence referred to in Article 422 of the Criminal Code;
- passive bribery referred to in Article 423 of the Criminal Code;
- active bribery referred to in Article 424 of the Criminal Code and
- disclosure of an official secret referred to in Article 425 of the Criminal Code.

Officers of the Section for the fight against organized crime and corruption and the Section for suppressing economic crime conducted several joint police investigations in cooperation with the Special Prosecutor for fight against organized crime, corruption, terrorism and war crimes that have resulted in filing criminal charges against several perpetrators for criminal offences with elements of corruption.

During 2006, a total of 271 charges against 449 persons were filed.

During 2007, a total of 274 charges against 435 persons were filed.

During 2008, a total of 231 charges against 363 persons were filed, of which the Police Directorate filed 50 charges against 64 persons, while other entities filed 181 charges against 299 persons.

During the first six months of 2009, a total of 111 charges against 173 persons were filed, of which the Police Directorate filed 16 charges against 24 persons, while other entities filed 95 charges against 149 persons.

It is significant to emphasize that in 2009 charges were processed against responsible persons of AD Luka Bar, Director of Automobile Association of Montenegro, Director of Public Medical Institution – Ulcinj health clinic, head of municipal police Cetinje, responsible persons of the Department of town planning in Tivat, responsible persons of AD Plav Lake, director of Dzemo LTD from Bar, judge of the High Court in Bijelo Polje for passive bribery, head and employees of construction inspectorate in Ulcinj, directors of land-registries and eight employees for a number of criminal offences of passive bribery and abuse of an official position, a number of police officers due to passive bribery, customs employees because of passive bribery, etc.

2. Prosecution

The number of employees of the Division for suppressing organized crime, corruption, terrorism and war crimes was increased and vacancies were filled, so that the office of prosecutor, in addition to the Special Prosecutor, is performed by five deputies, whereas the duties of prosecution administration are performed by four state employees. The Division is equipped with adequate office space and the necessary technical equipment.

During 2006, the Public Prosecution Office represented before courts a total of 79 indictments against 104 persons (five direct indictments against six persons, 67 indictments after investigation against 89 persons and seven bills of indictment against nine persons).

During 2007, the Public Prosecution Office represented before courts a total of 61 indictments against 90 persons (five bills of indictment against eight persons, four direct indictments against four persons, and 52 indictments after investigation against 78 persons).

During 2008, the Public Prosecution Office represented before courts a total of 34 indictments against 50 persons.

During 2009, three bills of indictment were filed against three persons.

3. Adjudication

Specialized divisions for trials of criminal offenses of organized crime, corruption, terrorism and war crimes were formed within the High Court in Podgorica and the High Court in Bijelo Polje.

The programme of solving case backlog, adopted for all courts separately, gives priority to solving the cases with elements of corruption.

In 2006, resolving Prosecution Office indictments, the courts have completed criminal procedures in 65 cases against 85 persons, while criminal procedures are pending in 14 cases against 19 persons.

After the criminal procedures were completed, 32 judgments of convictions against 42 persons, four judgments of rejection against five persons and 29 judgments of acquittal against 38 persons were passed.

The judgments of the courts were appealed by the Prosecution Office in 37 cases against 51 persons, of which the appeals proceedings were completed in 26 cases against 28 persons, while the appeals proceedings is pending in 10 cases against 22 persons. Deciding on appeals, second instance courts upheld 11 appeals against 12 persons, while they rejected 15 appeals against 16 individuals. The accused persons lodged seven appeals in five cases.

In 50 cases against 55 persons judgments became final.

In 2007, deciding on prosecution cases, the courts have completed criminal procedure in 59 cases against 89 persons, while criminal procedures are pending in 2 cases against 1 person.

After the criminal procedures were completed, 25 judgments of conviction against 45 persons, five judgments of rejection against seven persons and 29 judgments of acquittal against 37 persons were passed.

The Prosecution Office lodged 39 appeals against 60 persons concerning court judgments, of which the appeals proceedings was completed in 22 cases against 23 persons, while the appeals proceedings are pending in 15 cases against 22 persons.

The accused persons lodged appeals in two cases against three persons.

Deciding on appeals, second instance courts have upheld 3 appeals against 3 persons, while they rejected 19 appeals against 20 persons.

In 34 cases against 39 persons the judgments became final and enforceable.

In 2008, deciding on indictments of the Prosecution Office, the courts have completed criminal procedure in 26 cases against 31 persons, while criminal procedure is pending in 8 cases against 19 persons.

After the criminal procedure was completed, 18 judgments of conviction against 20 persons, 2 judgments of rejection against two persons and 6 judgments of acquittal concerning 9 persons were passed.

The Prosecution Office lodged 13 appeals against 18 persons concerning court judgments, of which the appeals proceedings was completed in 3 cases against 3 persons, while the appeals proceedings are pending in 7 cases against 10 persons. Deciding on appeals, second instance courts have upheld 1 appeal against 1 person, while they rejected 2 appeals against 2 persons.

In 9 cases against 10 persons the judgments are final and enforceable.

During 2008, a decision on forfeiture of material benefit was taken in cases with elements of corruption. The aggregate sum of material benefit forfeited is EUR 1,037,825 and $ 116,000.

In 2009, deciding on prosecution cases, the courts have completed criminal procedure in 1 case against 1 person, while criminal procedures are pending in 2 cases against 2 persons.

After the completion of criminal procedure, one judgment of conviction was passed against one person. The judgment is final and enforceable.

On 30 June 2009, the courts in Montenegro were working on 260 criminal cases with elements of corruption. In that period 201 cases were resolved (101 judgments of conviction, 86 judgments of acquittal and 14 judgments of rejection). Of that number 107 decisions are final and enforceable. In other cases, the appeals proceedings are in progress.

On 30 June 2009 there were 59 unresolved cases.

The Tripartite Commission data given in the text below on cases that were initiated under reports as of 1 January 2006 undoubtedly indicate that significant progress has been achieved in solving cases with elements of corruption.

The following table gives a comparative overview of trend of growth of efficiency in resolving cases of corruption (June 2008 - June 2009) related to cases from the period 1 January 2006 – 30 June 2009:

CRIMINAL OFFENCES WITH ELEMENTS OF CORRUPTION	30 June 2008		30 June 2009		Growth INDEX 2008/2009	
1. INDICTMENTS BEFORE COURTS	No. of cases	No. of persons	No. of cases	No. of persons	No. of cases	No. of persons
Number of cases/ indictments	126	165	177	247	140	150
2. MAIN HEARING AND JUDGMENT						
Criminal procedure completed by a judgment	70	81	151	206		
Criminal procedure pending	56	84	26	41		
Judgment of conviction	35	41	76	108	217	263
Judgment of rejection	4	5	11	14		
Judgment of acquittal	31	35	64	84		
3. PROCEDURE UNDER LEGAL REMEDIES						
Prosecutor's appeals	45	51	89	129		
Appeals proceedings completed	21	21	51	54		
Appeals proceedings not completed	24	30	32	54		
Appeal upheld	10	10	15	16		
Appeal rejected	11	11	36	38		
Appeal of the accused person	2	2	7	10		
Final judgments	37	39	94	105	254	269

Explanation of the table - a positive trend in June 2009 compared to June 2008:

- Number of pending cases before courts prior to 30 June 2009 in comparison to the status on 30 June 2008 has increased by 40%
- Number of judgments of conviction prior to 30 June 2009 in comparison to the status on 30 June 2008 has increased by 117%
- Number of final and enforceable judgments prior to 30 June 2009 in comparison to the status on 30 June 2008 has increased by 154%

On the basis of the new urgency note of the Supreme Court, after the meeting with visa liberalization experts, the courts have provided updated data on the number of cases, validity and structure of judgments for criminal offences with elements of corruption, not only for cases from 1 January 2006 until 30 June 2009, but also for cases from previous years - in other words, for all cases of corruptive criminal offences that were completed by a final and enforceable judgment prior to 20 October 2009.

According to the latest data of the Supreme Court, based on data from the Montenegrin courts, the number of final and enforceable judgments with elements of corruption on 20 October 2009 was the following:

Total number of final and enforceable judgments for criminal offences with elements of corruption against 494 persons is 376.

The number of final and enforceable judgments of conviction for corruption was 136, against 156 persons.

The structure of final and enforceable judgments of conviction against 156 persons is as follows:

- imprisonment of up to 8 years - against 35 persons
- imprisonment of 8 years - 2 persons
- suspended sentence - 113 persons
- a fine - 6 persons

Type of corruptive offence:

a) abuse of an official position - 81 persons

b) abuse of authorizations in economy - 45 persons

c) passive bribery - 5

d) active bribery -15

e) unconscientious performance of office - 10

Office for Reporting Corruption in Courts was established in the Judicial Council. Each citizen can, anonymously or not, report corruption in courts. In addition to that, Judicial Council organized a campaign for reporting corruption in the judiciary in which posters were printed with the phone number to which every citizen can report corruption in the judiciary. That campaign was organized through print and electronic media.

At the Supreme Court of Montenegro for many years, there exists the Office for Citizen Complaints, where every citizen can also report any omission in the work of judges.

Each report is examined in accordance with the procedure stipulated by the Law on the Judicial Council and the Rules of Procedure of the Judicial Council.

From the day of formation of the Office for Reporting Corruption – 21 May 2009, only one report of corruption in the courts was filed, verification of allegations it contains is in progress.

4. Preventive measures

Practical experiences in implementing measures aimed at prevention of corruption are given in response to question No. 44, Chapter 23 - Judiciary and Fundamental Rights.

Prosecution Office:

According to Article 103 of the Law on Public Prosecution Office (Official Gazette of the Republic of Montenegro 69/03, Official Gazette of Montenegro 40/08), Supreme Public Prosecutor of Montenegro submits to the Parliament of Montenegro an annual report on the work of Prosecution Office, which contains a description and analysis of the situation within the Public Prosecution Office, detailed data for each Prosecution Office related to the number of received and resolved cases during the reporting year, as well as problems and shortcomings of their work. Annual report also contains data on the work of the Prosecutorial Council and an overview of measures for the improvement of Public Prosecution Office and Prosecutorial Council's work. The report is published on the web page of the Prosecution Office www.tuzilastvocg.co.me

According to Article 100 of the Law on Public Prosecution Office, Supreme Public Prosecutor of Montenegro, upon a request of the Ministry of Justice, submits data and information that s/he requires in order to monitor the organization and work of the Public Prosecution Office, act upon applications and complaints of citizens, as well as general data about the prosecution of offenders and other offences punishable by law.

The Special Prosecutor for suppressing organized crime, corruption, terrorism and war crimes, starting from 01 September 2008, when jurisdiction expanded to crimes of corruption, until 30 June 2009, received 36 charges against 75 persons. After checking the charges in the pre-trial proceedings, 2 charges against 4 persons were dismissed, due to lack of well-founded suspicion that a criminal offence of corruption or other criminal offence which is prosecuted ex officio was committed, 27 requests were submitted for investigation against 59 persons, whereas pre-trial proceedings are in progress on one charges against 3 persons. After the completed investigation, 15 indictments were brought against 36 persons, whereas investigative procedure is in progress in 10 cases against 21 persons, whereas 2 cases involving 2 persons were delegated to the Basic Public Prosecution Office's competence. Prosecution cases were resolved in 8 cases against 9 persons, by means of a judgment of conviction (imprisonment), whereas criminal procedures are in progress in 7 prosecution cases against 27 persons. The Special Prosecutor took over work on 6 indictments of other Prosecution Offices, against 9 persons, of which 5 prosecution cases against 8 persons were resolved.

Special Prosecutor lodged 2 appeals against 3 persons. Out of them, procedure is completed under one appeal against 2 persons, in which the Prosecutor's appeal was rejected, whereas the procedure is pending upon one appeal against one person.

Cooperation between the Public Prosecution Office at international level in the fight against corruption and organized crime is carried out in compliance with the European Convention on Mutual Legal Assistance in Criminal Matters with additional protocols.

Conditions and procedure of providing international legal assistance in criminal matters are laid down by the Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 04/08).

Supreme Public Prosecutor's Office of Montenegro concluded several bilateral agreements on cooperation with Public Prosecution Offices of other countries, as follows:

- Russian Federation's Prosecutor General's Office;
- Ukraine's Prosecutor General's Office;
- Public Prosecution Office of Bosnia and Herzegovina;
- Public Prosecution Office of the Republic of Croatia;
- Public Prosecution Office of the Republic of Macedonia;
- Public Prosecution Office of the Republic of Serbia;
- Prosecution Office for War Crimes of the Republic of Serbia;
- Office for Suppressing Corruption and Organized Crime of the Republic of Croatia;
- Agreement on cooperation with the EULEX Mission and Prosecution Office in Kosovo which has jurisdiction.

By means of the memorandum of March 2005, concluded in Skopje, cooperation was established and a network of prosecutors of: Albania, Bosnia and Herzegovina, Croatia, Serbia, Macedonia and Montenegro was formed.

Under the Decision of the Vice-Prime Minister of the Government of Montenegro for European Integration No. 10-8045 of 10 October 2007, a Tripartite Commission was established for the analysis of organized crime and corruption cases, as well as reporting and development of a single methodology of statistical indicators in the field of organized crime and corruption. It consists of representatives of judiciary, Prosecution Office and the police force. Its task is to make a statistical processing of data necessary for assessing the scope and prevalence of corruptive criminal offences and criminal offences in the field of organized crime, taking into account the various

criteria that the police, prosecution office and courts take as a basis for surveillance and proceeding, to analyze and draw up periodic reports on the proceeding under criminal charges for organized crime and corruption, as well as to monitor joint activities in this area and make recommendations for the improvement of inter-institutional cooperation. It is done under the established single methodology.

Data collected and processed by the Tripartite Commission are public, except for the data that are state, military, official or business secret and they can be found at the web site of the Administration for Anti-Corruption Initiative.

The annual report on the work of the Police Directorate, which contains statistical data on all cases of corruption is the subject of discussion in the Parliament of Montenegro, during the Committee for Security and the Government's sittings (to which the Police Director submits an activity report) and the Ministry of Interior, which supervises the police force work in accordance with the Constitution and law. Annual report on the work of the Police Directorate, which contains statistical data on all cases of corruption, is public, with the exception of data which are state, military, official or business secret and it is found at the website of the Police Directorate.

Police cooperation at the international level takes place mostly through NCB Interpol. During the implementation of specific criminal processing, direct cooperation is established through liaison officers or personally with the entities in charge of investigation. Cooperation is mainly based on signed bilateral agreements on the suppression of organized crime. Also, cooperation is intensive with neighboring countries through cross-border co-operation. Cooperation with foreign police forces goes mainly through the Division for International Cooperation within the Police Directorate, which is in charge of coordinating the work with other police forces.

37. Training:

a) How and by whom is relevant staff (anti-corruption prosecutors etc.) trained?

Training of prosecutors and judges working on cases of corruption is conducted at the Judicial Training Centre. Training at the Judicial Training Centre is conducted through seminars, workshops, round tables, conferences and organization of study visits.

In the period 2004 – 2008, the Centre organized different types of trainings in the field of corruption, organized crime, application of European law. In addition, judges and prosecutors were also sent through the Centre to international conferences that dealt with this topic.

Training of prosecutors and judges working on cases of corruption is carried out through various forms of training organized by international organizations (OSCE, UNDP, CEDEM).

Police Directorate, in cooperation with the Police Academy, conducts education and training activities for police staff. The topic of corruption and suppression of economic crime has entered into the regular teaching curriculum at the Academy for all police staff, through a number of teaching units. In cooperation with OSCE, ICITAP, IOM, UNDP specialized seminars are organized for criminal police officers working in the corruption combating affairs.

In the period 2007-2009, officers of the Section for Combating Organized Crime participated in a number of trainings on corruption in the country and abroad with the assistance of international organizations, as follows: OCTN, ICITAP, ICMPD, OLAF, ILEA, Interpol and the Police Academy, in accordance with the training plan for all officers of border and criminal police.

b) Which typical “accompanying offences” (fraud, tax offences and money laundering) are covered by the training?

In February 2005, the Centre has organized the participation of judges at a seminar in Belgrade, which was organized by the Judicial Centre of Serbia in cooperation with the Academy of European Law from Tirana, on the topic of money laundering. In December 2005, in cooperation with OSCE, a seminar was organized on cyber crime and money laundering, investigative techniques and processing of cases.

In December 2007, organized by the Centre, judges and prosecutors from Montenegro participated in the international conference on anti-corruption measures and the role of the judiciary, which was held in Zagreb.

In December 2007, organized by the Centre, Montenegrin judges participated in the seminar which was organized by the Hungarian Regional Centre for Competition and Hungarian Judicial Academy in Budapest, on the topic "Fundamentals of European Competition Law”.

In April 2007, a conference was held in Podgorica on "Implementation of Civil Law ***Convention*** on ***Corruption*** of the ***Council*** of ***Europe***."

In October 2008, within the "twinning" program, a seminar was held on the secret surveillance measures, which was attended by judges and prosecutors from Montenegro, and a seminar on organized crime and corruption.

In November 2008, judges were sent through the Centre to a meeting entitled "Integrity of Judges and Suppressing Corruption in the Judiciary", which was organized by the ABA/CEELI Institute from Prague as a five-day course. Seminar attendees were awarded certificates.

In December 2008, Mr. Drago Kos, chairman of GRECO within the Council of Europe, with the support of the United Nations Development Program (UNDP) - Office in Podgorica developed a "Training Program of Montenegrin Judicial Office Holders in Fight against Corruption". The program should serve as a tool for training judges and prosecutors on recognition of corruption and efficient fight against it. This program is an integral part of the 2009 Annual Training Program of the Center.

In May 2009, in cooperation with the U.S. Embassy in Podgorica and the OSCE Mission to Montenegro, the Centre organized a seminar on the topic of "Measures of Secret Surveillance and Seizure of Property Acquired through a Criminal Offence."

In June 2009, in the organization of the Centre, two prosecutors participated in the international conference on the topic "New Technical Methods of Surveillance and Protection of Fundamental Rights - Challenges for the European Judiciary".

Judges of specialized divisions were attendees of "Summer School" organized by the Regional Anti-Corruption Initiative (RAI), which was held in the Republic of Macedonia, and dedicated to "International Standards and Cooperation in Fight against Corruption."

Judges of specialized divisions attended the seminar on "Seizure of Property Acquired through Crime" which was held in Luxembourg in the period 23-24 April 2009, organized by the European Institute of Public Administration (EIPA).

Trainings of Police Directorate officers for criminal offences of money laundering, fraud and tax crimes 2007-2008-2009

- An officer of the Section for Suppressing Money Laundering participated in the work of the 27th Plenary of the MONEYVAL Committee held in Strasbourg-France in the period 06-11 July 2008.
- On 24-25 September 2007, Regional Conference was held in Budva, organized by OSCE, on the topic "Fight against Money Laundering and Prevention of Terrorism Financing". The

seminar was attended by the Head of Section and Head of the Group for Organized Economic Crime Suppression.

- In the period from 22-26 October 2007, a study visit was organized to the investigating Finnish and Swedish police units for combating money laundering, organized by the EU Mission for Fight against Money Laundering "CAFAO".
- At the level of vocational training and professional development, two employees of the Section for Combating Organized Crime and Corruption attended a two-day seminar organized by the Administration for Prevention of Money Laundering and Financing Terrorism and UNDP, on the topic of "Legal Regulations Envisaged in the New Law on Prevention of Money Laundering and Financing of Terrorism".
- On 13 and 14 October 2008, four officers of the Section participated in the conference, "Suppression of Money Laundering" organized by OSCE.
- In the period 24-26 November 2008, regional workshop on the topic: "Preventing Money Laundering and Terrorism Financing in the Financial Sector", attended by two officers of the Group for Organized Economic Crime Suppression.
- Kolasin, 21-23 January 2009 - Seminar: "Money Laundering and Terrorism Financing".
- Podgorica. 23 and 24 April 2009, a seminar at the Human Resources Administration on "Planning and Enforcement of the State Budget".
- Danilovgrad, 21 and 22 April 2009, participation in the seminar organized by the Ministry of Economic Development in cooperation with the Swedish Bureau of Investigation on "Investigations and Processing Misdemeanours in the Field of Export Control of Dual – use Goods".
- Budva, 28-30 May 2009, a seminar organized by the IOM - lectures on "Fight against Transboundary Organized Crime" aspect 1. Smuggling of goods; 2. Financial investigations, 3. Money laundering.
- Podgorica, 25-26 May 2009, seminar on "System of Public Finances and State Budget".
- Budva, 20-22 May 2009, seminar for training instructors on "Fight against Corruption and Transboundary Organized Crime.

38. What is done to strengthen the rule of law enforcement bodies in the fight against corruption in general but also to fight corruption internally.

An important segment of the fight against corruption refers to prosecution and punishment of perpetrators of these crimes. To that end, reforms that are aimed at strengthening human resources of courts, the Public Prosecution Office and police, improving material conditions of employees, working conditions, adequate equipping and establishment of linked databases constitute a prerequisite for the success of the fight in question. In parallel, reforms are implemented at the legislative level in terms of reforms of criminal legislation which allow a more efficient system for the detection and prosecution of these crimes. All of the above is accompanied by a more active role of other state bodies responsible for detection of related criminal offences such as money laundering (Administration for Prevention of Money Laundering and Financing Terrorism) and the introduction of efficient internal control (Customs Administration, Tax Administration).

Police Directorate was established after the adoption of the Law on Police (Official Gazette of the Republic of Montenegro 28/05) of 28 April 2005, which envisaged a complete reorganization of the police force, which is now a separate body within the state administration. Ministry of Interior and Public Administration supervises the work of the Police Directorate.

By means of the Rulebook on Internal Organisation and Job Descriptions of the Police Directorate (adopted in December 2006), a section was formed within the Criminal Police Department for fighting organized crime and corruption, instead of the former Division for Suppression and Prevention of Organized Crime. This focuses competence for these criminal offences, having regard to the connection between the acts of corruption and organized crime and the need to suppress them. In the Section, there is a working line - a group formed to fight corruption, whose

main task is to have a preventive and repressive influence against all the manifestations of corruptive criminal offences, with other operating structures of the Police Directorate and other competent state bodies, institutions and civil society. In reorganizing the Section for Fight against Organized Crime and Corruption, Police Directorate achieved progress regarding the increase of the number of employees through the new job descriptions. In taking measures and actions on opposing corruptive criminal offences, the Police Directorate has achieved full inter-agency cooperation, with the following: Administration for Anti-Corruption Initiative, Agency for National Security, Customs Administration, Tax Administration, Real-Estate Administration, Administration for Prevention of Money Laundering and Financing Terrorism as well as other institutions and NGOs.

At the Police Directorate, a Division for Special Checks was formed, thereby creating the conditions for application of secret surveillance measures. Technical assistance was provided and trainings conducted focused on secret surveillance measures that were organized for those officers who are involved in the application of these measures.

Police Directorate budget in 2009 amounted to EUR 82,580,768.50; in 2008 to EUR 84,297,512.59, in 2007 to EUR 50,344,415.94 and in 2006 to EUR 49,841,375.54. Increase in budgetary support compared to the previous years is noticeable.

By means of the project "National Intelligence System" which was initiated in 2007 and which is implemented by the Police Directorate, automatic data exchange at the national level through a single database will be ensured in cooperation with the Customs Administration.

Police Directorate officers participated in seminars and trainings organized by national and international institutions (Human Resources Administration, OCTN, ICITAP, OSCE, TAIEX, ICMPD, OLAF, ILEA and others), which have dealt with the problems of suppressing corruption and financial crime, financial investigations and confiscation of property acquired through crimes, suppressing economic crime and corruption, money laundering and financial investigations, fight against corruption in public administration, provision of international criminal assistance in cases of seizure of material benefit acquired through a criminal offence, prosecution of corruption, integrity plan, system of public finances and state budget, reporting and conducting investigations on corruption in the police, on the application of Professional Instruction for Reporting Cases with Elements of Corruption to the Police Directorate, the role of prosecutors in co-operation with the police in pre-trial proceedings, for the purpose of resolving all crimes.

Through the program of education, professional training and specialized professional development for civil servants and state employees of the Police Directorate which is laid down by the Police Academy in Danilovgrad and on the basis of the stated needs of Police Directorate organizational units, the following seminars and courses dealing with organized crime and corruption are scheduled to be held during 2009:

- police cooperation in the region in suppressing organized crime,
- suppression and detection of computer crime,
- corruption-detection of criminal offences with elements of corruption,
- money laundering and financial investigations,
- fight against illegal migrations,
- fight against smuggling and trafficking in persons,
- the role of internal control in suppressing corruption in the police,
- application of the Code of Ethics for Police Officers,
- implementation of Instructions for Reporting Corruption to the Police.

Pursuant to obligations from the Revised Action Plan for implementation of the Programme for Fight against Corruption and Organized Crime, five seminars were organized during 2009 at the Police Academy, on the topic "Ethics, Code and Anti-corruption Measures and Instructions for Reporting Corruption," in which 80 employees were trained for trainers.

Public Prosecution Office carries out prosecution affairs against offenders. For corruption suppression affairs, a division was established in the Supreme Public Prosecutor's Office for organized crime, corruption, terrorism and war crimes, which is headed by a Special Prosecutor. Its legal and institutional status and composition are regulated by the Constitution of Montenegro (Art. 134-138), the Law on Public Prosecutor (Official Gazette of the Republic of Montenegro 69/03, Official Gazette of Montenegro 40/08), in chapter VI (Articles 66-82). In the Division, in addition to the Special Prosecutor, there are five deputies and four state employees. Specialization of prosecutorial office holders was conducted within the Division. In other words, prosecutorial office holders with the longest work experience in the Prosecution Office, who had previously passed the necessary professional trainings and professional development, are in charge of suppressing this type of crime. Permanent education is conducted, organized by the Judicial Training Centre, with a view of professional development of judicial office holders who work in the Division on corruption suppression affairs.

Special Prosecutor and his/her deputies are competent for proceeding before specialized divisions of the High Courts. In 2009, the Division for Suppressing Organized Crime, Corruption, Terrorism and War Crimes was fully equipped, in terms of adequate working premises, as well as necessary equipment and appliances. For these purposes, EUR 60,000.00 was spent from the budget of Montenegro. In compliance with Article 81 of the Law on Public Prosecution Office (Official Gazette of the Republic of Montenegro 69/03, Official Gazette of Montenegro 40/08), monthly incomes of Public Prosecutors and Deputies in the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes have been increased by a special allowance of 50% of the basic monthly salary. Given the current number of cases with elements of corruption, having applied the Rulebook on Internal Organisation and Job Descriptions, the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes was fully strengthened from the human resources point of view and it is ready, both professionally, and under the number of employees, to fully realize its function in accordance with law.

Strengthening the prosecutorial organization is ensured through an increase in budgetary support, in order to get ready for the application of the new Criminal Procedure Code and Law on the Public Prosecution Office, pursuant to recognized needs for increasing the number of prosecutors. The budget for 2009 envisaged the increase in the number of prosecutors, civil servants and state employees by 50% and the budget approved amounting to EUR 4,982,150.536 for the following sub-programs: "Administration" EUR 1,406,452.47, "Prosecution Offices" EUR 3,500,262.79, "Prosecutorial Council" EUR 75,435.27. The Budget of the Prosecution Office in 2008 amounted to EUR 4,998,279.00, in 2007 to EUR 2,715,562.03, and in 2006 to EUR 1,762,362.20. The given data clearly indicate that the budgetary support to the prosecutorial organization was increased year by year. Human resources capacities of the Supreme Public Prosecutor's Office of Montenegro were strengthened by appointing another Deputy.

Pursuant to the Law on Amendments to the Law on Salaries of Civil Servants and State Employees, acting Supreme Public Prosecutor of Montenegro in January 2008 adopted interim decisions which specified a fixed part of salary (40% increase, including compensations for working Saturdays) and the position of civil servants and state employees, depending on the complexity, importance, requirements and responsibilities at work. In November 2006 the Prosecutorial Council adopted a Code of Ethics for Public Prosecutors and Deputy Public Prosecutors. Code of Ethics for Prosecutors, established the principles and rules of conduct of Public Prosecutors and Deputy Public Prosecutors, which they are required to adhere to with the aim of preserving and further developing the dignity and reputation of the Public Prosecution Office as an autonomous and independent body. The Council for the realization of the Judicial Information System project was established in 2009, and a task force which includes the Deputy Basic Public Prosecutor in Podgorica. In addition to strengthening the human resources capacities within the Public Prosecution Office, all necessary measures were taken to ensure the necessary equipment and work premises, so that all prosecutorial office holders in the Division have adequate working premises (offices) and the necessary equipment. The required number of civil servants and state employees, necessary for the prompt functioning of the prosecutorial administration was also ensured.

Various mechanisms were established for the cooperation of police force, Public Prosecutors and courts. By means of the Decision of Vice Prime Minister of Montenegro for European Integration No. 10-8045 of 10 October 2007, a Tripartite Commission was established for analysis of cases in the field of organized crime and corruption, as well as for reporting and development of a uniform methodology of statistical indicators in the field of organized crime and corruption. Members of this Commission are representatives of police, Public Prosecution Office and courts. Joint trainings were organized for inspectors, prosecutors and customs officers in order to create a single framework for communication and cooperation of law enforcement bodies. Agreement on cooperation between the Police Directorate and Customs Administration, which entered into force in October 2008, allows a faster cooperation, including specific conditions for use of databases and information exchange.

Supreme Public Prosecutor of Montenegro signed a series of bilateral agreements related to mutual cooperation and data exchange in the field of organized crime, fight against corruption, terrorism and trans-border crime. Out of them, the following agreements can be singled out: Russian Federation’s Prosecutor General's Office, Ukraine's Prosecutor General's Office, State Prosecution Office of Bosnia and Herzegovina, the Croatian State Prosecution Office, Public Prosecution Office of the Republic of Macedonia, the Serbian Public Prosecution Office, Prosecution Office for War Crimes of the Republic of Serbia, Office for the Suppression of Corruption and Organized Crime of the Republic of Croatia, and the Agreement on cooperation with EULEX mission and the competent Prosecution Office of Kosovo.

Representatives of the Supreme Public Prosecution Office attended numerous trainings and seminars on the topic of fight against organized crime and corruption, application of secret surveillance measures, financial investigations, international legal assistance in criminal matters, impact of corruption on society, strengthening ethics in the judicial system, plea bargaining, conflict of interest in exercising public offices, typologies in money laundering and financing terrorism, new technical meanings of constant supervision and protection of fundamental rights - challenges for the European judiciary, implementation of the Second Additional Protocol to the European Convention on International Legal Assistance in Criminal Matters, tax and VAT frauds, corruption and organized crime in town planning, inter-agency cooperation in suppressing money laundering and financing terrorism, protection of personal data, new regulations in the draft Criminal Procedure Code and the European Convention on Human Rights, secret surveillance measures, Public Prosecutors assuming investigation, implementation of the Professional Instructions on Procedures for Reporting Criminal Offences with Elements of Corruption and Protection of Persons who Report These Crimes to the Police Directorate, successful prosecution of corruption, strengthening cooperation between police force, prosecutors and judges in the fight against transnational and organized crime, training of Public Prosecutors, accountants and auditors on reporting criminal offences with elements of corruption, inter-institutional cooperation and data exchange, suppressing money laundering in the financial sector, anticorruption policy in Montenegro, criminalization and implementation of laws, fight against corruption in the public procurement process, witness protection, cooperation in the fight against terrorism and organized crime, etc.

When the Law on Amendments to the Law on Courts was adopted, in March 2008 (Official Gazette of Montenegro 22/08), the High Court became competent for trial in cases of criminal offences of organized crime, corruption, terrorism and war crimes. Within the two High Courts in Podgorica and Bijelo Polje, specialized divisions (Article 99) were established for work on these cases, which have been active as of 01 September 2008. Specialized Division for trying criminal offences of organized crime, corruption, terrorism and war crimes within the High Court in Podgorica has five judges and three investigating judges, while the Division of the High Court in Bijelo Polje has three judges. The judges who are reassigned in those Divisions are entitled to the amount of monthly salaries equal to monthly salaries of Supreme Court judges and the right to special allowance for difficult working conditions and specific character of affairs they perform (Art. 21 of the Law on Amendments to the Law on Courts). Divisions are equipped with the necessary equipment for successful operations; special facilities for protected witnesses were provided. According to security assessments, Police Directorate issues a decision on the provision of personal protection to judges who work in these Divisions beyond the court, pursuant to the Decision on Determining

Persons and Facilities whose Protection is Provided by Police Directorate (Official Gazette of the Republic of Montenegro 69/06).

New Rulebooks on internal organisation and job descriptions were also adopted and they provide employment of appropriate human resources in accordance with newly-established needs. Some judges are assigned to other courts in order to improve quality and efficiency and intensify work on the cases of organized crime and corruption and on old cases.

The Law on Salaries and other Income of Judicial and Constitutional-court Office Holders (Official Gazette of Montenegro 36/07, 53/07), which is being implemented as of 1 September 2007, improved the financial position of judicial office holders. In applying the Law, in March 2008 the Government of Montenegro increased the coefficient value by 40% compared to the previous value, with retroactive application as of 1 January 2008.

The budget of the judiciary in 2009 amounted to EUR 20,468,877.00, in 2008 to EUR 19,779,371.38, in 2007 to EUR 12,708,649.42, and in 2006 to EUR 8,426,193.39. It is clear from these data that the budgetary support for judicial branch of power was increased, year by year.

The Council for the establishment of information system of judiciary was established at the end of 2008, thus contributing to a more efficient work of the courts.

The Judicial Training Centre, a separate organizational unit of the Supreme Court of Montenegro, was established in 2006 on the basis of the Law on Education within the Judicial Authorities (Official Gazette of the Republic of Montenegro 27/06). In compliance with the Annual Programme of professional development of judges and prosecutors, the Centre organized numerous trainings for judges and prosecutors on the topics of: organized crime and corruption, seizure of material benefit, regulations in the new Criminal Procedure Code, moral principles of judicial and prosecutorial office, financial investigations, measures of secret surveillance and seizure of property acquired through criminal offences, criminal liability of legal persons, cooperating witnesses and protected witnesses, international documents on corruption, plea bargain, budgetary operations and public procurements, pre-trial proceedings in relation to criminal offences with elements of corruption, investigations in relation to criminal offences with elements of corruption, etc.

Administration for Prevention of Money Laundering and Financing Terrorism was formed by a Decree of the Government of Montenegro of 15 December 2003 (Official Gazette of the Republic of Montenegro 67/03) pursuant to the Law on Prevention of Money Laundering (Official Gazette of the Republic of Montenegro 55/03). The new Law on Prevention of Money Laundering and Financing of Terrorism (Official Gazette of Montenegro 14/07) entered into force on 29 December 2007.

Pursuant to the Law on Prevention of Money Laundering and Financing of Terrorism and international standards, the Administration is organized as an administrative type financial intelligence unit. The Administration is an independent body; the Ministry of Finance exercise administrative supervision over its work.

By adopting the new Law, the group of entities subject to the obligation to report suspicious transactions to the Administration was expanded. Amendments to the Law included over 10 000 organizations and the Administration for Prevention of Money Laundering and Financing Terrorism is competent for supervision and implementation of random inspections so as to ensure that all entities subject to the obligation to implement the law meet the obligations established by law. In this regard, the new Rulebook on Internal Organisation and Job Descriptions was adopted. Within the Department of Control, International and Internal Cooperation, the new Rulebook introduced the Section for Control of the Entities Subject to the Obligation to Implement the Law as an organizational unit whose inspectors perform continuous inspection controls of entities subject to the obligation to implement the law.

The budget of the Administration for Prevention of Money Laundering and Financing Terrorism in 2009 amounted to EUR 534 036.21, in 2008 to EUR 491 440.22, in 2007 to EUR 393 598.46, and in 2006 to EUR 331 363.31. A tendency of increase in budgetary support is noticeable.

In order to ensure quality inter-agency cooperation and better data exchange, Administration for Prevention of Money Laundering and Financing Terrorism signed cooperation agreements with the following institutions: Ukrainian State Committee for Financial Supervision, EULEX Mission in Pristina, U.S. FinCEN, National Office for Prevention and Control of Money Laundering - FIU Romania, FIU of the Russian Federation, FIU of Poland and the Financial Intelligence Service of Portugal. In addition to that, an Agreement on Cooperation between the Central Bank of Montenegro and Administration for Prevention of Money Laundering and Financing Terrorism was concluded. Representatives of Administration for Prevention of Money Laundering and Financing Terrorism of Montenegro, FIU Albania, FIU Croatia, FIU Slovenia, FIU Serbia and Investigation and Protection Agency – Bosnia and Herzegovina signed a Regional Protocol on combating money laundering and terrorism financing.

In accordance with the domestic and international training programs, with a view to strengthening internal capacities, officers of Administration for Prevention of Money Laundering and Financing Terrorism have attended seminars on the following topics: fight against terrorism and terrorism financing, strengthening cooperation in suppressing money laundering and financing terrorism, inter-agency cooperation in the prevention of money laundering and terrorism financing, typologies of money laundering, conflict of interest, international investigations on weapons of mass destruction, use of securities in money laundering schemes, money laundering and counterfeiting of products and goods/commercial frauds, information exchange between the Financial Intelligence Services from South-Eastern Europe.

With reference to the issue of conduct and work performance of employees, the Customs Administration is competent to establish and apply standards that are consistent with European Commission standards in the field of customs ethics. Application of these standards impacts the reduction of the risk of corruption at border crossings, which was one of the goals of TTFSE (Trade and Transport Facilitation in South East Europe) World Bank Project.

Division for Internal Control was established in September 2003 and it performs affairs in compliance with laws and other regulations and internal acts. Division for Internal Control plays an important role in the development and implementation of Program of Fight against Corruption of the Customs Administration of Montenegro: preventive – the Division coordinated activities of development and implementation of self-assessment of integrity and the development of the Action Plan and repressive – the Division investigates cases of abuse of authorities by employees in the Customs Administration. In implementing this dual function, the Division is placed under the direct control of the Director of Customs Administration.

Since the formation of the Division for Internal Control, it has become increasingly more active and it assumes increasing responsibility for conducting investigations of cases of abuse of authority, poor performance, and particularly of violations of the Law on Civil Servants and State Employees of Montenegro.

Rulebook on the work of the Division for Internal Control greatly aided prevention and control of corruption in the customs, through various mechanisms of supervision and control, such as internal verification program, internal and external audit and investigation and prosecution regimes. These mechanisms provide a balance between preventive strategies that will encourage a high level of integrity and repressive strategies that are designed to identify the occurrence of corruption and for disciplinary or criminal prosecution.

Division for Internal Control is in charge of managing, organizing and synchronizing activities of organizational units in the implementation of the Action Plan for the development of integrity in Customs Service of Montenegro, adopted in 2004. Programme of integrity implies the identification of structures and procedures that are exposed to risk of abuse of authorities and establishment of procedures and standards which enhance the integrity of the customs service and also reduce the risk of corruption. Pursuant to the obligation established in the Revised Action Plan for implementing the Programme of Fight against Corruption and Organized Crime, adopted at the Government of Montenegro's sitting of 29 May 2008, this Administration in November 2008, with the expert assistance of the EU TACTA Mission (Technical Assistance to Customs and Tax Administrations) to Montenegro, adopted the Revised Action Plan on the development of integrity in Customs Service of Montenegro.

Namely, assessment of results of the strategy of integrity was conducted and areas that still require focus were defined, in accordance with the ten factors of the Revised Arusha Declaration from 2003, as follows: to take measures in terms of more efficient communication between customs outposts and regional customs units, regional customs units and Department, as well as proposing the adoption or amendments to operating instructions, timely organization of training on the implementation of new regulations; further development of information system, training of employees and managers to use information systems, increasing software and hardware security, more efficient communication of customs officers and CIS employees regarding technical issues, further development of efficiency and effectiveness of the risk analysis system, study on the jobs that are most exposed to corruption, development, adoption and implementation of a rotation plan of working tasks in compliance with the conducted study, and more.

One of the measures taken by the Customs Administration in order to combat corruption is rotation of customs officers. Rotation of employees within the regional units – customs offices is under the competence of the administrator of customs offices, and within the Administration and between the customs offices, under the competence of the Director. Records of the rotation in the service are kept by the Customs Administration. In agreement with Article 79 of the Law on Civil Servants and State Employees, an employee can be transferred to the appropriate position that fits his/her qualifications, without his/her consent or upon his/her request, in case the needs of a state body so require.

At the end of 2008, Customs Administration adopted a Code of Conduct for Customs Officers and Employees with the professional assistance of EU TACTA mission to Montenegro, with the aim of raising awareness of customs officers on the obligation to adhere to ethical values, which is an important measure for strengthening the integrity and reputation of the Customs Service of Montenegro. The Code contains practical and unambiguous rules of conduct expected from a customs officer, which is a key element of each program of integrity.

Customs Information System (CIS) started to operate in January 2003, and in 2005 it was upgraded with a new project "Automatic Counters". The project has enabled real time updating of records of customs declarations in the CIS. This approach has contributed to a better control and data analysis owing to the fact that the state of the system corresponds to the real time situation. Electronic data exchange (ERP) was implemented and its operations officially began in May 2006. The project "System for Risk Analysis" was implemented in March 2007. Software for risk analysis is integrated into the CIS, and as such it is a single information system of the customs service.

Cooperation of the Customs Administration and the Supreme Public Prosecutor is exercised under the Instructions on Mandatory Proceedings of the Customs Service involving the Supreme Public Prosecutor in case of Committed Criminal Offence, adopted at the joint meeting in December 2006. Cooperation with the Police Directorate was defined by the Agreement on Mutual Cooperation signed in October 2008.

Employees of the Customs Administration attended anti-corruption trainings on: fighting corruption in public administration, integrity plan, Law on Free Access to Information, suspicious transactions, corruption in public administration, mechanisms for a successful prosecution of corruption, suppressing money laundering and financing of terrorism, fight against counterfeiting of banknotes, and others.

Tax Administration based its strategy for fighting corruption on the following principles: enhancement of work of Tax Administration that will contribute to eliminating conditions for the occurrence of corruption, identifying opportunities for the occurrence of corruption within authorities, establishment of the system of organization of affairs and tasks that will reduce to a minimum the possibility of occurrence of corruption, establishing a system of internal control of work of officers and organizational units, cooperation, information exchange and joint action with other state bodies, cooperation with associations of tax payers in order to introduce tax discipline and improve the work of tax authorities and establish an efficient control system at all levels and in all organizational units.

Apart from the competences of officers re-assigned to jobs with supervisory-control authorities, laid down by the Rulebook on Internal Organisation and Job Descriptions, a Rulebook was adopted on the work of internal control in November 2006.

Internal control also includes the control of inspection control procedures and their audit, conducted by tax inspectors - quality controllers or persons with significant technical skills and long experience in this field. Internal control also includes the control of implementation of penal policy, submission of requests for initiation of misdemeanour procedures, imposition of penalties and enforcement of collection procedures of imposed fines.

In the 2006-2009 period, general and specialized trainings and external trainings with different thematic areas were conducted in Montenegro for the employees of the Tax Administration, out of which those on the topic of corruption can be singled out: seizure of property acquired through crimes, anti-corruption efforts with an emphasis on prevention, prevention of corruption, integrity plan, fight against corruption in public administration, suppression of money laundering and financing terrorism, fight against VAT frauds, tax collection, tax control, prevention of business barriers, seizure of property acquired through criminal offences.

39. Public offices: is equal access guaranteed to all citizens? Do regulations exist which are objective and founded on merit-based criteria (in terms of adequate salaries, social rights, rotation in sensitive posts, financial disclosure obligations during office)?

Article 62 of the Constitution of Montenegro (Official Gazette of Montenegro 01/07) guarantees that everyone has the right to work, free choice of profession and employment, just and humane conditions of work and protection during unemployment. Article 5 of the Labour Law (Official Gazette of Montenegro 49/08) prohibits direct and indirect discrimination against persons seeking employment, and against employees, with respect to sex, birth, language, race, religion, skin colour, age, pregnancy, health or disability, national affiliation, marital status, family responsibilities, sexual orientation, political or other belief, social origin, financial standing, membership in political and trade union organizations or other personal capacity. Articles 5 and 8 of the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08) require that the affairs of a state body be performed in a politically neutral and impartial manner, in compliance with the public interest and that on the occasion of hiring all jobs be available to all candidates under equal conditions.

Having regard to the quoted provisions of these acts, it can be concluded that they guarantee equal access for all citizens in a clear and precise manner and ensure independence and impartiality in performing affairs and exercising public offices.

The Law on State Administration (Official Gazette of the Republic of Montenegro 38/03), Chapter VI - Management and Responsibilities in Public Administration Bodies, Articles 41-46, sets out the responsibility and duties of ministers and heads of public administration bodies and defines the affairs and responsibility of secretaries of ministries, deputy ministers and deputy heads of public administration bodies.

The Law on Civil Servants and State Employees provides for who the managerial personnel are, conditions for conducting managerial person's affairs, as well as the procedure of their appointment.

Managerial personnel, within the meaning of this Law are: in the ministries, secretaries of ministries and deputy ministers; in the administration authorities, deputy heads of public administration bodies and in the services formed by the Government, deputy heads of service. Managerial personnel must have a college degree, at least five years of work experience and a passed civil service exam.

Human Resources Administration, in compliance with the Law on Civil Servants and State Employees, conducts open competitions for employment of managerial personnel. In the process of conducting an open competition, the provisions of the law setting out open competitions are applied.

The procedure of testing abilities is conducted via oral interviews, mandatorily attended by the head of a state body in which employment is entered into.

The head of body sets out a proposal for appointment from the list of candidates for appointment delivered by the Human Resources Administration to the state body.

The proposal for appointment is submitted to the Government of Montenegro. The decision on appointment and removal from office of managerial personnel is issued by the Government of Montenegro.

Managerial personnel are appointed for a period of 5 years and after that term expires, they may be re-appointed.

Terms for removal from office of the managerial personnel are:

- if they require it on their own;
- if during their office their work is assessed as "not satisfactory";
- expiration of office;
- termination of employment.

Managerial personnel who are removed from office if they require it on their own, or if during their office the report on their work is "not satisfactory", or when the office has expired, may be reassigned in the same or other state body to a job that corresponds to his/her professional qualifications and abilities.

Managerial personnel, who cannot be reassigned within one year after the removal from office, are entitled during that period to receive compensation in the amount of salary which s/he had in the last month of exercising office, with appropriate adjustment. Exceptionally, the right to compensation may be extended for another year, if during that period that person acquires the right to pension.

As for salaries, allowances and other income, they are regulated by special regulations. The Law on Salaries of Civil Servants and Employees applies to civil servants and state employees (Official Gazette of the Republic of Montenegro 27/04, Official Gazette of Montenegro 17/07 and 27/08). Law on Salaries and other Incomes of Judges and Prosecutors and Judges of the Constitutional Court (Official Gazette of the Republic of Montenegro 36/07 and 59/07) regulates the issues of salaries and other incomes of Judges and Prosecutors and Judges of the Constitutional Court, whereas the Law on Salaries and Other Income of State and Public Officials (Official Gazette of Montenegro 33/08) regulates the right to salaries, compensation of salary and other incomes of state and public officials, based on the exercise of public office.

State officials, within the meaning of the Law on Salaries and Other Income of State and Public Officials are: President of Montenegro, Speaker of the Parliament of Montenegro, Prime Minister of Montenegro, Deputy Speaker of the Parliament of Montenegro, Vice Prime Ministers, members of Parliament and ministers.

Public officials, within the meaning of this law, are considered to be: Secretary General of the Parliament of Montenegro, Deputy Secretary General of the Parliament of Montenegro, Secretary General of the President of Montenegro, Secretary General of the Government of Montenegro and the Director of the National Security Agency.

State officials, in performing their offices, have the right to:

- salaries for the performance of public offices;
- the difference between the salary or pension received and the salary s/he would receive if s/he were performing the state office professionally;
- compensation of costs;
- other compensation in connection with the exercise of office.

Public officials, in the exercise of office, have the right to:

- salaries;
- compensation of costs;
- other compensations in connection with the exercise of office.

State or public officials who exercised their office professionally are entitled to receive compensation in the amount of salary received for the last month of the exercise of office during

the period of one year after the termination of office. This period may be extended for another year, if during that period the state or public official acquires the right to pension.

State officials are entitled to old-age pension even before meeting the general conditions specified by the regulations governing pension and disability insurance:

- if s/he held the state office at least in two terms and has at least 20 years of pension insurance and at least 55 years of age for men or 50 years for women;
- if the state office was performed at least for three terms and he/she has at least 15 years of pension insurance.

The Law on Pension and Disability Insurance and the Law on Health Care are enforced for the said category of persons, in terms of exercising certain social rights.

The Law on Prevention of Conflict of Interest (Official Gazette of Montenegro 1/09) expanded the number of public officials in relation to the previous Law on Conflict of Interest (Official Gazette of the Republic of Montenegro 42/04), which has ceased to be valid with the adoption of the Law on Prevention of Conflict of Interest, on 17 January 2009. In compliance with Article 3 of the Law on the Prevention of Conflict of Interest, public officials are considered to be:

- persons elected directly in elections;
- persons elected, appointed or whose appointment is confirmed by the Parliament of Montenegro;
- persons appointed by the President of Montenegro;
- persons elected, appointed, or whose appointment is approved by the Government of Montenegro;
- President and members of the Judicial Council and Presidents of Courts and judges appointed by the Judicial Council, Presidents and members of the Prosecutorial Council, Deputy Public Prosecutor and director of the Broadcasting Agency;
- persons appointed or whose appointment is approved by the Parliament or the mayor of the Capital, Historic Royal Capital, or municipality.

Public officials are considered to be other persons elected or appointed by the bodies referred to in paragraph 1 of this Article, who decides on the rights, obligations or interests of natural or legal persons or on the public interest, with the exception of persons appointed by the President of Montenegro in accordance with special regulations related to defence and military affairs.

Article 19 of the same Law lays down the obligation of reporting on earnings and property of public officials. The said Article lays down that a public official must, within 15 days of taking office, submit a report to the Commission on his/her property and earnings, as well as on the property and earnings of his/her spouse and children if they live in the same household, on the state on the day of election or appointment.

Upon the termination of public office a public official is obliged to submit a report to the Commission within 15 days of termination of public office, as well as one year after termination of office, on the situation on the date of submission of report.

The Law on Prevention of Conflict of Interest, Article 49, paragraph 1, item 8, lays down that a fine of fifteen-fold to twenty-fold amount of the minimum wage in Montenegro will be imposed on a public official who fails to submit a report to the Commission within the required term or who fails to state accurate data in the report.

40. Is integrity, accountability and transparency of public administration assured, e.g. by means of quality management tools, auditing and monitoring of standards such as the Common Assessment Framework of EU Heads of Public Administration?

The entire system of state administration of Montenegro, on new reform basis, was established by the Law on State Administration (Official Gazette of the Republic of Montenegro 38/03). Its

harmonization with the Constitution of Montenegro (Official Gazette of Montenegro 1/07) was ensured by the Law on Amendments to the Law on State Administration (Official Gazette of Montenegro 22/08).

The basic principles of the newly-established system of state administration, which are related to the integrity of public administration bodies in Montenegro in the broadest sense, are: provision of constitutionality and legality (Article 2, paragraph 1); professionalism, autonomy, independence and impartiality (Article 2, paragraph 2); publicity and transparency, and availability of data, documents, reports and information, except in cases specified by law (Article 49); ensuring equal and efficient protection of rights and interests of natural and legal persons based on law (Article 5, paragraph 1); the duty to decide on matters within their jurisdiction in a lawful and timely manner (Article 5, paragraph 2); control of work via administrative and other supervision, judicial control and other forms of control in compliance with law (Article 6).

Simultaneously, the Law, also in the systemic dimension, prescribes relations between the state administration and citizens (provisions of Art. 51-59) by setting out instruments and procedures to ensure, on the one hand, legality, publicity, transparency and responsibility of public administration bodies and on the other hand, their service role for citizens in exercising their rights, meeting their obligations or protecting their interests, public interest included, which means all citizens. Issues of publicity and transparency are regulated in more detail in the provisions of Art. 95-98 of the Law, which lay down the duties and responsibilities of state administration bodies to introduce the public to the performance of affairs given to them under the mandate and to publish certain materials through the media, and to enable the media with the monitoring of advisory and other professional forms of processing issues within their competence. Particularly important are the provisions of Article 80 of the Law, as they are related to mandatory cooperation of state administration bodies with non-governmental sector (NGO) and they set out the required forms of that cooperation.

Management and accountability of state administration bodies (provisions of Art. 41-46) are established on the dual and cascade level, which means that heads of public administration bodies and managerial personnel in public administration bodies are accountable for their work and the work of bodies they manage to the body authorized for proposing and to the body authorized to elect or appoint, to a particular office, duty or position in the appropriate hierarchical structure. Thus, for their own work, the work of ministries, and the situation in the field, ministers are accountable to the Parliament of Montenegro (which elects them and removes them from office) and to the Prime Minister of Montenegro (who proposes them for election, or for removal from office of minister – Art. 41). Managerial personnel (secretaries of ministries and assistant ministers) are accountable for their work to ministers (who are authorized to propose appointment and removal from office) and to the Government of Montenegro (which appoints them or removes them from office - Art. 42 and 43).

Heads of other public administration bodies (administrations, secretariats, offices, directorates and agencies, but only agencies that have the status of public administration bodies) are accountable for their work, the work of the administration bodies they manage and for the situation in the field to the line minister (who is authorized to propose appointment or removal from office) and to the Government of Montenegro (authorized to appoint and remove from office - Article 44).

Also, the newly-established system of civil servant-state employee relations has a targeted and thematically defined set of norms related to the matters in question. It is so because of the importance of administrative capacities, as a precondition for the good work of public administration bodies and also with a view of securing integrity, accountability and publicity of work of public administration in general, which should change the image of citizens and restore their confidence in the work of state administration. Thereat, it should be pointed out that the 2004 Law on Civil Servants and State Employees was replaced by the new Law in 2008. The new Law on Civil Servants and State Employees ensured harmonization with the Constitution of Montenegro. Among other things, questions of conflict of interest and protection of civil servants and state employees who report suspicion of corruption and matters of disciplinary and financial accountability of civil servants and state employees have been regulated more thoroughly and accurately.

The basic principles of this law are: exercise of civil service in a politically neutral and impartial manner, in compliance with public interests (Article 5); civil servant ethics (Article 6); legality and accountability (Article 7); equal access and public advertisement of recruitment into civil service (Article 8); promotion in service or career system (Article 9); protection of rights and prohibition of preferential treatment or denial of rights of civil servants and state employees, particularly because of the political, ethnic, racial, religious affiliation, sex or other characteristics (provisions of Art. 10 and 11). The segment of civil servants accountability (disciplinary and material) procedures, institution of suspension, measures and their imposition, are specified by the provisions of Art. 57-78 of the Law. On the basis of a serious disciplinary offence, under the conditions laid down by law, a disciplinary measure of termination of employment may be imposed (Article 6, paragraph 2). Also, if a civil servant or state employee receives an annual performance assessment "not satisfactory", and if a special commission, in the verification process, confirms such an assessment and if such person cannot be reassigned to other appropriate affairs (s/he is able to perform) his/her employment will terminate - provisions of Art. 93-95. Managerial personnel are removed from office (their employment terminates) if in the course of office their work is assessed as "not satisfactory" and if they cannot be reassigned to other relevant affairs (they are able to perform) - Article 35.

Integrity and professionalism, i.e. competences of civil servants or state employees, are a precondition for exercising a full integrity of a state administration body in its mission, and it is provided through the norm which means the right of civil servants and state employees to seek a written instructions, order or warrant in cases where their oral order is not clear, or if they believe that it is contrary to a regulation. When they receive a written instructions or order of the superior officer, civil servants and state employees are obliged to perform that task, unless it constitutes a criminal offence. In that case, they are acquitted of material and disciplinary, but not of criminal accountability (Article 47).

The Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03) and special laws governing special administrative procedures have laid down: rights, obligations and authorizations as well as accountability of civil servants and state employees who ensure professional, independent and impartial attitude and position, i.e. their integrity in the conduct of administrative procedure and deciding on the rights, obligations and legal interests of parties in administrative procedures. Let us point out to the particularly important principles - free evaluation of evidence, protection of the rights of citizens and of public interest (which means all the citizens and the state, which is why the authorities are established), the obligation of providing professional assistance to a lay party, instructing on the use of legal remedies (appeals, objections and other legal remedies) and use of other mechanisms, which imply assessment of legality of acts and work of public administration bodies in administrative procedures (inspections, especially administrative inspection, second instance body or body that exercises supervisory rights, Administrative Court, the Ombudsman, the Constitutional Court of Montenegro - through a constitutional complaint and other mechanisms and instruments of supervision and auditing of public administration bodies' work).

Taking into account the impact of these important issues on restoring the trust of citizens and general public in the work of public administration bodies, in practice we endeavour to deal with them in an active and constructive manner. We have achieved significant progress in the practice of publicity and transparency of work, accessibility or freedom of access to information in the possession of state administration bodies in matters of accountability for performing civil service, as well as in administrative procedure actions and proceedings - Law on Administrative Procedure. There are certainly possibilities for further development and progress, but compared to the situation before the reform process of state administration, we can state that there is progress. This was certainly contributed to by a range of control mechanisms and audit of public administration bodies' work.

Also, we are aware of the fact that we are facing further work and progress in this segment of the process, whereat we see as a priority the integrity, accountability and transparency of state administration bodies' work in the creation of integrity, authority and thereby of professional and expert performance of office by each civil servant and state employee.

The preparation of the legal text which will appropriately standardize matters of integrity of bodies of authority in Montenegro is in progress and it will, inter alia, take into account standards and definitions of the EU Common Assessment Framework for public administration managerial personnel, so as to ensure the norm and practice of application of instruments for quality management, revising and supervision and improve and appropriately develop this segment.

41. Which measures are taken to raise awareness of corruption as a serious criminal offence (e.g. campaigns, media and training)? Who is responsible for the awareness raising?

In 2001, the Government of Montenegro established the Agency, now the Administration for Anti-Corruption Initiative, as the first state body which has, as the main goal, preventive anti-corruption activities. The Administration for Anti-Corruption Initiative is the central state body responsible for raising public awareness on harmful effects of corruption and mechanisms for the fight against corruption, while other state bodies, such as: Human Resources Administration, Commission for Prevention of Conflict of Interest, Police Directorate, Customs Administration, Tax Administration, Public Procurement Directorate and Police Academy, also perform activities related to raising awareness on the issues within their competences. Finally, non-governmental organisations, especially MANS (Network for Affirmation of Non-Governmental Sector), CEMI (Centre for Monitoring), CGO (Centre for Civic Education), CRNVO (Centre for Development of Non-Governmental Organisations) actively monitor anti-corruption policy and implement promotional activities. In this manner, a multidisciplinary approach to work is being developed and fostered.

The Government of Montenegro, at its session held on 2 April 2009, adopted the Programme for intensive promotion of the results achieved in the implementation of measures set in the Innovated Action Plan for implementation of the Programme for the fight against corruption and organised crime, which binds bodies, institutions and other entities involved in the implementation of the Action Plan to systematically and continuously inform the public on the efforts made in the fight against corruption and organised crime in Montenegro. The Programme is implemented with the aim of raising public awareness on this issue, and strengthening the trust of citizens in the competent institutions. A special emphasis in the implementation of this Programme is put on inter-institutional cooperation, especially in terms of communicating individual and joint activities to the public (general, professional, civil society and media), on which the success of its implementation will largely depend, as well as the overall transparency of the process of implementation of anti-corruption policy in Montenegro.

In the address to the general public and specific target groups, different communication channels are used in campaigns, communicating information through media, and in trainings. Furthermore, all bodies and NGOs in charge of raising public awareness on corruption issues regularly update their web pages, and by doing so make all relevant information available to citizens.

I Campaigns for raising public awareness on corruption

a) Administration for Anti-Corruption Initiative

The Administration for Anti-Corruption Initiative conducts public campaigns with the aim of actively engaging citizens in the fight against corruption and to raise public awareness on this issue. The campaigns are conducted in the manner that includes production and distribution of information material, placement of billboards, advertising in daily newspapers, arranging guest appearances on radio and TV shows, etc.

i. Global anti-corruption campaign

From 2006, the Administration for Anti-Corruption Initiative has participated in the global anti-corruption campaign which marks the International Anti-Corruption Day (9 December) through more intensive public campaigns in early December, and a round table in which members of the National Commission and representatives of the international community participate.

After joining the UNODC's global anti-corruption campaign *Your NO Counts* in 2008, the Administration for Anti-Corruption Initiative printed and distributed brochures, calendars and posters, which were the part of the campaign *Your NO Counts* in the Montenegrin language, as well as broadcasted UNODC's TV spot with the subtitles in Montenegrin.

ii. Campaign for encouraging persons who report corruption, i.e. whistleblowers

On 24 October 2008, the Director of the Police Directorate issued the *Professional instruction on procedures for reporting criminal offences with elements of corruption and protection of persons who report these offences to the Police Directorate*. The guideline establishes procedures for reporting corruption to the police via phone, fax, and e-mail or in person, as well as the protection system for persons reporting corruption and information which are being disclosed.

In cooperation with the OSCE Mission to Montenegro, Police Directorate and Administration for Anti-Corruption Initiative conduct campaigns intended to promote the Professional instruction, with the aim to encourage citizens to report such criminal offences. In late November and early December 2008, the first phase of the campaign has started, using billboards, posters and pamphlets which were also distributed on border crossings. The campaign was implemented through both electronic and print media, with distributed 100 000 flyers containing information on the procedure and protection measures which the police provides to persons reporting corruption. The Administration for Anti-Corruption Initiative and Police Directorate, with the support of the OSCE Mission, conducted the second, intensive phase of the campaign which lasted one month. The campaign entitled - *Report corruption, the rest is our responsibility*, in addition to the previously mentioned means of communication, included a TV spot promoting the procedure and protection measures for the citizens who report corruption.

iii. Private sector and privatisation process

In cooperation with the Union of Employers, a brochure was published entitled - *Fighting corruption - private sector participation*, containing information on the negative consequences of corruption for overall economic development; the need to suppress it by creating efficient, long-term measures and activities; the Code of Ethics of the Union of Employers; Council of Europe's Civil Law Convention on Corruption, as well as the recommendations for more active participation of private sector in the fight against corruption. Also, a brochure on reporting corruption in privatisation process was published, in cooperation with the Commission for examination of objections, complaints, proposals and suggestions of citizens and other entities related to the process of privatisation.

iv. Campaign in secondary and higher education institutions

Since the academic year 2006-2007, the Administration for Anti-Corruption Initiative has implemented anti-corruption campaign in higher education institutions in Montenegro, entitled - *Corruption must not be the way out*. During one-hour lecture and discussion, students have the opportunity to be informed about the concept, historical development and forms of corruption, as well as its consequences and preventive and suppressive action against this phenomenon. Special attention is given to corruption in education. Also, this activity is aimed at increasing intolerance toward corruption. During three academic years, including 2008-2009, the total of 27 educational sessions was held at 18 state university and private university faculties.

Since 2007, the Administration for Anti-Corruption Initiative has also conducted an anti-corruption campaign in student and undergraduate dormitories in Montenegro, during which information bulletin was distributed, containing a short description of criminal offences with elements of corruption, with special attention given to corruption in education and bodies responsible to act upon complaints of citizens.

Since 2008, one of the target groups of the Administration's campaigns has been secondary school students as well. During the past school year, in cooperation with the NGO CEMI, the Administration for Anti-Corruption Initiative has implemented anti-corruption campaign (interactive lectures adapted to the secondary school age) in 14 Montenegrin secondary schools, in the following cities: Podgorica, Niksic, Cetinje, Bar, Danilovgrad, Kotor, Igalo, Herceg Novi, Tivat, Budva, Mojkovac, Tuzi, Ulcinj, Bijelo Polje, Kolasin and Berane. Educational campaigns which the

Administration for Anti-Corruption Initiative implements in secondary schools include the brochure developed for secondary school students in Montenegrin and Albanian language.

v. Informing stakeholders

Communication strategy for public relations of the Administration for Anti-Corruption Initiative for 2009 provided for a number of activities through which the Administration systematically, continuously, timely and accurately informs the public on the activities undertaken in the fight against corruption. From 1 April 2009, the Administration for Anti-Corruption Initiative has started issuing the internal bulletin *Anticorruption*. The aim of issuing this publication is to enable richer and more efficient interaction with state bodies, NGO sector and international partners, all of which are this way informed about a wide range of anti-corruption activities, initiated by and involving the Administration for Anti-Corruption Initiative, as well as other entities involved in the anti-corruption policy.

All the Administration's campaigns always include informational material. During all campaigns, brochures and flyers are distributed, which contain basic information on corruption and anti-corruption measures and activities, as well as the Administration's telephone number at which citizens can report suspicion of the existence of corruption.

In its campaigns, the Administration for Anti-Corruption Initiative promotes and distributes the United Nations Convention against Corruption and Civil Law Convention on Corruption of the Council of Europe.

II Activities of other state bodies related to raising public awareness on harmful effects of corruption and the mechanisms for the fight against corruption.

i. Customs Administration

With the aim to improve the system of communication with citizens, the Customs Administration of Montenegro implemented an intensive campaign entitled - *Open Line*, so as to receive complaints from citizens by phone or in writing, and to introduce the public with the possibility to report smuggling, customs violations, corruption and all irregularities in the work of customs service and customs officers. The campaign consisted of promotional posters, information flyers, and advertisements in daily newspapers, placement of billboards with the *Open Line* signs all over Montenegro, especially in places nearby border crossings.

The Customs Administration has developed the following brochures: *Rules of origin of goods and preferences*, *Application of customs tariff*, *Determination of customs value of goods*, *Simplified procedures*, *How to file a complaint to the Customs Office*, *How to import and export goods*, as well as *Guideline for Citizens*, intended for natural persons, and containing necessary information on customs procedures for goods, with which these persons should be acquainted when arriving to Montenegro.

ii. Tax Administration

The activities of the Tax Administration aimed at raising public awareness on the issue of corruption are based on constant invitation to citizens to report corruption. In addition to regular website updating, the Tax Administration publishes informational material containing information on the concept, harmful effects and measures to fight corruption in tax administration.

The Tax Administration has developed a flyer entitled - *Corruption*, containing instructions and invitation to report all noticed irregularities and illegal behaviour of tax officials, as well as taxpayers, related to non-compliance with the tax regulations.

By means of the Tax Administration's website, under the link *Anticorruption*, an invitation is made to all non-governmental organisations, whose activities and action programmes are aimed at fighting corruption and organised crime, to propose the activities to be implemented during 2008 in the field of informing the citizens on the harmful effects of corruption and organised crime, in which representatives of the Tax Administration would take part.

Furthermore, by using the *Box for complaints of citizens*, placed in all organizational units, citizens are invited to indicate any irregularities in the work of tax officials, including corruption. In the previous period, the Tax Administration published the material on its website under the link *Say NO*

to Corruption. This material was also distributed to all local units of the Tax Administration, which placed it on their notice boards and counters, for the purpose of providing necessary information to business entities, state administration and local governance bodies, with the request to make it available to a wider range of citizens and users of their services.

iii. Ministry of Education and Science

The Ministry of Education and Science, in cooperation with the NGO CEPRIM (Centre for education, partnership between parents and young people - Podgorica) holds lectures to and conducts surveys among students in elementary and secondary schools, organises radio and TV programmes on corruption in education, develops the Code of Ethics for pupils and students and employees, in electronic form. Their cooperation includes continuous activities, such as researches on corruption in education, campaigns for raising public awareness on corruption among teachers, pupils, students and undergraduates, and development of codes of ethics for employees in the education field, as well as for pupils, students and undergraduates.

In cooperation with the CEPRIM, the Ministry issued the publication entitled - *Research on Corruption in Education* in December 2008. The publication had a public presentation and was distributed to the majority of schools in the territory of Montenegro. In addition, a short information bulletin on measures for implementation of anti-corruption action plan was published, under the slogan *Be careful*. These were presented in the electronic and printed media and in direct communication. During the campaign, the NGO CEPRIM organised seminars and educational sessions for parents, in those cities where surveys were previously conducted, such as: Podgorica, Budva, Montenegro, Niksic, Berane and Danilovgrad.

iv. Public Procurement Directorate

On its website, the Public Procurement Directorate has published the practical guideline entitled - *Manner to report irregularities and illegal practice in the public procurement procedures*, the brochure entitled - *Guideline through the public procurement system in Montenegro*, intended for participants in the public procurement process, as well as the *Commentary on the Law on Public Procurement*, prepared in cooperation with the Commission for control of public procurement procedure.

v. Commission for Control of Public Procurement Procedure

The Commission for Control of Public Procurement Procedure, in cooperation with the European Agency for Reconstruction, published the professional publication *Protection of Bidders' Rights* (comparative analysis of procedures and manners to exercise the rights of bidders and protect public interest in public procurement). In cooperation with the Human Resources Administration, the *Handbook on Public Procurement* was issued, while the publication *Protection of bidders' rights in the public procurement procedures in Montenegro* was published in cooperation with the World Bank.

vi. Judicial Council

Judicial Council established the Office for reporting corruption in courts, where citizens can report cases of judicial corruption, even without disclosing their identity. In addition, the Judicial Council organised a campaign to encourage reporting judicial corruption, which included printing posters with phone number at which every citizen can report cases of judicial corruption. This campaign included both print and electronic media.

The activities aiming to introduce the Office for reporting corruption in courts and its work to the citizens were intensified by establishing the Judicial Council's website, which will have one special part dedicated to encouraging citizens to freely report corruption in judiciary.

III Activities of Non-governmental Organisations

The coalition of 203 non-governmental organisations – *Reaching the Goal through Cooperation* - implemented the campaign *Society against Corruption*, with the support of the USAID, and in cooperation with the Montenegro Media Institute. On this occasion, the best five journalism stories on topics related to corruption were awarded. Under the project, the coalition organised meetings with citizens, prepared joint plan for launching civil initiatives for amendment or adoption of laws

that will provide for greater transparency in the local government operations, as well as greater participation of citizens and NGOs in decision-making process and control of the local administration operations.

With regard to the set of measures related to intensive communication with citizens on the exercise and protection of their rights, the NGO Network for Affirmation of Non-governmental Sector (MANS) provided for the means of communication with citizens. The MANS established the *INFO Phone Line* for citizens to request information from state bodies, as well as the *SOS Phone Line* for reporting corruption.

The MANS also published and distributed informational and educational material. A number of publications was published, such as: *The Right to Know* (the publication on the free access to information), *Behind Closed Doors* (the publication on access to information in the privatisation process), *Eyes Wide Shut* (the publication on illegal buildings in the municipalities of Podgorica, Budva and Zabljak), *Do You Know You Have the Right to Know* (the publication on the right to free access to information), *Green Labyrinth* (the publication on the right to access information on environment), *Corruption or the EU Integration* (the publication on political will to fight corruption and organised crime, and obstacles related to free access to information). All publications were distributed to institutions, international organisations and media.

The MANS organised three roundtables on free access to information, a roundtable on conflict of interests, as well as street performances in all Montenegrin municipalities, at which the promotional material on the right to access information was distributed within the campaign *I have the right to know*. A roundtable on the *Problems in reporting on the implementation of the Innovated Action Plan for implementation of the Programme for Fight against Corruption and Organised Crime* (November 2008) and a round table on the *Corruption in Urban Development* (February 2009) were held for representatives of the institutions obliged to report as per the Innovated Action Plan.

In December 2008, the MANS conducted the public campaign entitled - *Clean Way to Europe*, which involved street performances and distribution of informational material.

In April 2009, the MANS held the third National Anti-Corruption Conference, which was dedicated to the importance of the fight against corruption in the integration process, the regional experiences in monitoring of the implementation of anti-corruption policies, the efficiency in the prosecution of corruption and organised crime, as well as to the transparency in the implementation of reforms and the role of civil sector in the fight against corruption. The Draft publication on implementation and monitoring of the Action Plan for Fight against Corruption and Organised Crime in 2008 was developed, launched and promoted.

In cooperation with the USAID/ORT MAP, the Ministry of Culture, Media and Sport and the Association of Young Journalists of Montenegro, the Montenegro Media Institute (MMI) organised seminars on *Application of the Law on Free Access to Information - how to learn from your own and the mistakes of others*.

The NGO CEDEM (Center for Democracy and Human Rights) conducts annually since 2006 researches entitled *Democracy Index*. Democracy index represents the way to measure the level of democratic development of one society. Using the language of figures, through analysis of specific indicators, the level of democracy within the society is being indicated.

The following fields were the subjects of researches:

- politics and powers;
- rule of law and legislation;
- economic freedoms and economic participation;
- democracy in education;
- democracy of media;
- position of ethnic and religious minorities;
- position of women;
- position of disabled persons.

The above-mentioned researches were published as publications by CEDEM in 2006, 2007 and 2008.

Public opinion of Montenegro is one of the most important projects of CEDEM. From 1999 to 2009, 40 researches were published. The most of them, out of the total number of 30, being separate projects, referered to the political public opinion. The other researches referred to individual aspects of reform processes in Montenegro (implemented within the macro project entitled *Reform for Healthy Society* of the NGO Network Action), or esepcially topical issues in the Montenegrin society.

According to the citizens opinion, corruption is mostly present in the customs (6.84 coeficient), municipality services (6.81), and than state services (6.76), followed by the judiciary (6.51), police (6.49), health care (6.40), prosecution (6.30), higher education (5.66), media (5.25), sport (4.76), secondary education (4.60) and elementary education (3.88). The mentioned researches are available at CEDEM web page (www.cedem.me).

IV Media

Recognizing the great importance of media in communicating information to public and creating public opinion, in addition to its regular media coverage of anti-corruption activities, the Administration for Anti-Corruption Initiative fosters continuous cooperation in the implementation of thematic programmes with several Montenegrin media.

During 2008, in cooperation with the radio station *Antena M* and the *National Radio Broadcaster of Montenegro*, the Administration has launched a series of informational and educational programmes, broadcasted twice a month, and a thirty minutes programme on *Atlas Television*, which is broadcasted once a month. The programmes are intended for citizens and designed so as to tackle the corruption issues and ways to fight the phenomenon in different specific areas. This activity has been continued in 2009, in accordance with the *Programme for intensive promotion of the results achieved in the implementation of measures set in the Innovated Action Plan for implementation of the Programme for the fight against corruption and organised crime*.

Nevertheless, all entities involved in the fight against corruption inform the public on their activities through the media coverage. The most frequent channels of communication include press releases, press conferences and interviews.

V Trainings

i. Administration for Anti-Corruption Initiative

The Administration for Anti-Corruption Initiative organises seminars and participates in trainings organised by other state bodies and non-governmental organisations, or those arising from the cooperation with international organisations.

To date, the Administration for Anti-Corruption Initiative has organised several lectures for professional audience, including, in particular, the following: series of lectures at the Institute of Certified Accountants of Montenegro and Institute of Accountants and Auditors of Montenegro; educational sessions for public prosecutors, accountants and auditors on reporting criminal offences with elements of corruption, interinstitutional cooperation and exchange of information, in cooperation with the Council of Europe; roundtable *Harmonization of Montenegrin legislation with the provisions of the UN Convention against Corruption*, in cooperation with UNDP; two roundtables on *Implementation of the Council of Europe's Civil Law Convention on Corruption*, in cooperation with the Council of Europe.

In the past three years, representatives of the Administration for Anti-Corruption Initiative participated as lecturers in seminars, roundtables and public discussions on the issue of corruption and its suppression. The following should be especially noted: seminars intended for all state administration employees, organised by the Human Resources Administration; training organised by the Police Academy; seminars intended for local officials and organised by the Commission for Prevention of Conflict of Interest; *Corruption in Judiciary* (the Administration for Anti-Corruption Initiative, in cooperation with UNDP and Nansen Dialogue Centre); seminars *Corruption in Education* (organised by the Centre for Monitoring and Centre for Civic Education); and others.

Another target group the Administration for Anti-Corruption Initiative tends to focus more attention on are journalists. In March 2009, the Administration organised meetings with news desk editors from the Montenegrin media, while three seminars dedicated to investigative journalism are currently being organised, under the IPA 2007 project, i.e. the component entitled - *Raising public awareness on the issue of corruption*.

ii. Human Resources Administration

In cooperation with competent bodies, the Human Resources Administration developed the programme entitled - *Fight against Corruption in Public Administration,* which includes analysis of contemporary anti-corruption measures, aimed at both preventing and fighting corruption. This provides for the responsible persons in state bodies to be timely informed on the available anti-corruption measures. The programme's target group includes all civil servants and public employees. The module *Fight against Corruption in Public Administration* tackles the following topics: prevention of corruption, interinstitutional cooperation through the execution of operational tasks and the issues of proving corruption, procedures for reporting corruption and investigation of corruption cases, internal control as a mean for preventing and fighting corruption, development of integrity, request to access information as a mean for efficient control of the state bodies' operations, conflict of interest and corruption, and possibility of the occurrence of corruption in public procurement. The education also covers the following topics: prevention of money laundering, employee ethics as an element of modern management, inspection control procedure.

In addition, the Human Resources Administration published the handbooks *Prevention of Corruption* and *Analysis of Implementation of Law on Free Access to Information*.

Finally, in 2009, the Regional School of Public Administration (ReSPA) has been established with the headquarters in Danilovgrad, which will provide education, with the aim to strengthen administrative capacities of the countries in the region.

iii. Customs Administration

Employees in the Customs Administration underwent a number of anti-corruption trainings and seminars, such as the seminar on the fight against money laundering, suspicious transactions, corruption in the public administration, as well as on the mechanisms to successfully prosecute corruption and others, organised by both state bodies and international partners (TAIEX, CAFAO, and CARDS Programme 2003).

iv. Police Directorate

Police Directorate organised trainings for all employees in the Division for Internal Control – under the seminar entitled - *Reporting corruption and conducting investigation into corruption in the police*, while the employees of the Police Directorate participated in several seminars tackling the fight against corruption and financial crime, organised by international institutions (OCTN, OSCE, and ICITAP). The trainings for the police officers and prosecutors dealing more directly with corruption cases were also implemented, such as the training on the implementation of the *Professional instruction on procedures for reporting criminal offences with elements of corruption and protection of persons who report these offences to the Police Directorate*.

In order to strengthen the police capacities for the fight against organised crime and corruption, the Police Academy in Danilovgrad conducts trainings in the areas of fight against corruption and organised crime. Since February 2009, the Academy has conducted the seminar for trainers from the Border Police Department, General Police Department, Special Anti-terrorist Units, Special Police Units.

In agreement with the Border Police Department, the educated trainers carry out further education of the police officers in the regional police units.

v. Tax Administration

The Tax Administration carries out continuous training of employees in the internal control, as well as all employees, among which the following should be especially noted: the general and specialised trainings on the Code of Conduct for Business Taxation, the training carried out by the experts from Her Majesty's Revenue and Customs from Great Britain; *Prevention of Corruption*;

Access to information on indicators from the Action Plan, Combating money laundering and financing of terrorism, Fight against VAT frauds, Tax collection, Tax control, Role of media and relations with Tax Administration, Electronic control - means and methodologies, Eliminating barriers to business, Implementation of the project of Joint registration and collection, Large taxpayers and audit, Control techniques for small and medium-sized enterprises, Confiscation of proceeds from crime, Anti-corruption efforts with emphasis on prevention, *Training while working*.

External trainings abroad have been carried out in the organisation of IOTA, while the topics included: *Prevention and Detection of VAT frauds*, *Taxation of Special Types of Industries – Construction Industry, Cases of VAT frauds, Taxation of Financial Instruments, Collection of Taxes, Training Forum, Tax Control, Taxpayer Education and Service, Merging of Tax and Customs Agencies* and *General Assembly of IOTA.*

vi. Public Procurement Directorate

Through various seminars, the Public Procurement Administration carries out education of its employees for the implementation of the Law on Public Procurement (in cooperation with EAR, SIGMA / OSCE, Human Resources Administration). Under the project implemented with the support of the OSCE Mission to Montenegro, *Adherence to transparency principle in the public procurement procedures in Montenegro,* several workshops were conducted for the local government employees in the southern, central and northern municipalities of Montenegro.

In cooperation with SIGMA, the Public Procurement Administration has launched new project on development of generic training modules on public procurement for the countries included in the IPA project - *Training in Public Procurement in the Western Balkans*.

Authorized representatives of the Commission for Control of Public Procurement Procedure participate as lecturers in the trainings organised by the Human Resources Administration and the Commission for Determining of Conflict of Interest.

vii. Public Prosecution and Courts

In accordance with the Action Plan for implementation of the Programme for the fight against corruption and organised crime, public prosecutors and their deputies regularly undergo specialist trainings, in relation to: international standards in the field of fight against corruption and organised crime; criminal offences with elements of corruption and organised crime (the Criminal Code and the Criminal Procedure Code); criminal offences from Chapters XXIII and XXXIV of the Criminal Code (criminal offences against payment transactions and business operations and criminal offences against official duty); efficient prosecution strategy (entities, actions, measures, deadlines, pre-trial and investigative procedure); new forms of crime, as well as the application of measures of secret surveillance.

Since 2007, Judicial Training Centre has organised seminars for participants of the initial training (professional associates in judicial bodies and persons who passed the bar exam in other state bodies), in accordance with the Annual Education Programme for 2007. In December 2008, the Coordination Board of the Judicial Training Centre adopted the Programme of Training on the Fight against Corruption for Judges and Prosecutors. The Ministry of Justice published the Programme was published in Montenegrin and English language, with the support of UNDP Judiciary Reform Programme, which is also supporting its implementation, along with the OSCE Mission to Montenegro.

viii. State Audit Institution

Representatives of the State Audit Institution participated in international workshops on audit of privatisation of companies and prevention and detection of corruption, while in numerous study visits, they exchanged experience on introduction of the programme budget, annual and medium-term planning, audit of donations and funds from the European funds, cooperation with parliament, planning and implementing audit and the concept of training and education of employees in the State Audit Institution.

The Human Resources Administration engaged members of the Senate of the State Audit Institution as lecturers at seminars envisaged by the Professional Development Programme for 2008-09, entitled - *Budgetary control as a tool for fighting corruption in state bodies*. In the plan of

activities and trainings for the following period, the State Audit Institution also included education of state auditors in filing of criminal charges on suspicion of crimes of corruption and cases of corruption to the Public Prosecutor.

ix. Commission for Prevention of Conflict of Interest

Commission for Prevention of Conflict of Interest, in cooperation with the NGO CEMI, continuously conducts several educational seminars for public officials, NGOs and media. These seminars are attended by large number of state officials, prosecutors, local government officials, and media representatives. The seminar topics include: conflict of interest - the new Law on Prevention of Conflict of Interest; restrictions in exercising public functions; gift reporting; conduct of proceedings before the Commission, criminal provisions and international experiences. The seminars also included lectures entitled - *What is corruption*. A TV video was made on the conduct of public officials in relation to boards of directors, nepotism, establishment of companies etc.

x. Administration for the Prevention of Money Laundering and Terrorism Financing

With the aim of continuous education and training, representatives of the Administration for the Prevention of Money Laundering and Terrorism Financing attend numerous trainings tackling the following topics: inter-agency cooperation in the prevention of money laundering and terrorism financing, combating money laundering and terrorism financing, conflict of interest.

xi. Non-governmental organisations

In 2008 and 2009, the NGO MANS has organised School of Active Citizenship, with the purpose of raising awareness and building capacities of local activists in fight against corruption. The School lasted 14 weeks, and has been attended by 20 young participants.

Under HOPE Fellowship Programme, the NGO Centre for Monitoring – CEMI, National Albanian-American Council (NAAC) and the Administration for Anti-Corruption Initiative organise public presentations on the strengthening of fight against corruption at the local level, intended for local government employees and officials.

In cooperation with the NGO Centre for Civic Education (CGO), the CEMI implements the project entitled - *Fight against Corruption in Education*, which includes: public opinion poll, capacity building of student organisations in fighting corruption, education of secondary school students and teachers on corruption, analysis of the existing student documents and preparation of recommendations for their improvement, conferences and printing of publications containing data and proposals of solutions for successful fight against corruption in education.

Under the project entitled - *Education of public officials on conflict of interest,* the NGO CEMI has organised a seminar for media representatives *Presentation of the new Law on Prevention of Conflict of Interest - Innovations in the Law*.

The NGO Centre for Development of NGOs (CRNVO) implements the project *Reducing corruption in local governance in Montenegro* (2009), in cooperation with the Administration for Anti-Corruption Initiative and the Association of Municipalities of Montenegro. The project is supported by the U.S. Embassy in Montenegro, and is aimed at raising awareness of citizens, NGOs and the members of municipal assemblies on the importance of their communication and cooperation, in the light of improving the situation in local community, in particular with respect to the problem of corruption.

42. Do effective codes of conduct, and other measures enhancing corporate social responsibility, exist for the private sector to prevent corrupt practices? How are these codes of conducts enforced?

The adoption and observance of the codes of ethics in the institutions representing the interests of the private sector in Montenegro is one of the ways for taking action on improvement of corporate responsibility, which contributes to combating corruption in the private sector.

The Chamber of Commerce of Montenegro is an independent, business, professional and interest organisation of companies, banks and other financial organisations which perform business activities in the territory of Montenegro and have common business interests (www.pkcg.org)

Within the Chamber of Commerce, the Court of Honour is operating, of which the work is regulated by the Rulebook on the Court of Honour within the Chamber of Commerce of Montenegro (Official Gazette of the Republic of Montenegro 32/04), adopted by the Assembly of the Chamber on 5 May 2004. The Rulebook prescribes that the Court shall determine the responsibility and impose measures for the actions of members of the Chamber which are harmful to the community and companies, and those misinterpreting the essence of laws and other regulations, or damaging the reputation of Montenegro, violating business ethics and good business practices, in accordance with the Law on Chamber of Commerce of Montenegro (Official Gazette of the Republic of Montenegro 42/98), the Statute and the Code of Business Ethics in Economy. In the exercise of its functions, the Court is independent and autonomous in decision-making, and judges on the basis of laws, codes, general acts, business practices and business ethics. The Chamber provides the means for conducting activities of the Court of Honour, which is based in Podgorica.

The codification of good business practices and business ethics is planned, since currently the rules from a number of sources and types of socio-political and state systems is being applied.

Moreover, within the Chamber, the Arbitration Committee for Resolving Consumer Disputes has been established, in accordance with the Law on Consumer Protection (Official Gazette of Montenegro 26/07), so as to enable the out-of-court resolution of consumer disputes and to protect traders from unfair competition.

Currently, a campaign for promotion of all forms of alternative dispute resolution in economy, the courts within the Chamber, and the Court of Honour, is being prepared. A part of this campaign will be devoted to the importance of implementation of the Code of Ethics with a view to combating corruption in the private sector.

The Union of Employers of Montenegro is a voluntary, independent, non-governmental, non-political and non-profit organisation, established to coordinate, represent, defend and promote the interests of its members through collective bargaining, the development of social dialogue, democracy and civil society.

In 2005, The Union of Employers of Montenegro adopted the Code of Ethics for Employers, which has been published at the Union's website (www.poslodavci.org). Ethical principles applied to doing business should provide for more humanity and more effectiveness in carrying out economic activities, and especially in creating a business culture. The Code of Ethics contains ten principles of the UN Global Agreement, the obligation to respect and implement the UN Millennium Development Goals and the principles of doing business.

By virtue of their membership in the Union of Employers of Montenegro, each member has been acquainted with the contents of the Code and has a duty to act in accordance with the Code.

Through its activities, the Union of Employers of Montenegro promotes the contents and importance of the application of the Code of Ethics.

Montenegro Business Alliance is a business association of entrepreneurs, domestic and foreign investors; working to promote the private sector development, and indicating problems in the existing legislation, by recommending proposals, aimed at eliminating existing barriers to business and improving the overall business environment in Montenegro (www.visit-mba.org)

Montenegro Business Alliance has adopted the Code of Business Conduct – The General Principles of Business Ethics, relating to the personal and professional relations, corporate governance, and relations with employees and other companies. Each member, by joining the Alliance, accepts the Code and has duty to comply with it.

The Institute of Accountants and Auditors of Montenegro is an independent, professional organisation of accountants and auditors, of which the main goal is to promote and improve the knowledge, abilities and expertise of its members in accounting and auditing carriers (www.irrcg.co.me)

The Institute of Accountants and Auditors of Montenegro has adopted the Code of Ethics for members of the Institute, which defines the responsibilities of a certified professional accountant towards the public, employees and colleagues, while performing duties within the Institute. In addition, the Code of Ethics for Professional Accountants of the International Federation of Accountants (IFAC) is also being applied.

At the end of 2008, the Administration for Anti-Corruption Initiative, in cooperation with the Council of Europe, organised the training for public prosecutors, accountants and auditors on reporting criminal offences with elements of corruption, inter-institutional cooperation and exchange of data. The representatives of the Institute were among the participants of the training. A part of this training was dedicated to the implementation of and compliance with the Code of Ethics. In March 2008, a representative of the Administration for Anti-Corruption Initiative held a lecture *Prevention of Corruption,* within which one part was dedicated to the Code of Ethics.

The Institute of Certified Accountants and Auditors is self-regulatory, independent, voluntary professional association undertaking measures to promote the knowledge, abilities, skills and competencies of its members in the accounting and auditing jobs. (www.isrcg.com). The Institute adopted its Code of Ethics, while the Code of Ethics for Professional Accountants of the International Federation of Accountants (IFAC) is also being applied.

In June 2008, the Institute of Certified Accountants of Montenegro organised a seminar *Application of IAS / IFRS, tax and other existing regulations*, at which the representatives of the Administration for Anti-Corruption Initiative held the lecture *Prevention of Corruption*, stressing the importance of the Code of Ethics in combating corruption.

A member of the Institute has duty to act in accordance with the Code of Ethics of IFAC and the Institute's Code of Ethics at all times. Otherwise, disciplinary proceedings may be instituted against him/her. Should the proceedings determine an offence has been committed; the Disciplinary Commission can impose a warning, fine or penalty of expulsion from the Institute membership to the member of the Institute found responsible for the offence.

The Bar Association of Montenegro is mandatory, independent and professional organisation of lawyers who have law firms based in the territory of Montenegro.

In 1999, the Bar Association adopted the Code of Professional Ethics, available at the website of the Bar Association of Montenegro (www.advokatskakomora.me). The Code of Ethics contains general rules concerning the basics of professional ethics and responsibility, independence and autonomy, expertise, conscientiousness, professional reputation, prohibition of advertising, public appearances, professional work and incompatibility of offices. It also contains the special rules concerning the relationship with clients, and the client - attorney privilage. Prior to commencing the practice, the attorney-at-law has a duty to get acquainted with the contents of the Code. One of the questions in the bar exam is related to the norms and the application of the Code of Ethics.

The Bar Association monitors compliance with the Code, determines whether a violation of the Code calls for disciplinary responsibility of the attorney-at-law and establishes and punishes such responsibility. From November 2007 to May 2009, 51 reports were filed against the members of the Chamber.

The Chamber of Physicians of Montenegro is a professional organization founded by the doctors of medicine and dental practitioners, for the purpose of protection and further development of expertise, medical ethics, improving the quality of health protection and protection of professional interests.

The Chamber of Physicians of Montenegro has adopted the Code of Medical Ethics, which is published at the website of the Chamber of Physicians of Montenegro (www.ljekarskakomora.co.me).

The Code of Ethics sets forth ethical principles to be applied in the discharge of professional duties of the Chamber of Physicians, as well as the relations of members of the Chamber towards patients and other members of the Chamber. The Chamber has established a Court which, at the Prosecutor's request, initiates proceedings to determine the liability of a doctor – a member of the Chamber with respect to violation of law, Statute and the Code of Medical Ethics, and adopts the

decision accordingly. The Court of the Chamber is independent in the exercise of its function and adopts its decisions on the basis of laws, the Statute, the Code of Medical Ethics and the Rulebook on organisation, procedure and manner of functioning of the Court of the Chamber. For committed violations, the Court of the Chamber may impose the following measures: warning, public warning, fine, temporary removal from the Register, permanent removal from the Register.

Furthermore, the Commission for Ethical Issues operates within the Chamber, and deals with ethical standards of doctors in the exercise of medical practice; takes positions and proposes measures in relation to ethical issues in accordance with the Code of Medical Ethics, works to preserve the reputation and dignity of the medical profession, keeps medical secrets and fosters collegial relations between doctors, provides opinions to the Chamber members regarding the eligibility for performance of medical profession; initiates proceedings before the Court of the Chamber for violations of the provisions of the Code of Medical Ethics, and performs other tasks in the area of medical ethics and deontology.

Promotion of the Code of Ethics is currently being prepared and on this occasion a lecture will be held on the importance of the Code of Ethics, while the Code will be distributed to the Chamber members.

The principles of medical ethics are studied at the Faculty of Medicine in Podgorica, within the subject of *Medicine and Society*.

The Chamber of Engineers of Montenegro is a professional organisation of persons working on spatial planning and development and building construction, with a view to ensuring expertise and protection of public interest.

In 2003, the Chamber of Engineers of Montenegro adopted the Code of Ethics, which regulates the behaviour of engineers towards investors and third parties, and protects engineers from unconscientious investors and third parties. The Code of Ethics is available at the website of the Chamber of Engineers of Montenegro (www.ingkomora.me).

The Application of the Code is controlled and reviewed by the Ethical Issues Board, the Supervisory Board, the Board of Directors, and the executive section boards. With a view to the implementation of the Code, a Rulebook on conduct of disciplinary proceedings has been adopted. The Rulebook prescribes the manner of conduct of the proceedings and measures for those violating the Code. The reports to the disciplinary commission may be submitted by all interested natural persons, investors and engineers through the Professional Service of the Chamber. Once the Service has examined the reports, the latter are submitted to the Prosecutor in the disciplinary proceeding, who then determines the facts and decides upon initiation of the proceedings, with the assistance of his/her Secretary.

To date, the Disciplinary Court has not had any sessions, as there were no justified requests.

The Association of Banks of Montenegro is an association founded to promote the banking business of its members, to organise and establish business cooperation with partners at home and abroad, to represent and protect common interests of its members before the Central Bank of Montenegro, the competent state bodies and organisations, as well as in relations to international organisations and institutions. (www.ubcg.org)

In 2004, the Association of Banks of Montenegro adopted the Code of Business Conduct of Banks, which presents a set of principles and rules for the banks in Montenegro to comply with while performing tasks defined in accordance with laws and regulations, as well as the acts and decisions adopted by the bodies of the Association. The application of the Code is mandatory for all banks in Montenegro. The bank has a duty to introduce all its employees to the rules of the Code and to ensure the work is performed in accordance with the rules and principles set by the Code. The Court of Honour, operating within the Association, is competent for examining the liability for violations of the rules of the Code and imposing measures thereto.

The Court of Honour imposes measures to the members of the Association for the violation of the Statute, agreements and conventions, special rules of banking business, good business practices and the Code of Business Conduct. The Court of Honour may impose the following measures: warning, a warning pronounced at the session of the Assembly of the Association, a public warning

published in the internal bulletin of the Association and mass media, the exclusion from membership of the Association, having obtained the approval of the Board of Directors.

43. What are the practical results of anti-corruption efforts in Montenegro?

Detailed answer is given in the answer 36 of this Chapter.

44. What are the measures, approaches, strategies, etc. targeting prevention of corruption? What is the practical experience with their implementation?

The Programme for the Fight against Corruption and Organised Crime and the Action Plan for its implementation constitute the strategic framework for suppressing corruption and organised crime in Montenegro. At its session held on 28 July 2005, the Government of Montenegro adopted the Programme for the Fight against Corruption and Organised Crime, while the Action Plan for 2006 – 2009 was adopted on 24 August 2006. The latter defines specific measures and activities, competent bodies and institutions, timelines, success indicators and risk factors.

Demonstrating a systematic approach to the fight against corruption, the Action Plan for implementation of the Programme for the Fight against Corruption and Organised Crime contains the measures relating to:

- Prevention of corruption,
- Repression, i.e. prosecution, and
- Education and provision of public support.

The coordinated corruption prevention policy was defined for the purposes of the prior action, i.e. the elimination of the conditions for occurrence of corruption; which at the same time provides for the implementation of the United Nations Convention against Corruption. Coordination and quality and dynamics supervision are established through monitoring the implementation of the Action Plan by the National Commission, on both practical and political level.

Pursuant to the Action Plan, prevention and education include the goals in relation to which we are providing the following information:

a) Improvement of the working conditions and general position of judges, prosecutors and police, and strengthening integrity of judges and prosecutors

In the past four years, a number of activities aimed at improving the working conditions of judges and prosecutors were implemented.

The Law on Salaries and Other Income for Judges and Prosecutors and Constitutional Court Officials (Official Gazette of Montenegro 36/07, 53/07), effective as of 1 September 2007, improved the financial position of judges and prosecutors. In accordance with the Law, in March 2008, the Government of Montenegro increased the value of wage coefficients by 40% compared to the previous value, with retroactive application of this decision as of 1 January 2008. In January 2008, the acting Supreme Public Prosecutor of Montenegro adopted the temporary decisions on the fixed part of the salary (40% increase, including compensation for work on Saturdays) and the position of civil servants and state employees with respect to the complexity, importance, requirements and responsibilities at work.

The autonomy and independence of the court were enhanced, through the establishment of procedures for appointment and removal of judges, as well as through the establishment of the Judicial Council, which provides for the autonomy and independence of courts and judges. In accordance with the Law on Judicial Council (Official Gazette 13/08), the Judicial Council shall safeguard the court and judges from political influence (Article 4), supervise their work, decide on disciplinary responsibility of judges (Article 23). In addition, the Constitution established the

competence of the Judicial Council to appoint and remove judges, president of the court and lay judges (Article 128 of the Constitution).

The activities aiming to introduce the Office for reporting corruption in courts and its work to the citizens were intensified by establishing the Judicial Council's website, which will contain a special part dedicated to encouraging citizens to report judicial corruption. In the first half of 2009, the Judicial Council the decision allowing the custody of a judge of the High Court in Bijelo Polje, under the investigation for the criminal offence of passive bribery. Also, two judges were removed from their duties, and two judges have submitted a request for termination of the status of a judge, as well as one President of the High Court.

By June 2009, the Office for reporting corruption in courts, whose head office is in the Judicial Council, received 15 reports of which the examination found none referred to the suspicion of corruption, but rather to the inefficiency of a judge or the party's discontent with the work of the judge in charge. One report has been forwarded to the prosecutor for further action and examination of allegations therein.

Independence and impartiality of public prosecutors are prescribed by the Constitution and the Law on Public Prosecutor (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08). The Article 3 of the Law prescribes that duties of public prosecutor shall be performed under no influence, and no person shall influence public prosecutor in exercising his functions, except in the cases provided for by this Law. The independence and impartiality are ensured through the manner of appointment of prosecutors by Prosecutorial Council, providing for the independence of public prosecution office and public prosecutors. The members of Prosecutorial Council shall be appointed and dismissed by the Parliament. The Law on Public Prosecutor (Chapter VII, Articles 83-90) stipulates the appointment, the term of office, competences, organisation and the manner of work of the Prosecutorial Council.

The integrity of judges and prosecutors is tackled by the Code of Ethics for Judges adopted in July 2008, and the Code of Ethics for Prosecutors, effective as of November 2006, which judges and public prosecutors, respectively, have duty to comply with.

b) Strengthening police integrity

With regard to the integrity of police, the Code of Police Ethics was adopted in December 2005.In accordance with the Code; Ethics Committee was established in February 2006, charged with examining the professional conduct of police officers. The Ethics Committee examines cases and adopts opinions, which are then submitted to the Disciplinary Prosecutor for further action. The Ethics Committee performs its duties in accordance with its Rules of Procedure, the Law on Police and the Code of Police Ethics.

The Ethics Committee of the Police Directorate continually acts upon cases of violation of police ethics.

From 1 September 2006 until the end of 2007, the Ethics Committee examined 45 cases with respect to compliance with the Code of Police Ethics in performing official duties and decided to forward 43 cases to the disciplinary prosecutor for further action. For one case, a court judgment is awaited, so as the Committee could take the position, while one case was returned for the purpose of obtaining additional information.

During 2008, the Ethics Committee examined 36 cases. The Committee found the rules of the Code of Police Ethics were violated in 31 cases, which were forwarded to the disciplinary prosecutor for further action, while in five cases no violation of the Code of Police Ethics had been determined.

In the first half of 2009, the Ethics Committee examined 22 cases at one session. The Committee found the rules of the Code of Police Ethics were violated in 20 cases, which were forwarded to the disciplinary prosecutor for further action, while two cases were returned for the purpose of obtaining more information and will be re-examined at the following session. All received cases examined by the Ethics Committee in the first half of 2009 were related to the behaviour and conduct of police officers from the General Police Department, employed in the organisational units of the Police Directorate.

Finally, the Rulebook on establishing disciplinary responsibility of the Police Directorate Officers was adopted, as well as the Instruction on Procedures for the Adoption of the Plan of Protection for the Police Officers Working on Cases of Organised Crime and Corruption (July 2009).

c) The ethics and declarations of income, assets, and gifts received by public officials

Legislation tackling the issue of conflict of interests constitutes another part of the preventive anti-corruption policy. The Law on Prevention of Conflict of Interest (Official Gazette of Montenegro 01/09) provides for the obligation of public officials to declare their income and assets, as well as on incomes and assets of their spouses and children – during the exercise of public function; in the following manner: once a year, by the end of February of current year for the previous year; in case of changes in the data from the declaration with respect to the increase not less than EUR 5 000; and, finally, after the termination of public function.

In 2008, 1774 public officials, out of 1921, or 92.3% of them, submitted the reports declaring their income and assets. In 2009, by 2 October, 2313 public officials, out of 2670, or 86.8% fulfilled this obligation prescribed by law. Moreover, 934 state officials, out of 936, or 99.8% submitted the reports, whereas out of 1734 local officials, 1379 of them, or 79.5%, fulfilled this legal obligation. Submitted information are kept in the database of the Commission for Determining Conflict of Interest, and available at the Commission's website. Non-governmental organisations continually participate in the monitoring of regulations and practice in the prevention of conflict of interest.

The Commission for Determining Conflict of Interest submits its Activity Report to the Parliament of Montenegro once a year.

d) Limiting opportunities for corruption in public sector

Limiting opportunities for corruption in public sector is provided for through the adoption and implementation of sector action plans in the areas of health and social protection, education and spatial planning.

With respect to education sector, the Ministry of Education and Science has prepared and published the Action Plan for Combating Corruption in Education (2009-2012), and organised several round tables for parents and campaigns, in cooperation with youth sports clubs, in order to inform the public on the contents of this document. After the parliamentary elections held in March 2009, the new Government organisations entails two separated sectors for health and social protection, thus two sector action plans were to be adopted. With regard to the health sector, the action plan has already been adopted, while the adoption of the action plan for the social protection sector is expected. The action plan for the spatial development sector is currently being drafted.

Measures for elimination of barriers to entrepreneurship are also an important part of activities aimed at prevention of corruption. In order to fulfil GRECO's recommendations concerning the elimination of barriers to business, the Parliament of Montenegro, on 11 August 2008, adopted the Law on Spatial Planning and Development (Official Gazette of Montenegro 51/08). By virtue of this Law, the codification of this area was carried out, as it repealed the Law on Spatial Planning and Development, the Law on Construction Land, the Law on Building Construction and the Law on Spatial and Building Inspection. As for the elimination of barriers to business, the most important innovations refer to simplifying and shortening the administrative procedures regarding the review of technical documentation and obtaining the construction and building use permits. The proposed solutions shorten and simplify the mentioned procedures so that the investor selects the company to perform the review of technical documentation (Article 86 of the Law), and obtains the construction and building use permits by means of one administrative procedure each. Previously, investors had seven administrative procedures to obtain the said documents, whereas the stated activities reduced these to two administrative procedures.

With regard to the procedure for issuing the construction permit, pursuant to Article 93 of this Law, for obtaining a construction permit, it is necessary to submit the following documentation: the conceptual project or main project, the report on the conducted review of the conceptual or main project, and the evidence of the ownership or other rights on the construction land. The innovation in comparison to the previous law is that the construction permit is issued on the basis of the reviewed conceptual or main project. The possibility of obtaining the construction permit on the basis of the reviewed conceptual project provides an opportunity for the investor to ensure a loan,

as well as to attract potential buyers of both, land and the future building, if the investor is not the end user. If he/she decides to obtain the permit on the basis of the conceptual project, the investor is not obliged to obtain approval on the conceptual project. It should be noted that special building permits for preliminary works, as well as additional construction permits, do not exist anymore.

According to the Article 94 of the Law, the construction permit is issued within 15 days from the day of submission of the request, if the requirements referred to in the Article 93 of the Law are met, while the permit shall be published on the website of the public administration or local self-government body within seven days from the day of its issuance. An important innovation is also the relocation of obligation of the fee for communal equipping of construction land from the construction permit to the building use permit, so as not to burden the investment at its start. Also, from 1 January 2009, the citizens and investors have no obligation to pay fees for the use of construction land.

Furthermore, on 4 August 2008, the Law on Domestic Trade (Official Gazette of Montenegro 49/08) was adopted, stipulating that companies starting up trade activities in shops, shall not be required to seek the work permit from the municipal administrative bodies (the license has practically been abolished). The tradesperson shall, at least eight days earlier, report the start of the work to the competent inspection and municipal administration body. Naturally, this does not release him/her from the obligation for the business premises to meet the minimum technical requirements.

The Law on Craftsmanship (Official Gazette of Montenegro 54/09), effective as of 18 August 2009, prescribes that companies starting up trade activities shall not be required to seek the work permit from the municipal administrative bodies.

Following the adoption of the Programme for the Elimination of Barriers to Entrepreneurship Development (October 2007), and the Operational Plan (April 2008), the Council for the Elimination of Barriers to Business, which monitors their implementation and proposes to the Government of Montenegro the adoption and amendments to the legislation with respect to the elimination of barriers to business. In December 2008, the Council adopted the Report on the Implementation of the Activity Plan for 2008. Thus, regarding the improvement of the existing legislative framework on the elimination of barriers to business, the following activities were implemented: the Ministry of Justice adopted amendments to the Guidelines on the Work of the Central Registry of the Commercial Court, which enabled legal on-line registration of companies; the working group for preparation of the new Law on Insolvency of Companies has been formed, and is expected to submit the draft law to the Government of Montenegro by the end of 2009, for its review and adoption; the Real Estate Administration formed the working group for preparation of amendments to the Law on State Survey and Real Estate Cadastre; a working group of the Customs Administration was also formed and has adopted recommendations for the elimination of the barriers with respect to the foreign trade; the new Labour Law was adopted (Official Gazette of Montenegro 49/08), which simplified procedures for entering into and termination of employment and for determination of responsibilities of employees, etc. As of February 2009, the Council for the Elimination of Barriers to Barriers has been established, providing detailed information on the Council's work (www.biznis-barijere.com).

At its session held on 4 September 2009, the Council for the Elimination of Barriers to Business adopted the Action Plan for elimination of business barriers (September - December 2009), and agreed to prepare the Medium-Term Action Plan for the elimination of barriers to business by the end of the year. The adopted Action Plan determines the activities in the priority areas, as per the proposals and initiatives of economic entities. Accordingly, the Council verified the establishment of operational teams for the implementation of the activities set in the Action Plan, with a view to undertaking specific measures to eliminate barriers to business in the following areas: collection of cinema taxes, recognition non-tariff barriers in trade and customs procedures, improvement of legal solutions tackling utility taxes and legislation related to the work of foreigners.

Its following session, the Council held on 2 October 2009, when it discussed the report on the ease of doing business, as well as the Action Plan containing the short and medium term priorities for improving the business environment. With a view to the implementation of these

recommendations, the Council has taken actions and measures aimed at revising certain regulations containing some barriers to business.

The efforts Montenegro has made towards elimination of barriers to business in the previous period are best reflected in the Report on the Ease of Doing Business, published annually by the World Bank; which, among other things, analyses the barriers to business and accordingly helps countries to identify problems and to resolve them. According to the latest Report on the Ease of Doing Business for the period June 2008 - June 2009 (Doing Business 2010), Montenegro has improved the business environment and its position for 6, taking 71st position among 183 ranked countries. The progress of Montenegro was noticed in four of the ten indicators (as follows: starting up business, issuing construction permits, employment and tax payment), while only 11 states achieved an improvement in a larger number of indicators than Montenegro.

With regard to *Starting up Business*, Montenegro is mentioned as a reformer when it comes to introduction of the unique system of registration of companies and accelerated registration of the taxpayers with the Tax Administration and the Health and Pension and Disability Insurance Funds. Also, the implemented reforms contributed to the shortened or simplified post-registration procedures (tax returns, registration for social protection, licensing). As for the *Employment*, it appraises the benefits and privileges implemented by means of new legislation, which led to a more flexible labour market. Montenegro has begun implementing fixed-period contracts, which are more flexible, with no limits on the cumulative duration. Under the indicator *Tax Payment*, the significant reduction of tax rates in Montenegro was stressed. The reduction of profit tax rate (not mentioned in the previous reports) is highlighted, as well as the reduction of burdens on the basis of incomes and contributions paid by employers. The progress was also recognized in the area of issuing construction permits by: adoption of new regulations, simplifying procedure for obtaining permits on the basis of the risk assessment study, thus introducing a shortened procedure for smaller buildings, and focusing on larger projects, having significant impact on the environment.

As for the local self-government reform, in April 2008, a Working Group for Elimination of Barriers to Business Barriers was established within the Ministry of Interior and Public Administration. In December 2008, the Working Group prepared an analysis of regulations at the municipal level, and proposed measures and activities to eliminate barriers to business. The report was adopted by the Council for the Elimination of Barriers to Business Barriers. In February 2009, the model for elimination of barriers to business with conclusions was prepared and submitted to the Council.

With the aim of implementing measures for prevention and fight against corruption at the local level, as per the Model programmes and action plans for the fight against corruption at local level, 11 local self-government units adopted Programme and Action Plan for the Fight against Corruption. Several of them have begun the implementation of the measures provided for by the adopted documents (Niksic and Pljevlja).

Working Group involving representatives of the Community of Municipalities and the Capital Podgorica was formed within the Ministry for Spatial Planning and Environmental Protection, so as to analyse all regulations in the field of spatial planning and development and building construction, and prepare proposals for revision of the legislative solutions and procedures. After having consulted more than hundred stakeholders in the spatial planning and building construction in Montenegro (the representatives of the Secretariats for Spatial Planning of 21 municipalities, water management authorities, regional water management authority, Montenegrin Power Enterprise, etc.), a document analysing administrative barriers to business in spatial planning and building construction has been prepared and submitted to the Council for Elimination of Barriers to Business, for its consideration.

The Chamber of Commerce of Montenegro continuously monitors the situation with respect to barriers to business, by virtue of both the direct contacts with entrepreneurs, and the work of its boards for all industries. The Chamber informs the relevant state bodies on the existing business to barriers and proposes measures for their elimination. As a member of the Council for Elimination of Barriers to Barriers, the Chamber actively participates in improving the business environment.

In cooperation with the Council for the Elimination of Barriers to Business, the Ministry of Economy, the Ministry for Spatial Planning and Environmental Protection, the Union of Employers of Montenegro, the Chamber of Commerce and representatives of private sector, and the support of

the OSCE Mission to Montenegro, in July 2009, the Administration for Anti-Corruption Initiative began implementation of the project entailing exchange of experiences on the issue of elimination of barriers to business. The representatives of the above mentioned institutions analyse the existing legislative and institutional framework for starting up business, with special reference to the issuance of construction permits. The first of the three round tables was held in Budva, on 16 July, while the other two were held in October 2009.

In July 2009, a research on phenomenon, causes and harmful consequences of corruption in the private sector was launched, and was completed in October 2009. The results of the research and recommendations arising from it are expected to, among other, contribute to the elimination of barriers to business and to the prevention of corruption in private sector.

e) Effective implementation of the Law on Financing of Political Parties and the Law on Election of the President of Montenegro, Mayors and the Presidents of Municipalities

The Parliament of Montenegro adopted two laws which, together with the annual Budget Law, form a legal framework for financing of political parties and election campaigns, as follows: the Law on Financing of Political Parties (Official Gazette of Montenegro 49/08) and the Law on Financing Campaigns for the Election of the President of Montenegro, Mayors and the Presidents of Municipalities (Official Gazette of Montenegro 08/09).

Political parties are obliged to submit annual financial statements on their financial operations to the competent authority, as well as their audit reports. During the audit of reports of political parties in relation to the parliamentary elections held in March 2009, the auditors of the Ministry of Finance did not find any serious abuse by political parties. Pursuant to law, all reports have been published at the website of the State Election Commission, providing for the full transparency of the process.

Financing campaigns for the election of the President of Montenegro, mayors and the Presidents of Municipalities is based on the same principles as the financing of campaigns of political parties.

f) Effective implementation of the Law on Free Access to Information

The Law on Free Access to Information (Official Gazette of the Republic of Montenegro 68/05), effective as of November 2005, guarantees access to information held by public authorities and in accordance with the following principles: the freedom of information, equal conditions for exercising rights, openness and transparency of public authorities and urgency of procedure (Article 2). All state bodies act in accordance with the Law on Free Access to Information, thus contributing to strengthening of the principle of transparency in their work (in the first half of 2009, 1360 (402+ 958) requests for information were submitted).

Since the adoption of the Law on Free Access to Information in December 2005, until end of June 2009, the NGO MANS submitted over 20 400 requests for information. According to this NGO, the silence of the administration is high, and refers to around 1/4 of the submitted requests, whereas in around 40% of cases, the request for the access to information was granted. The violation of law has been determined by over 1800 decisions of the second instance bodies, while 81% of more than 1400 judgments of the Administrative Court were in favour of the MANS.

Following the examination of the IV Report of the National Commission on the Implementation of the Action Plan for Implementation of Programme for the Fight against Corruption and Organised Crime (March, 2009), the Government requested the Ministry of Culture, Sports and Media to prepare the Analysis of Application of the Law on Free Access to Information, with special emphasis on the problems in the implementation of this Law with respect to the fight against corruption and organised crime, as well as to assess the need for amendments to this Law, in the light of the prepared analysis

The analysis showed that from 1 January 2006 to 20 April 2009, the Administrative Court of Montenegro brought decisions in 369 cases related to the access to information, as follows:

- 218 for failing to adopt decision (59%);
- 149 against final decisions and conclusions (40%);
- 2 for execution of the court decisions (1%).

Out of the total number of complaints, the Administrative Court:

- adopted 263 (71%);

- refused, rejected or suspended the procedure in106 (29%).

The Court's judgments indicate that the majority the decisions were annulled due to the vague and unstated reasons on the basis of which the access to information was limited or not allowed. Also, a significant number of decisions were cancelled for not allowing for the access to information in a manner sought by the party, without specifying a valid reason for such decision.

Prevention of corruption is also implemented through the adoption of and compliance with the codes of ethics for specific professions and sectors. Civil servants and state employees are obliged to comply with the Code of Ethics adopted in 2005, whereas the employees of the Tax Administration and Customs Administration, in addition to the above Code, comply with the special codes of ethics. Furthermore, the associations of entrepreneurs adopted their own codes of ethics (see answer to question No 42), all of which contributes to the anti-corruption action. Following the reform of the procedure for employment in the public sector, and establishment of the Human Resources Administration, the centralized management of human resources in public administration was enabled, eliminating the opportunities for nepotism and similar phenomena.

Moreover, the adoption and implementation of regulations on public procurement and the prevention of money laundering and financing of terrorism, which are harmonized with the EU Directives and recommendations of the FATF, also present a part of preventive anti-corruption policy.

In October 2004, within the framework of the Customs Administration project aimed at the development of integrity, the Customs Administration developed the Action Plan for the Integrity Development in the Customs of Montenegro. The Action Plan defines 12 challenging areas, for each of the criteria from Arusha Declaration, i.e. Declaration of the World Customs Organisation concerning good governance and integrity in customs. Implementation of the above Action Plan among other aims at reducing the risk of corruption.

The Action Plan has been revised, in the light of the assessment of the integrity strategy results foreseen by the Declaration, and with respect to the areas that still need to be tackled, in accordance with 10 factors given in the revised Arusha Declaration from 2003. The revised Action Plan for the Integrity Development in the Customs was adopted in November 2008. Some of the measures aiming at reducing the risk of corruption include:

- Assessment of the positions most exposed to corruption,
- Work rotation plans, in accordance with the above assessment,
- Periodical reviews of compliance with operational instructions, with a view to eliminate weaknesses in the work methods and integrity of employees,
- Strengthening the capacities of the Internal Control Department,
- Performance appraisal system and, accordingly, rewarding to motivate employees to perform all tasks in professional and responsible manner,
- Implementation of the Code of Conduct,
- Introduction of education on issues of integrity, implementation of the Code of Conduct, and the fight against corruption for managers and employees in the annual training plan,
- Introduction of compulsory training on integrity for the officials taking the customs examination.

Implementation of the Action Plan is coordinated by the Department for Internal Control.

The Action Plan defines following related objectives and measures:

- Joint promotion and prevention activities of governmental and non-governmental sector and civil society in raising public awareness on negative consequences of organised crime and corruption
- For information on activities on raising public awareness on corruption and the mechanisms to fight this negative phenomenon, please consult the answer to question no 41.
- Education on general concepts and forms of corruption and organised crime

As of academic 2006/2007, the Administration for Anticorruption Initiative has been implementing anti-corruption campaign in higher education institutions in Montenegro, entitled *Corruption must not be the way out*. During one-hour lectures and discussions, students have the opportunity to learn about the concept, historical development, forms of corruption and its consequences, as well

as preventive and repressive measures against the phenomenon. Special attention is given to corruption in education. This activity also aims at increasing the intolerance to corruption. During the three academic years, including 2008/2009, a total of 27 educational sessions was held at 18 faculties of the state and private universities.

Since 2007, the Administration for Anticorruption Initiative has also been conducting anti-corruption campaign in student and pupils hostels in Montenegro, within which an information brochure is being distributed, which contains a brief description of criminal offences related to corruption, with special focus on corruption in education and the authorities responsible for acting upon reports by citizens.

Since 2008, one of the target groups of the Administration's campaigns are secondary school students. In the previous school year, the Administration for Anticorruption Initiative, in cooperation with the NGO CEMI, implemented an anti-corruption campaign (interactive lectures adapted to the secondary school age) in 14 Montenegrin secondary schools, in the following cities: Podgorica, Niksic, Cetinje, Bar, Danilovgrad, Kotor, Igalo, Herceg Novi, Tivat, Budva, Mojkovac, Tuzi, Ulcinj, Bijelo Polje, Kolasin and Berane. Educational campaigns implemented by the Administration for Anticorruption Initiative in secondary schools include a brochure for the students, in Montenegrin and Albanian language.

- Improvement of transparency in business operations

With a view to improving the transparency in business operations, the Minister of Justice adopted the Rulebook on the Manner of Keeping Criminal Records of Legal Entities (Official Gazette of Montenegro 23/08), which regulates the keeping of criminal records of companies convicted of corruption-related crimes.

Domestic legal framework

45. Please provide succinct information on legislation or other rules governing this area;

An intensive legislative activity was followed by the adoption of the following national strategic documents: the Progamme for Fight against Corruption and Organized Crime was adopted on 28 July 2005, and the Action Plan for the implementation of the Programme for Fight against Corruption and Organized Crime on 24 August 2006, the Innovated Action Plan in May 2008, and the Resolution on Fight against Corruption and Organized Crime was adopted by the Parliament of Montenegro in December 2007, with clearly stated objectives in fight against corruption and organized crime, deadlines for their accomplishment and performance indicators.

Adoption of key conventions relating to anti-corruption efforts of Montenegro played a key role in the adoption and implementation of laws and national strategic documents listed below. (For more details on the conventions signed by Montenegro, please see the answer to the question No 54, Chapter 23.)

Within the framework of general reform processes in Montenegro, anti-corruption policy required changing of the legal system. Consequently, the legislative framework relating to this area consists of a number of regulations the most important of which are the following:

i. Criminal Code

The Criminal Code was adopted in December 2003 (Official Gazette of the Republic of Montenegro 70/03), followed by amendments to this Code (Official Gazette of the Republic of Montenegro 13/04, 47/06 and Official Gazette of the Republic of Montenegro 40/08). The preparation of amendments to the Criminal Code with respect to its harmonization with amendments to the new Criminal Procedure Code and international standards is currently in progress.

ii. Criminal Procedure Code

The reform of criminal procedure law started in December 2003, when the Criminal Procedure Code was adopted (Official Gazette of the Republic of Montenegro 71/03), while the amendments to this Code were adopted in July 2006 (Official Gazette of Montenegro 47/06).

The new Criminal Procedure Code (Official Gazette of Montenegro 57/09) was adopted on 27 July 2009. This Code established the principles aiming to enable fair administration of criminal procedure, so that no innocent person is pronounced guilty, and that a criminal offender is sentenced following the conditions stipulated by the Criminal Code and on the basis of legitimately conducted procedure. The application of certain provisions of the Law was postponed to take effect upon the expiration of six months or one year respectively.

iii. Law on Public Prosecution Office

The Law on Public Prosecution Office was adopted in December 2003 (Official Gazette of the Republic of Montenegro 69/03), whereby, inter alia, the Division for Fight against Organized Crime was established as a part of the Supreme Public Prosecutor's Office headed by Special Prosecutor. The Law amending the Law on Public Prosecution Office was adopted in June 2008 (Official Gazette of Montenegro 40/08).

iv. Law on Courts

The Law on Courts (Official Gazette of the Republic of Montenegro 05/02, 49/04, and Official Gazette of Montenegro 22/08) regulates the following: court establishment, organization and jurisdiction; preconditions for the selection of judges and lay judges; organization of court work; judicial administration; funding of court work and other issues of importance to the functioning of courts. The Law amending the Law on Courts (Official Gazette of Montenegro 22/08) stipulates that higher courts are responsible for trials relating to criminal offences of organized crime, corruption, terrorism and war crimes, so that special divisions were established within those courts to institute criminal proceedings in case of the above crimes.

v. Law on the Judicial Council

The Law on the Judicial Council was adopted in February 2008 (Official Gazette of Montenegro 13/08). According to the Constitution, the Judicial Council was established as a self-ruling independent body whose basic responsibilities, inter alia, include the appointment, removal from office and establishment of disciplinary liability of judges and presidents of the courts, while this Law stipulates in more detail the manner of appointment and termination of term of office of the Judicial Council members, organization and work of the Judicial Council, the procedure for appointment of judges and lay judges, the manner of deciding upon termination of judicial function, disciplinary liability and removal from office of judges and lay judges.

vi. Law on Prevention of Conflict of Interest

The Law on Prevention of Conflict of Interest (Official Gazette of Montenegro 1/09) regulates limitations relating to the performance of public functions, submission of reports on revenues and assets, and other measures to prevent the conflict of public and private interest.

More detailed explanation of this Law is given in the answer to question No 49 of this Chapter.

vii. Law on Liability of Legal Persons for Criminal Offences

The Law on Liability of Legal Persons for Criminal Offences (Official Gazette of the Republic of Montenegro 2/07 and 13/07) stipulates the terms of liability of legal persons for criminal offences, criminal sanctions applied to legal persons, and criminal proceedings resulting in the pronouncement of such sanctions. According to this Law, criminal charges may be filed against a legal person for the crimes under a special section of the Criminal Code and other criminal offences stipulated by a separate law, in case the terms of liability of legal persons stipulated under this Law are met.

viii. Law on the Prevention of Money Laundering and Financing Terrorism

The Law on the Prevention of Money Laundering and Financing Terrorism (Official Gazette of Montenegro 14/07 and 4/08) regulates measures and actions undertaken for the purpose of detection and prevention of money laundering and financing terrorism and establishes the Administration for the Prevention of Money Laundering and Financing Terrorism.

ix. Law on Witness Protection

The Law on Witness Protection (Official Gazette of the Republic of Montenegro 65/04), regulates the issue of out-of-court protection of witnesses testifying about criminal offences committed against the constitutional order and security of Montenegro, against humanity and other wealth protected by international law, criminal acts of organized crime and offences for which, according to the law, the offender may be sentenced to imprisonment up to 10 years or more, including serious criminal offences of corruption subject to a prison sentence of no less than 10 years.

x. Law on State Administration

The Law on State Administration was adopted in June 2003 (Official Gazette of the Republic of Montenegro 38/03), while the Law amending the Law on State Administration was adopted on 2 April 2008 (Official Gazette of Montenegro 22/08). This Law regulates organization of the state administration, activities performed by its authorities, the relations among the authorities and towards the citizens, as well as the management and responsibilities of the state administration authorities.

xi. Law on Civil Servants and State Employees

The Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08) provides for the protection of civil servants who report an act of corruption.

xii. Law on Free Access to Information

The Law on Free Access to Information (Official Gazette of the Republic of Montenegro 68/05) entered into effect in November 2005; this law guarantees access to information in the possession of governmental authorities according to the principles of: freedom of information, equal conditions for the exercise of rights, open character and public nature of governmental authorities work and emergency of procedures (Article 2). All governmental authorities are obliged to act in accordance with the Law on Free Access to Information, thus contributing to the strengthening of the principle of transparency of their work.

xiii. Public Procurement Law

The Public Procurement Law (Official Gazette of Montenegro 46/06) establishes the criteria for the selection of the best bidders, protection of the bidders' rights and decentralization of procurement.

xiv. Law on Financing of Political Parties

The Law on Financing of Political Parties (Official Gazette of Montenegro 49/08) governs the manner of acquisition and sources of funding for the work and election campaign of political parties, and the manner of control of funding and financial operations of political parties, aiming to ensure the legality and public character of their operation.

xv. Law on Financing the Campaigns for Election of the President of Montenegro, Mayor and President of the Municipalities

The Law on Financing the Campaigns for Election of the President of Montenegro, Mayor and President of the Municipalities was adopted in January 2009 (Official Gazette of Montenegro 08/09). This Law regulates the manner of acquisition and sources of funding the election campaign of the President of Montenegro, Mayor and President of the Municipal Assembly, aiming to ensure the legality and public character of this funding.

xvi. Law on State Audit Institution

By the Law on State Audit Institution (Official Gazette of the Republic of Montenegro 28/04, 27/06, 78/06 and Official Gazette of Montenegro 17/07), the State Audit Institution was established aiming to ensure the control over regularity and efficiency of operations of subjects to the audit (authorities and organizations administering the budget and state property; local government units; funds; Central Bank of Montenegro; and other legal persons that are partially owned by the State), i.e. with a view to carrying out professional and objective control of spending budgetary funds and administration of state property of Montenegro.

xvii. Law on International Legal Assistance in Criminal Matters

The Law on International Legal Assistance in Criminal Matters was adopted in December 2007 (Official Gazette of Montenegro 04/08). International legal assistance is provided according to an international treaty, or if it does not exist, or where any particular issue is not regulated by an international treaty, international legal assistance shall be provided in accordance with this Law and the principle of reciprocity shall apply.

xviii. Law on Custody of Temporarily and Permanently Seized Assets

Law on Custody of Temporarily and Permanently Seized Assets (Official Gazette of Montenegro 49/08) was adopted in July 2008. This Law prescribes the manner of keeping and managing the temporarily or permanently seized assets in the course of criminal or misdemeanour proceedings.

46. What anti-corruption laws exist? How and by which bodies are they implemented? Does the legislation contain provisions designed to prevent corruption?

Within the framework of overall reform processes in Montenegro, anti-corruption policy required changing of the legal system. Consequently, the legislative framework relating to this area consists of a number of regulations the most important of which are the following:

i) Criminal Code

The Criminal Code was adopted in December 2003 (Official Gazette of the Republic of Montenegro 70/03), followed by amendments to this Code (Official Gazette of the Republic of Montenegro 13/04, 47/06 and Official Gazette of Montenegro 40/08). The Criminal Code includes criminal acts of corruption regulated under Titles XXIII and XXXIV as follows: money laundering (Article 268); violation of equality in the conduct of business activities (Article 269); abuse of monopolistic position (Article 270); causing bankruptcy (Article 273); causing false bankruptcy (Article 274); abuse of authorizations in economy (Article 276); false balance (Article 278); abuse of appraisal (Article 279); disclosing a business secret (Article 280); disclosing and using stock-exchange secrets (Article 281); abuse of an official position (Article 416); fraud in the conduct of an official duty (Article 419); trading in influence (Article 422); passive bribery (Article 423); active bribery (Article 424), and disclosure of an official secret (Article 425).

The above incriminations, in the sense of criminal law concepts, include all forms of bribery and corruptive conduct regulated under the Criminal Law and the Civil Law Convention on Corruption of the Council of Europe.

Articles 112 and 113 of the Criminal Code stipulate that the material benefit obtained by a criminal offence shall be seized on the basis of the judicial decision ascertaining the commission of the criminal offence. The money, things of value, and all other material benefits obtained by a criminal offence shall be seized from the offender, and should such a seizure be not possible, the offender shall be obliged to pay for the monetary value of the obtained material benefit. Material benefit obtained by a criminal offence shall also be seized from the persons it has been transferred to without compensation or under a compensation that obviously does not correspond to its real value. Seized shall also be any property obtained by a criminal offence in favour of other persons.

Regarding the incrimination of money laundering, amendments to the Criminal Code are presently being prepared with a view to further harmonization with the International Convention for the Prevention of Money Laundering and to ensure the preconditions for more efficient prosecution of all activities undertaken for the purpose of laundering money resulting from any criminal offence whatsoever; also, new material-legal provisions regarding the extended seizure shall be included.

ii) Criminal Procedure Code

A separate Title of the National Strategy for the Reform of Judiciary (2007-2012) is dedicated to fight against corruption, terrorism, and organized crime, and it provides further normative reform activities aimed at revising the criminal-procedure system, abandoning the court investigation concept and entrusting its implementation to the Public Prosecutor. According to the Action Plan for the Implementation of the Strategy for Reform of Judiciary, the new Criminal Procedure Code (Official Gazette of Montenegro 57/09) was adopted on 27 July 2009. The Law was harmonized

with the European Convention on Human Rights and Fundamental Freedoms and other international documents. According to the Code, investigation is entrusted to the Public Prosecutor.

The new Code prescribes the procedure for seizure of material benefit and property, including a financial investigation for the purpose of an extended seizure of property whose legal origin was not proven in the course of criminal proceedings (Article 90 and Articles 486 to 489), while the responsibility to provide evidence is transferred to the defendant (Article 93) who must prove the origin of property by providing a plausible document, or make it plausible in another manner that that the objects, material benefit or property neither originated from a criminal offence or criminal activity, nor were they acquired by means of concealment of origin and sources of acquisition. The procedure of managing the seized and confiscated property obtained by a criminal offence is regulated under a separate law, i.e. the Law on Managing Seized and Confiscated Property (Official Gazette of Montenegro 49/08).

The new Criminal Procedure Code provides for new evidentiary activities – examination of photographs, listening to audio recordings and examination of audiovisual recordings (Article156).

The implementation of secret surveillance measures was extended by prescribing a catalogue of criminal offences, including certain acts of corruption, as follows: money laundering; causing false bankruptcy; abuse of assessment; passive bribery; active bribery; disclosure of an official secret; trading in influence; abuse of authority in economy; abuse of an official position; and fraud in the conduct of an official duty; punishable by imprisonment of 8 years or more serious sentence.

iii) Law on Public Prosecution Office

The Law on Public Prosecution Office was adopted in December 2003 (Official Gazette of the Republic of Montenegro 69/03), whereby, inter alia, the Division for Suppressing Organized Crime was established within the Supreme Public Prosecution Office headed by the Special Prosecutor. The Law amending the Law on Public Prosecutor's Office was adopted in June 2008 (Official Gazette of Montenegro 40/08), extending the jurisdiction of the Division to include criminal prosecution in cases of corruption, terrorism and war crimes. The competences of Special Prosecutor for suppressing organized crime were extended to include all criminal offences of corruption, except for minor forms of criminal offences of abuse of official position, fraud in the conduct of an official duty and abuse of authority in economy for which a prison sentence of less than 5 years was prescribed, and which remained within the jurisdiction of the Basic Public Prosecution Office.

Independence and impartiality of Public Prosecutors is regulated under the Constitution and the Law on Public Prosecutor (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08), where it is stipulated by Article 3 that the function of the Public Prosecutor may not be executed under the influence of any person and that no person shall have influence on the Public Prosecutor regarding the performance of his or her function, except in cases stipulated by this Law. Independence and impartiality shall be guaranteed by the appointment of Prosecutorial Council which shall ensure independence of the Public Prosecution Office and Public Prosecutors. The Prosecutorial Council shall be appointed and removed from office by the Parliament. The Law on Public Prosecutor (Chapter VII, Articles 83-90), stipulates election, term of office, jurisdiction, organization and work of the Prosecutorial Council. Article 84 of the Law on Public Prosecution Office stipulates that the Prosecutorial Council shall have a President and ten members. The Supreme Public Prosecutor shall by nature of his office preside over the Prosecutorial Council. The Prosecutorial Council shall include six elected Public Prosecutors, so that they shall constitute a majority in that body. Independent character is achieved through allocation of cases, the manner of which is regulated by the Rulebook on Internal Performance of the Public Prosecutor. Further on, the Law regulates the basis for disciplinary liability of Public Prosecutors or their deputies, and also the procedure for establishment of liability and pronouncement of disciplinary measure.

The Law on Public Prosecution Office regulates the procedure of appointment and removal from office of Public Prosecutors and their deputies, in addition to identification of general (citizenship, health condition and ability to work, qualifications) and special requirements (work experience), and also the following objective selection criteria for appointment, including: professional knowledge, work experience and work efficiency; published professional works and other activities

relating to the profession; professional development; ability to perform the function that he/she is applying to in an impartial, conscientious, diligent and responsible manner; communication skills; relations with colleagues; conduct outside of the job; professionalism; and reputation.

iv) Law on Courts

The Law on Courts (Official Gazette of the Republic of Montenegro 05/02, 49/04 and Official Gazette of Montenegro 22/08) regulates the following: court establishment, organization and jurisdiction; preconditions for the appointment of judges and lay judges; organization of court work; judicial administration; funding of court work and other issues of importance for functioning of courts.

In March 2008, the Law amending the Law on Courts (Official Gazette of Montenegro 22/08) was adopted whereby the competence for trials relating to criminal offences of organized crime, corruption, terrorism and war crimes was transferred from the courts of first instance to two High Courts, in Podgorica and Bijelo Polje. Two special divisions were established within those courts (Article 99) for dealing with such cases. According to the Article 18 paragraph 1 item 3 of the Law on Courts, starting from 1 September 2008, the special divisions of High Courts shall be in charge of trials containing elements of corruption, except for minor criminal offences of abuse of an official position, fraud in the conduct of an official duty, and abuse of authority in economy, that remained within the competence of the courts of first instance.

v) The Law on the Judicial Council

The Law on the Judicial Council was adopted in February 2008 (Official Gazette of Montenegro 13/08). According to the Constitution, the Judicial Council was established as a self-ruling independent body whose basic responsibilities, inter alia, include the appointment, removal from office and establishment of disciplinary liability of judges and presidents of the courts, while this law stipulates in more details the manner of appointment and termination of term of office of the Judicial Council members, organization and work of the Judicial Council, the procedure for appointment of judges and lay judges, the manner of establishment and termination of judicial function, disciplinary liability and removal from office of judges and lay judges. The Judicial Council as an independent authority guarantees self-ruling and independence of judges, protects the Court and judges against political influence, supervises the performance of courts and judges, decides on disciplinary liability of judges and performs a number of other activities as established under the Constitution and by law.

vi) Law on Prevention of Conflict of Interest

Necessary international standards and recommendations from the UN Convention against Corruption, of the European Union and the Council of Europe relating to fight against organized crime, corruption and money laundering, and especially the recommendations of GRECO (Council of Europe's Group of States for the Fight against Corruption) have been incorporated into the text of the new Law.

In order to establish and maintain the confidence of citizens in conscientious and responsible performance of public functions, this Law regulates the restrictions relating to the performance of public functions, reception of gifts and its reporting (Articles 14 to 18), submission of reports on revenues and property (Articles 19 to 21), and establishes clear restrictions in case of public officials moving from the public to private sector (*pantouflage*, Article 13), and also, establishes a Commission for the Prevention of Conflicts of Interest for the purpose of implementation of this Law.

Commission for the Prevention of Conflicts of Interest, as an independent authority, is responsible for establishing a conflict of interests and undertaking measures for its prevention. An opinion on the existence of conflicts of interest and a decision on the violation of this Law which is issued by the Commission in accordance with this Law shall be binding for a public official. The competencies and powers of the Commission are extended by this Law, especially with respect to issuing decisions on violation of this Law and requests for initiation of misdemeanour proceedings, including more severe sanctions for its violation.

Article 2 of the UN Convention against Corruption stipulating that the same standards must relate and apply to all public officials is incorporated into the Law on Prevention of Conflict of Interests.

Furthermore, clear restrictions were established in case of public officials moving from the public to the private sector (*pantouflage*) in order to avoid a conflict of interests, following the recommendations of GRECO and the UN Convention.

However, the Law did not follow the recommendations of the Council of Europe's Group of States against Corruption (GRECO) to the full extent, in terms of the restrictions of membership in companies' Management Boards.

This Law is explained in more details in the answer to the question No 50 of this Chapter.

vii) Law on Liability of Legal Persons for Criminal Offences

The Law on Liability of Legal Persons for Criminal Offences (Official Gazette of the Republic of Montenegro 2/07 and 13/07) stipulates the terms of liability of legal persons for criminal offences, criminal sanctions imposed on legal persons, and criminal proceedings resulting in the pronouncement of such sanctions. According to this Law, criminal charges may be filed against a legal person for the crimes under a special section of the Criminal Code and for other offences stipulated by a separate law, in case the terms of liability of legal persons stipulated under this Law are met.

This Law is based on Article 31 of the Criminal Code, and the provisions of the UN Convention against corruption and those of the Council of Europe Criminal Law Convention on Corruption have been implemented since the adoption of the Law. The Law provides for the measure of seizure of material benefit obtained by a criminal offence. Article 4 defines the concept of legal person that this Law applies to. Article 36 stipulates the conditions for and the manner of seizure of material benefit, while the security measures relating to the execution of seizure of material benefit are regulated under Article 62 of this Law. Additionally, unless otherwise provided for by this Law, the Law on Criminal Procedure shall apply accordingly, and so the Law on Executive Procedure shall consequently apply to the security measures.

viii) Law on the Prevention of Money Laundering and Financing Terrorism

This Law provides for the measures and actions undertaken for the purpose of detection and prevention of money laundering and financing terrorism.

The first Law on the Prevention of Money Laundering was adopted in September 2003 (Official Gazette of the Republic of Montenegro 55/03) and it was harmonized with the Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering and the Directive 2001/97/EC of the European Parliament and the Council.

The Administration for Prevention of Money Laundering and Financing Terrorism is responsible for the implementation of this Law, as a financial informative unit of administrative type. It was established by the Decree of the Government of Montenegro in September 2003.

By the Law on Amendments on the Law from March 2005 (Official Gazette of Montenegro 17/05), the provisions on the prevention of financing terrorism were also introduced, so the title of the Law was also amended. The Law was harmonized with the recommendations of the Financial Action Task Force (FATF) 40+8+1.

In November 2007, the new Law on the Prevention of Money Laundering and Financing Terrorism was adopted (Official Gazette of Montenegro 14/07), which was harmonized with the latest international standards in this area. Namely, this subject matter is very dynamic, so that new international standards and measures are continuously being added to the national legislation.

The new Law is fully harmonized with the Directive 2005/60/EC of the European Parliament and Council, of 26 October 2005, on the prevention of the use of the financial system for the purpose of money laundering and financing terrorism, and the UN Convention against Corruption.

ix) Law on Witness Protection

This Law regulates the conditions and procedures for providing out-of-court protection and assistance to a witness, when reasonable fear exists that testifying for the purpose of giving

evidence with a view to proving criminal offences, for which the protection may be provided under this Law, would expose the witness to severe danger to life, health, physical integrity, freedom or property of large scale, where other protection measures are not sufficient.

A decision about the application, termination or extension of application of Witness Protection Programme shall be made by the Commission for Application of the Witness Protection Programme. The Commission is consisted of: judge of the Supreme Court of Montenegro, Deputy Supreme Public Prosecutor and Director of the Protection Unit. Administrative tasks for needs of the Commission are carried out by the Protection Unit. The Protection Unit is a specialized organizational unit of the Police Directorate in charge of implementation of emergency measures and the Protection Program and responsible for its implementation and performing other activities in accordance with this Law.

The Law stipulates (Article 5) that the Protection Programme shall be applied only if the criminal offence cannot be proven without the testimony of a witness, or where it would be much more difficult to prove it in another manner, and also when proving any of the following criminal offences:

1) Against the constitutional order and security of Montenegro;

2) Against the humanity and other wealth protected by international law;

3) Executed in an organized manner;

4) For which a prison sentence of 10 years and more, or more severe sentence may be imposed.

x) Law on State Administration

The Law on State Administration was adopted in June 2003 (Official Gazette of the Republic of Montenegro 38/03), while the Law amending the Law on State Administration was adopted on 2 April 2008 (Official Gazette of Montenegro 22/08). This Law regulates organization of the state administration, activities performed by its authorities, the relations between the authorities and with the citizens, as well as the management and responsibilities of the state administration bodies.

The concept of this Law is to change the role of state administration, primarily from control-oriented and regulatory role, and transform it into a service-oriented state administration that has to be based on democratic foundations. This Law regulates organization of state administration, activities carried out by the state administration authorities, relations between the authorities and those with the citizens, and also management and responsibilities of state administration bodies.

Concerning the prevention of corruption, this issue is addressed by the provisions of the Law, regulating the principles of legality, public nature, undertaking of timely action by the state authorities, supervision of work and sanctions in case of failure to act.

xi) Law on Civil Servants and State Employees

This Law regulates the issues of position of civil servants and state employees relating to the following: employment; titles/functions; rights and obligations; liability; job assignments; performance appraisal, promotion and ability verification; professional development; termination of employment; protection of rights; personnel management; and supervision over its implementation.

This Law regulates the competencies of the Human Resources Administration, a special authority established by a Decree of the Government of Montenegro in 2004, whose main responsibilities include management and development of human resources of the state administration bodies of Montenegro, as well as the maintenance of the personnel information system for human resource management and development in those bodies. In addition to the above and other defined responsibilities, this authority monitors the implementation of this Law and other regulations on civil servants and state employees, while the implementation of this Law and other regulations is supervised by the Ministry of Interior and Public Administration, through administrative inspectors.

Concerning the provisions of the Law on the prevention of corruption, the introductory Articles include the provisions emphasizing the obligation of state officials to act in legal, ethical and independent manner in the course of performance of tasks (Articles 5, 6 and 7). Article 50 of this Law provides for a general prohibition to the civil servant to bring into conflict a private and public interest, as it could challenge his or her impartiality.

The principle of “whistleblowing”, i.e. the protection of persons who report corruption is incorporated into the Law. Article 54 provides for protection of civil servants and state employees who report corruption. It is prescribed that for this reason his or her employment and status in the authority may not be challenged, and protection of his or her identity is guaranteed so that it cannot be disclosed to unauthorized persons. In case that life, health, physical integrity, freedom or property of the civil servant is endangered, he or she may be protected according to the Law on Witness Protection. Article 59 defines, as a severe disciplinary violation, the abuse, restriction or denial of the rights of civil servant and state employee, as established under this Law, who reports a criminal offence with elements of corruption or makes an official statement about that. For such a violation, a fine may be imposed or employment may be terminated. Article 64 stipulates that disciplinary proceedings shall be initiated for a severe breach of work obligations against a person in managerial position acting against Article 54.

xii) Law on Free Access to Information

The Law on Free Access to Information (Official Gazette of the Republic of Montenegro 68/05) entered into effect in November 2005. This law guarantees access to information in the possession of governmental authorities according to the principles of: freedom of information, equal conditions for the exercise of rights, open character and public nature of work of governmental authorities and emergency of procedures (Article 2). All governmental authorities are obliged to act in accordance with the Law on Free Access to Information, thus contributing to strengthening of the principle of transparency of their work.

xiii) Law on Public Procurement

The public procurement system in Montenegro was established by the Law on Public Procurement that came into effect on 29 July 2006, the secondary legislation adopted pursuant to the Law, and standard forms and documents relating to the procedure for its implementation. In accordance with this Law, the institutional framework was established, a consistent implementation of the Law was ensured, and the preconditions for a full introduction of the legislation of the European Union were created, including the compliance with obligations stipulated by the Stabilization and Association Agreement, in the area of public procurement. This Law includes the provisions on anti-corruption that are very important for legal conducting of public procurement procedure. Article 13 stipulates that the contracting authorities, bidders and other participants in a public procurement procedure shall undertake efficient and effective measures in order to prevent the corruption, abuse of official position, signing of agreements for the purpose of cheating third parties, provision of false data on the occasion of bid submission, conflict of interest, and lack of impartiality and transparency in the course of implementation of a public procurement procedure. Additionally, the contracting authority shall reject a bid, cancel the procedure or withdraw from signing of a contract in case of suspicion of corruption. Furthermore, all participants in a public procurement procedure shall undertake all necessary measures in order to eliminate any conflict of interests.

Through the implementation of the Law on Public Procurement in the reporting period, all rules and requests of the European Union were complied with, with regard to ensuring a full freedom of flow of goods, people and capital. By this Law, business entities from the European Community that were established in or outside Montenegro may be awarded a contract under equal terms and conditions as those applying to the business entities from Montenegro. The principle of free open market was completely conformed to, pursuant to Article 76 of the Stabilization and Association Agreement.

The Law on Public Procurement was in substance harmonized with the Directive No 32004R0018 for the sector of normal public procurement, and the Directives No 31989L0665 and No 31992R0013 in the area of protection of rights. The obligation from Article 41 paragraph 2 of the Temporary Agreement relating to the harmonization of legislation on public procurement with the system of the European Union in the area of municipal services shall be completely conformed to by means of harmonization with all regulations and standards of the European Union and their incorporation into the national legislation by the Law amending the existing Law or by adopting a new Law on Public Procurement for the sector of municipal services, whereby the national legislation on public procurement shall be harmonized with the Directive No 32004R0017. The contract awarding procedure for the sector of municipal services is now conducted under the same

terms and conditions as in case of any other sector, i.e. the Law specifies no difference in terms of particularity (simplification) of the procedure for municipal services, which is stricter than the standards of the European Union, but not opposed to the above directive.

Additionally, this harmonization will also ensure harmonization with the new Directive No 32007L0066 on the protection of rights, and a full harmonization with the Directive No 32004R0018 stipulating new procedures in the area of competitive dialogue and dynamic purchasing system, limit values for public procurements and deadlines for duration of public tenders.

An UNCITRAL expert provided professional comments on the Law on Public Procurement especially in terms of the Article 9 of the UN Convention against Corruption where public procurement is directly addressed, and Articles 6-14 of the Convention including preventive measures of importance for public procurement. These comments address the Law on Public Procurement from the point of view of all goals of procurement procedure (competitiveness, transparency), especially emphasizing the principle of “integrity in the first place”. According to general conclusion, the Law on Public Procurement meets the requirements of Article 9 of the UN Convention against Corruption representing a strong element of harmonization with other prevention measures, and constitutes reasonable balance between the goals of integrity and other goals of procurement, including the principles of cost-efficiency and efficiency.

Nevertheless, it was emphasized that certain issues from Article 9 paragraph 2 of the UN Convention against corruption had not been completely defined by the Law on Public Procurement itself, or by any other relevant regulations. These issues especially relate to the following: 1) appropriate measures to ensure the transparency and liability in the state budget, revenues and expenditures, bookkeeping and auditing standards, risk management and internal control, and corrective measures, and 2) provisions relating to the procedure of verification and the conditions for training of personnel responsible for public procurement. However, it should be emphasized that the UN Convention requirements against corruption relate to the “system” and as such may not necessarily be a subject of the Law on Public Procurement itself, but they should find its place in other regulations.

Certain provisions of the Law on Public Procurement should be amended with regard to: centralized publishing of all information relating to procurement (laws, regulations, rules, court and administrative decisions) and all information relating to the public procurement procedure. Additionally, the importance of the issue of confidentiality of information and its potential connection with an appropriate monitoring system was also emphasized.

Pursuant to the Law on Public Procurement, the Commission for the Control of Public Procurement Procedures was established, while the Public Procurement Directorate was established by the Decree amending the Decree on Organization and Work of State Administration (Official Gazette of the Republic of Montenegro 72/06).

xiv) Law on the Financing of Political Parties

This Law governs the manner of acquisition and providing sources of funding for work and election campaign of political parties, and the manner of control of funding and financial operations of political parties, aiming to ensure the legality and public character of their operation. Political parties may receive funds for their regular activities and election campaign from public and private sources, according to this Law. This Law resulted from the requirements of Article 7 of the UN Convention against Corruption.

The Law includes the provisions relating to the provision of transparency and legality of operations of political parties and their financing. It should be especially emphasized here that the norms regulating the permitted and forbidden sources of funding of political parties (Article 19), in addition to a ban on putting pressure, i.e. ban on making promises or indicating the prospect of any privilege whatsoever or personal benefit for the political party’s donor or another submitter of the announced candidate list (Article 20). Equally important is the prescribed obligation to submit full reports on the origin, amount and structure of revenues and expenditures for the election campaign (Article 23).

This Law provides for high fines for a legal person financing a political party in the amount exceeding the limit prescribed by the law, and for a political party and National Election

Commission acting against legal regulations. The implementation of this Law is monitored by the Ministry of Finance.

xv) Law on Financing the Campaigns for Election of the President of Montenegro, Mayor and President of the Municipalities

The Law on Financing the Campaigns for Election of the President of Montenegro, Mayor and President of the Municipalities was adopted in January 2009 (Official Gazette of Montenegro 08/09 of 4 February 2009).This Law regulates the manner of acquisition and sources of funding for election campaign of the President of Montenegro, Mayor and President of the Municipalities, aiming to ensure the legality and public character of this funding.

The Law on Financing of Political Parties applies to the financing of campaigns for election of the President of Montenegro, Mayor and President of the Municipal Assembly, unless otherwise stipulated by this Law.

The implementation of this Law is monitored by the Ministry of Finance.

The candidates are obliged to submit to the competent election commission the reports on the amount and sources of funding collected to cover the costs of election campaign, both before and after the elections.

xvi) Law on the State Audit Institution

Establishment of an exterior independent audit of public expenditures significantly downsizes room for the occurrence of corruption. By the Law on State Audit Institution that was designed following the best international standards and practices, a State Audit Institution (SAI) was established, in addition to the regulation of its operations in terms of verification of compliance with regulations on the collection of public revenues, financing of expenditures, handling and management of assets, and executing other obligations of subjects to audit. The Institution shall without any delay initiate criminal charges if in the process of audit execution it establishes a suspicion that a criminal act was committed (Article 23).

At the 19th Congress of International Organization of Supreme Audit Institutions (INTOSAI) held in November 2007, SAI became a full member. The SAI, following recommendations of the Lima Declaration, applies the INTOSAI standards, the European guidelines for their implementation and other acts relating to external national audit. The auditing procedure is executed according to the INTOSAI standards adopted by the International Organization of Supreme Audit Institutions, and all auditing institutions, the members of this Organization, are subject to the obligation of their consistent application.

Regarding the harmonization with the Civil Law Convention on Corruption of the Council of Europe, Article 12 of the Law anticipates the Institution's obligation to include its findings into an auditor's report, and also for the auditor's report to include the factual situation, conclusions and recommendations so that any potentially established deficiencies may be corrected. Furthermore, Articles 19, 20 and 21 establish the Institution's obligation to submit regular annual reports to the Parliament and the Government of Montenegro, as well as the special reports and recommendations on the basis of information collected in the process of audit execution regarding the following:

- An assessment if the amounts presented in the budget final account are compliant with the recorded data, and whether the audited revenues, expenditures and assets were duly documented in accordance with the applicable regulations and general standards;

- Evaluation of significant cases of lack of compliance with the rules and regulations on national budget and state financial operations;

- Essential comments on identified deficiencies of the audited subject;

- Recommended measures.

The SAI submits special reports on particularly important issues to the Parliament and the Government of Montenegro. The SAI may, on the basis of information collected through the audit execution, advise the Parliament and the Government about specific financially important

measures and significant projects. Where it finds out that the existing laws have of may have an adverse impact or fail to produce the planned results, the SAI may recommend their amendment.

xvii) Law on International Legal Assistance in Criminal Matters

The Law on International Legal Assistance in Criminal Matters was adopted in December 2007 (Official Gazette of Montenegro 04/08). International Legal Assistance includes deportation of accused and convicted persons, transferring and assumption of criminal prosecution, execution of foreign sentences for criminal acts, delivery of acts, written materials and other objects relating to criminal proceedings in a foreign country, as well as execution of certain process actions such as hearing of the defendant, witness and the court expert, crime scene investigation, search of premises and persons, and seizure of objects.

International legal assistance is provided in accordance to an international treaty, or in case of its absence, or where any particular issue is not regulated by an international treaty, in accordance to this Law, based on the principle of reciprocity.

xviii) Law on Managing Seized and Confiscated Assets

Law on Managing Seized and Confiscated Assets was adopted in July 2008 (Official Gazette of Montenegro 49/08 of 15 August 2008). This Law governs the manner of keeping and managing seized and confiscated assets in the course of criminal or misdemeanour proceedings. The Court, i.e. the authority competent for administration of misdemeanour proceedings, shall without any delay submit a final and enforceable decision on confiscation of property, i.e. seizure of property, to the authority in charge of custody, that is management of confiscated property.

The Custody, i.e. management of assets shall be carried out by the Ministry of Finance which maintains the records on seized assets. Funds originating from the sale of confiscated assets, after deduction of the costs of property value appraisal, storage, keeping and sale, shall be paid into the budget of Montenegro. Such funds shall be used to fund the projects related to strengthening of capacities of judiciary and prosecuting authorities, and bodies responsible for internal affairs.

47. How is the link between domestic legislation and international conventions ensured?

The requirement of harmonization of national legislative framework with international standards arises from various international conventions and treaties signed by Montenegro, while the supremacy of international legislation is guaranteed by the supreme legal act of the State:

“Confirmed and published international treaties and generally accepted rules of international law represent an integral part of the internal legal order, shall have supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation” (Article 9 of the Constitution of Montenegro (Official Gazette of Montenegro 1/07)).

Consequently, in the process of adoption of laws, according to the Rules of Procedure of the Government (Official Gazette of the Republic of Montenegro 45/01, 09/03, 71/04, 71/06, and Official Gazette of Montenegro 18/08) and of the Parliament of Montenegro (Official Gazette of the Republic of Montenegro 51/06 and 66/06), harmonization of legal acts with the European legislation, and international treaties and acts of the Council of Europe, represent a prerequisite for the consideration, i.e. adoption of a specific legal act.

The relation between national laws and international conventions is ensured in the procedure of drafting and adoption of new laws and amendments to the existing ones. The Government, which proposes new laws, complies with this requirement through its operating bodies, while the law drafter is obliged to obtain from the competent authority an opinion regarding the compliance of the draft law with the corresponding regulations of the European Union (EU), and submit the EU regulations and ratified international conventions that the act has been harmonized with (Article 49 of the Rules of Procedure of the Government of Montenegro). Furthermore, harmonization with relevant international legislation is also ensured through public discussions organized by the Government. Additionally, all new laws relating to the rule of law, democracy and human rights

are submitted to the competent organizations, most often to the Council of Europe, Organization for Security and Co-operation in Europe, etc., for the purpose of obtaining an expert opinion.

According to the Article 130 of the Rules of Procedure of the Parliament, a rationale of the proposal for a law has to include, inter alia, an overview of harmonization with the European legislation and ratified international conventions.

The Committee for International Relations and European Integration is a permanent Committee of the Parliament which monitors and, as required, initiates harmonization of the national legal system with the European law; it monitors the execution of the State's rights and obligations arising from international treaties and the Council of Europe's acts; considers programs of assistance and cooperation with the EU; reviews other acts and issues within the jurisdiction of the Parliament in this area; reviews international treaties ratified or approved for ratification by the Parliament, and other activities (Article 42 of the Rules of Procedure of the Parliament of Montenegro). In addition to this, the Parliament has 10 permanent Committees more, including the Committee for Human Rights and Freedoms which participates in preparation and drafting of documents and harmonization of the legislation from this area with relevant standards stipulated by the European legislation.

According to the Article 73 of the Rules of Procedure of the Parliament of Montenegro, in the process of consideration of a proposal for a law, preparation of a proposal for a law or consideration of certain issues, with a view to obtaining necessary information and expert opinions, the Committee may, as required or for a specific period of time, engage scientists and experts in specific areas, members of governmental authorities and non-governmental organizations which do not have a right to vote (advisory hearing).

As a part of the so-called second reviewing, consideration of a proposal for a law in the Parliament at the sitting of the Parliament starts by a general discussion on the following: constitutional basis, reasons for adoption of the law, its harmonization with the European legislation and international confirmed treaties, etc.

According to the Resolution on Fulfilment of Obligations of Montenegro in Framework of Stabilization and Association Agreement (SAA) (Official Gazette of Montenegro 2/08), the Parliament of Montenegro established the National Council for European Integration (Official Gazette of Montenegro 22/08), as a strategic advisory body with a high level of participation by representatives of Montenegrin society, with a view to better coordination and monitoring of the SAA implementation, and future negotiations relating to the accession of Montenegro to the European Union. The National Council, inter alia, as required, provides its opinion on harmonization of Montenegrin legislation with European Union legislation.

Action Plan for implementation of the Programme for Fight against Corruption and Organized Crime, as one of its measures contains an analysis of harmonization of the national legislation with international standards from the area of fight against corruption and organized crime, including further activities related to harmonization. In terms of harmonization of national legislation with international anti-corruption conventions, Montenegro is especially devoted to the adoption of standards stipulated under the Criminal Law Convention on Corruption of the Council of Europe, and the accompanying Protocol, Civil Law Convention on Corruption of the Council of Europe, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the Council of Europe’s Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, and the United Nations Convention against Corruption.

The relation between national legislation and the Council of Europe's standards is implemented, inter alia, through a procedure of mutual evaluation implemented by the Council of Europe's Group of States against Corruption (GRECO) and the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

Compared to the Criminal Law Convention on Corruption of the Council of Europe, and the Resolution (94)24 about the 20 guiding principles for the fight against corruption, rounds I and II of the evaluation have been completed so far in Montenegro resulting in 24 obligatory

recommendations (year 2006). The implementation of recommendations at the same time includes a more complete harmonization with the Council of Europe's standards. The implementation of GRECO recommendations was identified as obligatory under the Action Plan for the implementation of the Programme of Fight against Corruption and Organized Crime. Following the adoption of the Report on Harmonization for Montenegro of December 2008, the activities are carried out to implement eight recommendations which have been assessed as partly implemented.

With regard to the MONEYVAL, the evaluation is conducted in relation to the international and European standards for the prevention of money laundering and financing of terrorism, as well as 49 recommendations of the international Financial Action Task Force (FATF). The MONEYVAL reports include detailed recommendations to improve the efficiency of member states systems for the prevention of money laundering and financing of terrorism, including the international cooperation related thereto.

With regard to the United Nations Convention against Corruption (UNCAC), Montenegro submitted a report on degree of UNCAC implementation, to the Conference of Contracting Parties (the second Conference of the Contracting Parties was held in 2008). Harmonization of the relevant legislation of Montenegro with the United Nations Convention against Corruption (UNCAC) is continuously and mostly implemented through the cooperation with the United Nations Development Program (UNDP), i.e. its Regional Office in Podgorica, and the United Nations Office for the fight against Drugs and Crime (UNODC).

Over the previous two years, the Administration for Anti-Corruption Initiative, in cooperation with the UNDP Office to Montenegro, provided for an analysis of harmonization of eight relevant Montenegrin laws with UNCAC, as follows: Law on Liability of Legal Persons for Criminal Offences; Law on Free Access to Information; Law on Financing of Political Parties; Law on International Legal Assistance in Criminal Matters; Criminal Procedure Code; Criminal Code; Law on Public Procurement; Law on Conflict of Interests; and Law on Civil Servants and State Employees in the part relating to the protection of persons who report corruption.

Generally speaking, a high level of compliance of all above laws with UNCAC was confirmed, except for the text of the previous Law on Conflict of Interests, since in the meantime a new Law on the Prevention of Conflicts of Interests was adopted in December 2008. The above analysis, together with recommendations for improvement and closer harmonization of certain provisions of national legislation with UNCAC, were submitted to the competent authorities to be taken into account when new laws are drafted (for example, by the Ministry of Justice, when preparing a new Criminal Procedure Code, etc.)

The appraisal of harmonization of anti-corruption laws with the European legislation and UNCAC, with a special emphasis on the prevention measures, and adoption of recommendations for their improvement in this regard, is one of the goals of the Project "Fight against Organized Crime and Corruption" MN-07/IB/JLS-02 (IPA 2007), as a part of which the following was considered: Draft Law on Integrity in the Public Sector; Law on the Prevention of Conflict of Interests; Code of Ethics of Civil Servants and State Employees; Law on Civil Servants and State Employees; Technical Instructions on Procedures for Reporting Crimes with Corruption Elements and the protection of persons reporting crimes with corruption elements to the Police Directorate; and the Criminal Code of Montenegro.

48. Is corruption defined as a criminal offence in line with the Council of Europe Criminal and Civil Law Convention? Which type of conduct can be sanctioned as corruption? Is active and/or passive bribery sanctioned? In the public and/or private sector? Trading in influence? What kind of sanctions exist (e.g. possibility of confiscation of proceeds, disqualification measures)?

Criminal offences with elements of corruption are included in the Criminal Code, mostly under the chapter on criminal offences against official duty and the chapter on criminal offences against

payment transactions and business operations. The Law on Courts that regulates, inter alia, the jurisdiction of the Special Division for the Prevention of Organized Crime, Corruption, Terrorism and War Crimes, defines the following criminal offences as those containing elements of corruption: abuse of an official position; fraud in the conduct of an official duty; abuse of authorizations in economy; money laundering; violation of equality in the conduct of business activities; abuse of monopolistic position; causing bankruptcy; causing false bankruptcy; trading in influence; false balance; abuse of appraisal; disclosing a business secret; passive bribery; active bribery; and disclosing a business secret. Accordingly, in our legal system the corruption is not criminalised as a separate criminal offence, but it is included into a number of criminal offences containing elements of corruption prescribed under the Criminal Code.

The Criminal Code, in relation to criminal offences against official duty, regulates criminal offences of passive and active bribery, i.e. passive and active bribery in the public sector.

Passive bribery, as a criminal offence, envisages that a person in official capacity who requests or receives a gift or any other benefit, or who accepts a promise of gift or any benefit for himself/herself or another for agreeing to perform within the limits of his/her official authorizations an official act s/he should not perform, or not to perform an official act which s/he should perform, shall be punished by an imprisonment sentence of two to twelve years. A less severe form of this criminal offence exists where a person in official capacity requests or receives a gift or other benefit or accepts a promise of gift or any other benefit for him/herself or another for agreeing to perform within the limits of his/her official authorizations an official act s/he should perform, or not to perform an official act s/he should otherwise not perform. If a person in official capacity commits such a criminal offence in relation to the detection of a criminal offence, initiating or conducting a criminal proceedings, imposition or enforcement of a criminal sanction, he/she shall be sentenced to imprisonment of three to fifteen years. An imprisonment sentence of three months to three years shall also be imposed where after performance or non-performance of an official act and in relation with that, a gift or another benefit is requested.

The Criminal Code also stipulates that a foreign official who commits this criminal offence shall be punished. Nevertheless, under the Criminal Code that is currently being revised for the purpose of full harmonization with the EU legislation and amendments to which are expected until the end of the current year, the concept of a person in official capacity will be extended and harmonized with the Criminal Convention on Corruption to include foreign official who is a member of a legislative, executive or judicial body of the foreign state, public official, official of international organization and its bodies, judge or other official of international court. Having in mind that the concept of foreign official is stipulated in this manner, no special regulation on liability of foreign official is required since it is contained in the concept of a person in official capacity.

Active bribery concept envisages that anyone who gives, offers or promises a gift or other gain to an official who agrees to perform an official act within the limits of his/her official authorizations that s/he ought not to perform or to omit to perform an official act s/he ought to perform, or a person who mediates in such bribery of an official, shall be punished by an imprisonment sentence of six months to five years. The above relating to the criminal offence of passive bribery equally refers to active bribery.

Active and passive bribery relate to the public sector, i.e. officials performing official acts. The present Code, in terms of the above criminal offences, contains a separate paragraph stipulating the liability of the responsible person of a business organization, institution or other entity that commits the crime of passive or active bribery. The revised Criminal Code provides for special criminal offences falling under the chapter on criminal offences against payment transactions and business operations, including illegal acceptance of gifts and illegal offering of gifts, i.e. special criminal offences of bribery in the private sector as well, to which less severe sentences apply in comparison with sentences prescribed for acts of corruption in the public sector.

Trading in influence is stipulated as a criminal offence under the Criminal Code, including both active and passive form of trading in influence as one criminal offence, and is therefore in essence and content harmonized with the requirements from the Criminal Law Convention on Corruption. Following expert opinion and recommendation to stipulate two separate criminal offences of passive and active trading in influence, for the purpose of systematic character and

higher clarity, the amendments to the Criminal Code shall stipulate two separate criminal offences of trading in influence and instigation of trading in influence and active and passive trading in influence. According to the existing regulations, anyone who accepts a reward or any other benefit or accepts a promise of any reward for himself or herself or another person in exchange for using his/her official or social position or influence to intercede that an official act be or not be performed, shall be found guilty of trading in influence. It is also stipulated that anyone who by using his/her official or social position or influence, intercedes that an official act be performed that should not be performed or that an official act not be performed that should be performed, and also anyone who gives, offers or promises a reward or any other benefit to an official or another person so as to use his/her official or social position or influence and intercede that an official act be performed that should not be performed or that an official act not be performed that should be performed, shall be punished. Perpetrators of any type of this criminal offence shall be punished by an imprisonment sentence of three months to five years.

All criminal offences of passive and active bribery and trading in influence are subject to the pronouncement of a prison sentence. In case of passive bribery, the received gift or material benefit shall be confiscated, as well as a reward or material benefit in case of trading in influence.

The Criminal Code regulates the conditions for and manner of seizure of material benefit. Money, things of value and all other material benefits obtained by a criminal offence shall be seized from the offender; should such a seizure be not possible, the offender shall be obliged to pay for the monetary value of the obtained material benefit. The revised Criminal Code shall stipulate material-legal conditions to apply the institute of extended confiscation of assets by defining the assets considered obtained by a criminal offence and by specifying a list of criminal offences to which this institute may apply and time relations between the execution of a criminal offence and acquisition of assets, and the protection of conscientious purchasers.

Material benefit acquired by the criminal offence shall be also seized from persons to whom it was transferred without any compensation, or from person who was aware of the fact that the material benefit was acquired by the criminal offence, or could have been or was obliged to be aware of it. Material benefit acquired by a criminal offence for a third person shall also be confiscated.

The Criminal Procedure Code that came into force, whereas it shall apply one year following its entry into force, regulates the procedure for seizure of assets acquired by the criminal offence, while the burden of proof is transferred from the Prosecutor to the defendant. The system and procedure of seizure can be divided into three phases: 1. the phase of investigation, where the proceeds from crime are established and located and ownership-related evidence collected (as well as the details on the owner's property) – financial investigation; The result of financial investigation can be a temporary measure (seizure) in order to ensure later confiscation on the basis of court's decision; 2. The phase of court trial, where the defendant is proclaimed guilty or acquited; and 3. The phase of handling the property, where the State confiscates the property and manages it in accordance to the law, taking into account international exchange, i.e. the return of property. By confiscation of illegal proceeds, the principle of no benefit from criminal offence for any person is implemented. The purpose of this is not only prevention and punishment, but also the protection of the interests of the injured party. With regard to administration of frozen or seized property, the Law on Managing Seized and Confiscated Assets was adopted.

Criminal offences containing elements of corruption, property confiscation and other issues relating to corruption are even in present legislation mostly harmonized with international documents, and by means of the mentioned revision of the Criminal Code, and the Criminal Procedure Code that entered into effect, the Criminal Convention of the Council of Europe, as well as other international documents relating to corruption, will be consistently implemented into our legal system.

The Law on Witness Protection from 2004 ensures out-of court-protection of witnesses. The Witness Protection Unit was established for the purpose of implementation of witness protection program, including physical protection of a witness and the members of his or her family, change of identity, nondisclosure of property-related information, etc., which enables more efficient and better coordinated witness protection.

The Law on Liability of Legal Persons for Criminal Offences from 2007 governs the conditions of liability of legal persons for criminal offences, criminal sanctions applied to all legal persons, and criminal proceedings in which such sanctions are imposed, whereby modern trends relating to drafting of criminal legislation were followed, and the UNCAC, Criminal Conventions of the Council of Europe on laundering, search, seizure and confiscation of the proceeds from criminal offences and financing of terrorism are implemented.

The Civil Law Convention on Corruption is not self-implementable, so that the conditions for its implementation had to be created within the national legal framework, which was done through the following measures:

- Damage compensation was incorporated into the Criminal Procedure Law, Law on Liability of Legal Persons for Criminal Offences and Law on Executive Procedure;
- Liability was regulated by the Law on Obligations;
- Employee protection was regulated by the Law on Civil Servants and State Employees, and Technical Instructions on Procedures for Reporting Crimes with Corruption Elements and the protection of persons reporting crimes with corruption elements to the Police;
- Accounts and audits were regulated by the Law on Accounting and Auditing, Law on State Audit Institution and Law on Companies;
- Collection of evidence was regulated by the Law on Civil Procedure; and
- Temporary measures were regulated by the Law on Executive Procedure.

49. What are the rules guaranteeing the avoidance of conflict of interest in the performance of officials serving in the government, the administration and the judiciary? Does the legislation provide for public declarations of wealth and/or interest for the mentioned officials?

The Law on Prevention of Conflict of Interest (Official Gazette of Montenegro 1/09) contains clear rules whereby avoidance of conflict of interests in the work of public officials is guaranteed.

Articles 8-10 of the mentioned Law govern the issue of conflict of interest avoidance where a public official is: 1) owner of founder of a company, including public company that for the purpose of this law also includes joint stock companies and other companies of mixed ownership, private and public, and also institutions and other legal person where a public official has management rights on the basis of ownership; 2) President or a member of the management body, manager (Executive Director or management board member) or member of Supervisory Board in companies; 3) President or a member of the management body and Supervisory Board, Executive Director, member of the management team of a public company, public institution or another legal person partly owned by the national or local government. In such cases, public official shall be responsible to: transfer management rights and resign from his or her management and other positions in the company if he/she is named, elected or appointed to a public function; resign from public function in case he/she accepts to perform other duties, i.e. other functions. Public official cannot be the President, a member of management body or supervisory board, Executive Director, a member of management team of a public company, public institution or another legal person. Exceptionally, public official, other than a member of the Government of Montenegro, judge of the Constitutional Court of Montenegro, judge, Public Prosecutor and Deputy Public Prosecutor, may be the President or a member of the management body and supervisory board, Executive Director, management team member of a public company, public institution or another legal person in a public company or public institution that is owned by the State, i.e. municipality. Public official can be a President, a member of management body or supervisory board of scientific, humanitarian, sports and similar associations.

Public official shall not conclude a service contract with any public company, or a contract with private companies that signed a contract or are doing business with the Government or local

government unit for the duration of his or her term of office, unless the value of such contract is lower than EUR 500 per year (Article 11).

The Law stipulates the rules of conduct of public official or authority when participating in a discussion or deciding about a matter where he/she or an associated person has private interest. Before his/her participation in a discussion, the public official shall make a statement on the existence of private interest, which shall be entered into records by the authority, and he/she shall request an opinion from the Commission for Prevention of Conflict of Interest, which shall be binding for the public official. Public official cannot participate in making a decision before the Commission provides an opinion on possible conflict of interests (Article 12).

The Law stipulates the restrictions following the termination of a public function where a conflict of interests may be suspected, i.e. suspicion related to an inequitable privilege of the previous public function or official position, by specifying an extension of this obligation over a period of time following the termination of the public function, known as pantouflage (Article 13).

The Law also stipulates restrictions and ban on acceptance of gifts, as one of the issues whereby the public character, integrity, prevention and removal of causes of corruptive conduct are ensured. No public official shall receive money, securities or precious metals, regardless of their actual value. No public official shall receive gifts, except for protocol gifts and appropriate gifts of lower value. A protocol gift is a gift given by the representative of another country or international organization, on the occasion of his or her visit or stay, and on other occasions, or another gift given in similar occasions (Article 14). An appropriate gift of lower value includes a gift of not more than EUR 50. If a public official receives several gifts from the same person during one year, the value of all gifts shall be added up and treated a single gift.

The ban on receiving gifts also concerns public official's family members.

Article 16 of the Law on the Prevention of Conflict of Interests governs the manner of handling gifts, meaning that:

The received gifts and their respective values are entered into the register of gifts maintained by the authority where the public official performs his/her function. If established that the value of an appropriate gift exceeds EUR 50, such gift shall be delivered to be managed by the authority where the public official performs his/her function, and shall become the property of the state or local government. Where the Commission for Prevention of Conflict of Interest is notified that a public official received gifts contrary to this Law, it shall notify accordingly the authority where the public official performs his/her function and the authority competent for election, i.e. appointment of the public official.

The Law on the Prevention of Conflict of Interest stipulates the following sanctions: fine; ban on holding the position of a civil servant or state employee for a period of four years as of the day of removal from office; proposal to remove the public official from his/her function; and public announcement of the Commission's decision.

The Law precisely stipulates the procedure before the Commission for the Establishment of Conflict of Interest when processing and deciding upon the rights and responsibilities of public officials, the associated persons and other legal and natural persons, relating to the application and implementation of the law (Articles 23-37).

Article 22 of the Law stipulates the procedure in case a public official is suspected of being in a situation of conflict of interest or another form of violation of the law. Public official in office or whose term of office expired has the right and duty to report a suspected existence of conflict of interest to the Commission, i.e. request the Commission to provide an opinion regarding the existence of conflict of interest, while the Commission shall be obliged to provide this opinion within the time limit specified by the public official. In this manner a clear distinction is ensured between the submission of a public official's request to receive an opinion about the existence of conflict of interest and the issuing of a decision following that initiative, whereby the procedure for establishment of violation of this Law is initiated, based on the decision of the Commission.

The Law provides for the procedure to decide if this Law has been violated or not, which may be initiated:

a) at the Commission's initiative;

b) at the initiative by the authority where the public official performs his/her official function;

c) by the authority competent for election i.e. appointment of the public official;

d) by the state administration authority or local government authority;

e) by other legal or natural person (Article 24).

The Law precisely stipulates the content of initiative for the establishment of conflict of interest, procedure following the initiative, declaration given by the public official, establishment of facts and circumstances, confidential character of the procedure, carrying out an oral hearing, making of a statement in front of the Commission by the person who initiated the procedure, and the submission of documents to the Commission (Article 25).

The Commission issues a decision establishing if the public official, by means of an act, action or failure to act, violated this Law. The decision is brought at the Commission's session that is closed to the participants in the procedure and the public, not later than 15 days from completion of the procedure conducted in accordance with this Law. An appeal against this decision in which its reconsideration is requested may be lodged by the public official within eight days (Article 36).

Violation of the Law on Prevention of Conflict of Interest established by a final i.e. enforceable decision of the Commission shall be regarded as unconscientious execution of public function and reported by the Commission to the authority where the public officer performs his or her function, and also the authority competent for election, appointment or nomination of the public official, so that the procedure for his or her removal from office may possibly be initiated.

Where a public official is removed from office due to unconscientious performance of public function, the authority competent for election, appointment or nomination of public official shall notify the Commission accordingly. Public official who has been removed from office due to a violation of this Law may not perform the duties of a civil servant or state employee for a period of four years following the day of his or her removal from office.

The authority competent for election and appointment, prior to deciding on the election, appointment or nomination of a public official, shall check with the Commission whether the nominated candidate had been removed from office during the period of four years prior to his/her candidacy, as a result of violation of the Law on Prevention of Conflict of Interest.

In case the Commission suspects, at any stage of the procedure, that a public official committed a criminal offence that is subject to prosecution ex officio, the Commission shall report it without any delay to the Public Prosecutor. In addition to the above sanctions, a fine in the amount of EUR 825 to EUR 1 100 shall apply.

The procedure for establishment of conflict of interest shall be conducted by the Commission for Prevention of Conflict of Interest in accordance to the applicable professional standards (Article 4). The Law stipulates the composition of the Commission and the position of its members, as well as very precise requirements for their appointment and termination of function in the Commission.

The Commission consists of a President and six members. The president and members of the Commission are appointed by the Parliament of Montenegro, following the proposal of the competent working body of the Parliament, for a period of five years with no possibility of re-election. A person whose impartiality and responsibility has been proven through his/her professional work and moral qualities can be appointed as the President or a member of the Commission, whereas at least one member of the Commission must have a law degree and must have passed a bar examination(Article 41). The President and members of the Commission cannot be members of political party bodies. The Presidents of the Commission performs his/her function professionally and is entitled to a compensation set forth for the Protector of Human Rights and Freedoms. Members of the Commission are entitled to a compensation set forth by the competent working body of the Parliament (Article 42). The duties of the President and members of the Commission shall cease upon the expiration of their term of office, by resignation or removal from office.

The President or member of the Commission shall be removed from office:

- in case of unconscientious or prejudiced execution of his/her duty as a member of the Commission;
- if he/she becomes a member of a body of a political party;
- if found guilty of a criminal or other punishable act on the basis of final and enforceable court decision, which would make him/her undeserving to serve as a member of the Commission;
- if the Commission establishes that he/she failed to act in a manner stipulated by this Law.

The causes of removal of the President or a member of the Commission from office are established at the session of the Commission, and the Parliament is notified accordingly.

The President or a member of the Commission may not carry out their duties until their removal from office is decided upon by the Parliament (Article 43).

Public disclosure of financial situation and reporting income

The Law regulates supervision over the financial situation of public officials by means of reporting income, as a prerequisite for public character and honest performance of the public function and by all means an inseparable part of integrity in the performance of that function. The rules of conduct of public officials, jurisdiction of the Commission to supervise the financial situation of public officials, and type and scope of information on the property which the public official must enter into the report are stipulated in detail by the Law.

With regard to Article 19 of the Law on Prevention of Conflict of Interest, public official shall, within 15 days following his/her appointment, submit a property and income report to the Commission, including the reports for his/her spouse and children (where living in one household), as of the day of his/her election, appointment or nomination.

Public official shall report accurate information.

During his/her mandate, public official shall submit an income report:

- once a year, until the end of February of the current year for the previous year;
- 15 days following that of any change of data from the income report relating to an increase in property value of more than EUR 5,000.

Following the expiry of his/her public function, the public official shall submit income report to the Commission within 15 days following the termination of his/her public function, and also one year following the termination of his/her office, according to the situation on the day of submission of income report.

An income report, in terms of Article 20 of the prevention of conflict of interest, shall include the following:

a) personal data of the public official and his/her family members from Article 19 paragraph 1 of this Law (surname, name, personal identification number, place of temporary and permanent residence, address, qualifications and title);

b) Information on his/her public function;

c) Information on his/her property and incomes, and especially relating to:

- Ownership rights over immovables and leasehold rights over immovables lasting for longer than one year, in the country and abroad;
- Ownership rights over movable property subject to registration by competent authorities (motor vehicles, vessels, airplanes, etc.);
- Deposits in banks and other financial organizations, both in the country and abroad;
- A share or shares in the ownership of a legal person;
- Cash amounts and securities in the amount of more than EUR 5 000;
- Copyright, patent and similar rights of intellectual and industrial property;

- Debt (principle, interest, term of payment) and receivables;
- Source and level of income from the performance of a scientific, education, cultural or sports activity;
- Membership in management and supervisory bodies of public companies and other legal persons owned or partly owned by the state or municipality, as well as of scientific, humanitarian, sports and similar associations.

The more detailed content and form of an income report is regulated by the Commission.

The data from income report (Article 21) shall be entered into the register of income and property maintained by the Commission and shall be available to the public.

50. Do precise codes of conduct exist, which indicate what is and what is not allowed, and which are subject to a permanent monitoring process? How are these codes of conduct enforced?

The precise rules of conduct of civil servants and state employees are contained in the Law on Civil Servants and State Employees as well as in the Code of Ethics of Civil Servants and State Employees.

General rules on work are applied to civil servants and state employees in terms of their rights, obligations and responsibilities, unless if the Law on Civil Servants and State Employees regulates these issues differently.

Civil servant i.e. state employee carries out his work in a politically neutral and impartial manner, in accordance with the public interest. In carrying out the tasks, civil servants, i.e. state employee obeys the Code of Ethics of Civil Servants and State Employees. The Code of Ethics is determined by the ministry competent for administration affairs, following the opinion of civil servants, i.e. state employees. The law prescribes that in performing his/her duties, a civil servant, i.e. state employee, shall not put his/her private interest before the public interest nor abuse the performance of his/her duties for the achievement of material or immaterial gain. Also, the Law prescribes that civil servants, i.e. state employees are obliged to avoid conflict of interest.

A civil servant, i.e. state employee, performs his/her duties according to the Constitution, the law, other regulations and general acts. He/she shall be liable for the lawfulness, professionalism and efficiency of his/her work, for lawful, efficient and rational use of public funds he/she administers, or uses in work, and for the damage caused to the state authority or third party by his/her unlawful or erroneous work. A civil servant, i.e. state employee is obliged to perform affairs conscientiously, observing the law, other regulations and rules of his/her profession, and to observe regulations on official duty and to respect the rules of service.

A special responsibility is envisaged for superior officials (civil servant, i.e. state employee who manages an internal organizational unit in a state authority), and who beside the responsibility for his/her own work, is responsible for the work of civil servants, i.e. state employees that he/she coordinates, regardless of their personal liability. At performing his/her tasks, a civil servant, i.e. state employee is obliged to observe the instructions and orders of the superior. A civil servant, i.e. state employee, has the right to demand a written instruction or order, if he/she believes that the contents of the oral instruction or order is not clear, or if he/she believes that the performance of the oral order or instruction would be against regulations. The civil servant, i.e. state employee is obliged to perform the task according to the written instruction, i.e. order, except in the case when the performance of the task would represent a criminal offence. A civil servant, i.e. state employee, shall be acquitted from material and disciplinary liability, if he/she caused damage or committed a disciplinary offence on the basis of a written order of his/her superior.

The Law prescribes that a civil servant, i.e. state employee is obliged to perform affairs outside his/her job description and working hours, if these affairs correspond to his/her qualification. Also, a

civil servant, i.e. state employee is obliged to perform affairs in a working group within the authority, in another authority or in an inter-sectoral working group.

On the basis of the Law on Civil Servants and State Employees, the Code of Ethics of Civil Servants and State Employees has been adopted. It presents a set of standards and rules of conduct which the civil servants and state employees obey in performing in performing affairs of the state authority. Provisions of the Code of Ethics also apply to managerial personnel (persons appointed or nominated to perform affairs in the state authority).

Code of Ethics contains principles of impartiality, political neutrality, loyalty, professionalism, commitment to customers. Also, the Code determines conflicts of interest, the obligation to avoid the conflict of interest, and declaring about the conflict of interest. The Code of Ethics also prescribed the obligation of maintaining public trust, keeping official secret, and reporting unethical requests. Disciplinary liability is envisaged in case of violation of standards and rules of the Code of Ethics.

Rules of conduct and ethical principles for judges are contained in the Code of Judicial Ethics which was adopted, in accordance with the Law on Judicial Council, by the Conference of Judges. Judges are obliged to obey these principles for the purpose of maintaining, affirmation and promoting the dignity and reputation of judges and judiciary. Non-observance of the Code of Ethics may constitute grounds for disciplinary responsibility of a judge. The Judicial Council formed the Commission for monitoring the implementation of the Code of Judicial Ethics and so far, there were no disciplinary proceedings initiated due to a violation of the Code's provisions related to affirmation of legality, independence, impartiality, professionalism, their work commitment, fairness, non-bribery, dignity of judicial profession, responsibility, public and media relations, relations towards colleagues and other employees in court.

Rules of conduct and ethical principles for prosecutors are contained in the Code of Ethics for Public Prosecutors and Deputy Public Prosecutors, entered into force on 10 November 2006 following a decision of the Prosecutorial Council, in accordance with earlier provided opinion of Public Prosecutors and Deputy Public Prosecutors. The Code lays down the principles and rules of conduct of Public Prosecutors and Deputy Public Prosecutors and is binding for all Public Prosecutors and Deputy Public Prosecutors. The Law on Public Prosecution Office provides that Public Prosecutors and Deputy Public Prosecutors abide by the Code of Prosecutorial Ethics in the performance of their offices. When taking the oath before the Prosecutorial Council, Deputy Public Prosecutors also sign a statement on the acceptance of the Code of Ethics, which reads is as follows: "I hereby declare that I am in agreement with the provisions of the Code of Ethics and that I shall abide by it in order to safeguard and further develop the dignity and standing of the Public Prosecution Office, as an independent authority". No violation of the Code of Ethics has been recorded.

Special Codes of Conduct exist in other organizations and institutions as well.

In 2005, Montenegrin Employers Federation adopted the Code of Ethics of Employers, which is published on the Internet address of the Montenegrin Employers Federation. Ethical principles of doing business should contribute to more humanity and effectiveness in carrying out economic activities, and especially in creating a business culture. The Code of Ethics contains ten principles of UN Global Agreement, the obligation to respect and implement the UN Millennium Development Goals and the principles of doing business. Through membership, each member of the Montenegrin Employers Federation is introduced to contents of the Code and is obliged to act in accordance with the Code.

Through its activities, the Montenegrin Employers Federation emphasises the contents and importance of application of the Code of Ethics.

The Chamber of Economy of Montenegro is an independent, business, and professional organization of companies, banks and other financial organizations which conduct business activities in the territory of Montenegro and which are connected by common business interests.

Within the Chamber of Economy the Court of Honour is operating, whose work is regulated by the Rulebook on the Court of Honour within the Chamber of Economy of Montenegro, and which was adopted by the Chamber's Assembly. The Rulebook prescribes that the Court shall determine the

responsibility and impose measures for the actions of members of the Chamber which are harmful to the community, companies, and those clashing with nature of laws and other regulations, or those damaging the reputation of Montenegro, violating business ethics and good business practices in accordance with the Law on Chamber of Economy of Montenegro, the Statute and the Code of Business Ethics in Economy. In the exercise of its functions, the Court is independent and autonomous in decision-making and rules on the basis of laws, codes, general acts, business practices and business ethics. The Chamber provides the means for conducting activities of the Court of Honour, which is based in Podgorica.

Montenegro Business Alliance has adopted the Code on the Conduct of Business - General Principles of business ethics relating to personal and professional relations, corporate governance, relations with employees and relationships with other companies. Each member, by joining the Alliance, accepts the Code and is obliged to act in compliance with it.

Institute of Accountants and Auditors of Montenegro has adopted a Code of Ethics for Members of the Institute, defining the responsibilities of a certified professional accountant towards the public, employees and colleagues, while performing duties within the Institute. Also, the Code of Professional Ethics of the International Federation of Accountants (IFAC) applies.

The Institute of Certified Accountants and Auditors adopted its Code of Ethics, and the Code of Professional Ethics of the International Federation of Accountants (IFAC) is also applied.

In 1999, the Bar Association adopted the Code of Professional Ethics which is available on the website of the Bar Association of Montenegro. The Code of Ethics contains general rules concerning the basis of professional ethics and responsibility, independence and autonomy, competence, conscientiousness, professional reputation, ban of advertising, appearing in public, professional work and incompatibility of jobs. Also, it contains special rules concerning the lawyer-client relationship, and the attorney's secret. Prior to commencement of his practice, the lawyer is obliged to become familiar with the content of the Code, and also one of the questions in the bar exam is related to the norms and the application of the Code of Ethics. The Bar Association monitors compliance with the Code, determines whether violations of the Code should result in disciplinary responsibility of the attorney and establishes and sanctions such a responsibility. In the period from November 2007 to May 2009, there were 51 reports against members of the Chamber.

Chamber of Physicians of Montenegro has adopted the Code of Medical Ethics, which is published on the website of the Chamber of Physicians of Montenegro. The Code of Ethics sets forth ethical principles in carrying out professional duties of Chamber of Physicians, as well as the relations of members of the Chamber towards patients and the interrelationships among members of the Chamber. Within the Chamber, a Court was formed which, at the Prosecutor's request, initiates proceedings to determine liability of doctors - members of the Chamber due to breaking the laws, statutes and codes of medical ethics, and brings the appropriate decision. The Court of the Chamber is independent in the exercise of its function and brings decisions on the basis of laws, statutes, Code of Medical Ethics and the Rulebook on Organization, Procedure and Work Methods of the Court of the Chamber. For committed violations, the Court of the Chamber may impose the following measures: warning, public warning, fine, temporary removal from the Register, permanent removal from the Register. Also, within the Chamber, there is a Commission for Ethical Issues dealing with ethical standards of doctors in the exercise of medical practice; taking positions and proposing measures in relation to ethical issues in accordance with the Code of Medical Ethics, working to preserve the reputation and dignity of the medical profession, keeping medical secrets and developing collegial relations between doctors, giving opinion to the Chamber members regarding the suitability for performing medical profession; initiating proceedings before the Court of the Chamber for violating the provisions of the Code of Medical Ethics, and performing other tasks in the domain of medical ethics and deontology.

In 2003, the Chamber of Engineers of Montenegro adopted the Code of Ethics, which, by its contents, regulates the behaviour of engineers towards investors and third parties, and also protects engineers from unconscientious investors and third parties. The Code of Ethics is published on the web page of the Chamber of Engineers of Montenegro. The Application of the Code is controlled and reviewed by the Ethical Issues Committee, the Supervisory Board, the Management Board, and Executive Committees of Sections. With a view to implementation of the

Code, a Rulebook on Conducting the Disciplinary Proceedings, which is precisely prescribing the manner of conducting the proceedings and measures for the violators of the Code, was adopted. Reports to the disciplinary committee may be submitted by all interested natural persons, investors and engineers through the Professional Service of the Chamber and after their processing, they are delivered to the Prosecutor in the disciplinary procedure, who, with the assistance of the Secretary shall determine the facts and decide upon initiating the proceedings.

In 2004, the Association of Montenegrin Banks adopted the Code of Business Conduct of Banks, which presents a set of principles and rules, in accordance to which the banks in Montenegro act, while performing tasks defined by laws and regulations, and acts and decisions adopted by bodies of the Association of Montenegrin Banks. The Code is mandatory for all banks in Montenegro. The bank has a duty to introduce every worker to the rules of the Code and to ensure that everybody performs work in accordance with its rules and principles. The Court of Honour within the Association of Banks shall establish the liability for breach of the rules of the Code and impose measures related thereto. The Court of Honour imposes measures to the members of the Association for violation of the Statute, agreements and conventions, special banking practices and good business practices and codes of business conduct. The Court of Honour may impose the following measures: warning, warning which will be announced at the session of the Assembly of the Association, a public warning published in the informative journal of the Association and public media, exclusion from membership of the Association with the approval of the Management Board.

51. Whistle-blowing – do clear rules (including on effective protection of whistle blowing) and reporting mechanisms exist in both the public and the private sectors?

Aiming to strengthen the fight against corruption and, in accordance to GRECO recommendations and joint evaluations I and II of the Republic of Montenegro adopted at the 30th plenary session in Strasbourg on 9-13 October 2006, that the civil servants and state employees conscientiously reporting suspected corruption (whistle blowers) are adequately protected from adverse effects. By the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08) the protection of officials from unjustifiable termination of office is guaranteed for those civil servants and state employees reporting corruption.

Article 54 of the quoted Law stipulates that employment of the civil servant or state employee shall not be terminated on such grounds if he/she reported a criminal offence containing elements of corruption to the head of a state body or other authorized official of the competent state authority or if he/she gave the related official statement. Persons from Article 54 paragraph 1 shall be guaranteed the protection against disclosure of identity to unauthorized persons and the protection against abuse, denial or restriction of the rights established under this Law. When reasonable fear exists that the civil servant or state employee who reported a suspected corruption would be exposed to severe danger to life, health, physical integrity, freedom or property of large scale, special protection shall be ensured in accordance to special regulations on witness protection. Any abuse of the right to report suspected corruption or the provision of malevolent report shall be regarded as a severe disciplinary offence.

Article 58 paragraph 1 item 16 of the quoted Law stipulates that a severe disciplinary offence includes abuse, restriction or denial of the right of the civil servants and state employees to report suspected corruption. Any abuse, restriction or denial of the right of a civil servant or state employee established under this Law, who reports a criminal offence containing elements of corruption or gives the related official statement, shall be regarded as a severe disciplinary offence.

Article 64 of the quoted Law stipulates that:

Disciplinary proceedings against a person in managerial position shall be conducted and disciplinary measures pronounced by the Commission appointed by the authority competent for his or her nomination, i.e. appointment.

The head of the state authority shall initiate disciplinary proceedings before the Commission from Article 64 paragraph 1 for severe violation of official duty against the person in managerial position

who acts contrary to Article 54 paragraph 2 of the quoted Law, whereby the establishment of disciplinary responsibility of a person in managerial position is ensured in case he/she fails to ensure the protection of identity and protection against abuse, denial or restriction of the right stipulated under this Law for the civil servant or state employee who reported justified suspicion of corruption.
The Law on the System of Internal Financial Control in the Public Sector (Official Gazette of Montenegro 73/08) governs a system of internal financial control in the public sector of Montenegro, including financial management and control and internal audit, established methodology and standards, and other issues of importance for the establishment, development and implementation of the system of internal financial control in the public sector. This includes an obligation for all state administration authorities to establish their respective Internal Audit Units which must be separate from other organizational units of the authority, both functionally and in terms of organization.
Functional independence is implemented through independent planning, implementation and reporting on conducted internal audits.
The head of the Internal Audit Unit and internal auditor may perform only internal auditing activities. Article 21 of the Law ensured the protection of the head of the Internal Audit Unit who cannot be allocated to another job position or removed from his or her position for stating the facts or providing recommendations in his or her audit report.
The Law on Free Access to Information (Official Gazette of the Republic of Montenegro 68/05) ensures protection of the person (civil servant or state employee) who discloses information on abuse or irregular performance of public function. Within the meaning of Article 25 of the quoted Law, the employee who conscientiously carries out his or her duty and who disclosed information on abuse or irregular performance of public function, and who notifies the head of the authority or authority competent for fight against prohibited actions accordingly, cannot be called to account.
In October 2008, the Administration for Anti-Corruption Initiative and the Police Directorate, in cooperation with the OSCE, prepared the Technical Instructions on Procedures for Reporting Crimes with Corruption Elements and the protection of persons reporting crimes with corruption elements to the Police Directorate.

The protection of witnesses who report criminal offences, including criminal offences of corruption, is, inter alia, regulated under the Criminal Procedure Code (out-of-court witness protection), Law on Witness Protection (witness protection in pre-trial criminal proceedings), and Law on Police (general protection of all persons).

52. Are there clear and transparent rules on financing of political parties, social partners and other interest groups? Are these entities subjected to external financial control in order to avoid conflicts of interest between their representatives, public officials and the private sector? What is the practical experience with implementation of these rules?

General framework for financing of political parties and election campaigns in Montenegro is essentially divided into regulations or segments of regulations stipulating the financing of regular activities of political parties and those regulations stipulating financing of the election campaigns.

Observing the recommendations of the Office for Democratic Institutions and Human Rights (ODIHR) and GRECO, the Government of Montenegro, in cooperation with the civil sector (NGO), prepared two laws which were adopted by the Parliament of Montenegro, and which, together with the Budget Law, constitute a legal framework for financing of political parties and election campaigns as follows: The Law on Financing of Political Parties (Official Gazette of Montenegro 49/08) and the Law on Financing the Campaigns for Election of the President of Montenegro, Mayors and Presidents of Municipalities (Official Gazette of Montenegro 08/09).

I. The most important characteristics of the general framework relating to the financing of regular activities of political parties are the following:

   a) Regular activities of political parties may be funded from public and private sources.

Public sources include budgetary funds of Montenegro and local governments. Public sources of funding may be used for regular activities of political parties and activities of members of the Parliament or Municipal Assembly. The level of public funding for this purpose is limited and it amounts to 0.2-0.4% of the current budget of Montenegro and 0.5-1% of local government budget. The budget of Montenegro for 2009 included EUR 1,951,409.53 for such purposes. These funds are allocated in the following manner: 15% of the amount is allocated equally to all political parties, while 85% is allocated in proportion to the number of members to the Parliament of the political parties at the moment of allocation of funds.

The funding from private sources received by political parties for regular activities must not exceed the amount that the concerned political party received from public sources, for the current year. Contributions by natural persons are limited to EUR 2,000, while those of legal persons are limited to EUR 10,000 per year.

b) The following types of funding of political parties are prohibited: acceptance of material and financial assistance from foreign states, and legal and natural persons outside the territory of Montenegro; anonymous donors; public institutions and companies; institutions and companies with a share of state-owned capital; trade unions; religious organizations; non-governmental organizations; casinos; betting houses and other organizers of games of chance. It is prohibited to accept material and financial assistance in cash. Parliamentary parties and other submitters of electoral lists are prohibited to accept contributions from any company or entrepreneur who, on the basis of a contract with the state authorities, carried out the provision of public services over the preceding two years, during that business arrangement, and two years following the end of such a business arrangement.

These prohibitions equally apply to the financing of regular activities of political parties and of electoral campaigns.

c) Political parties shall submit annual financial statements to the competent authority, including auditor's reports.

II. The most important characteristics of financing electoral campaigns are the following:

a) Electoral campaigns are funded from public and private sources.

In terms of funding from public sources (the budget of Montenegro and of the local governments) for this purpose funds up to 0.15% of the current budget in the electoral year are envisaged. The budget of Montenegro for 2009 included EUR 1,360,000 for such purposes. These funds are allocated in the following manner: 20% was paid to all authorized submitters of electoral lists, while 80% was distributed to the political parties in proportion with the number of their respective members of the Parliament of Montenegro. No political party shall be entitled to the applicable funds on the basis of electoral results unless it has previously submitted an audited financial statement of expenditures. Auditors of the Ministry of Finance identified no serious abuse by the political parties on the occasion of auditing their financial statements relating to the parliamentary elections held in March 2009.

A political party may receive funding for its electoral campaign from private sources, whereas the amount of such funding may be, at the most, twenty times the sum allocated from public sources. The expenditures shall be subject to auditing only where exceeding EUR 50,000.

According to the law, all financial statements are published on the website of the State Electoral Commission, whereby a full transparency of the process is achieved.

b) Equality of Political Parties

All political parties are equally treated in the distribution of public funds, according to the criteria of the number of members to the Parliament, as the only criteria that ultimately affects the distribution of a portion of the funding (80%). Accordingly, all parties have absolutely equal rights from the very beginning.

III. Financing the Campaigns for Election of the President of Montenegro, Mayors and Presidents of Municipalities

The financing of these campaigns is based on the same principles as the financing of political parties, with respect for specific characteristics.

a) Public Sources of Funding

The funds allocated for this purpose from the budget of Montenegro and of the local governments amount to 0.05-0.1 % of the current budget in the election year.

These funds are allocated so that 10% is equally distributed to all candidates, 40% is equally distributed to all candidates who win more than 10% of votes, while 50% is distributed to the candidate who wins the elections.

b) Private Sources

A candidate may also collect funds from private sources, while the total amount may not exceed the one allocated from the public sources.

A contribution to the campaign by natural person shall not exceed EUR 2,000, and the contribution of legal persons is limited to EUR 10,000.

c) Submitting Reports

All candidates submit reports that must be published on the website of the State Election Commission.

Conclusion:

Legal framework for financing of political parties in Montenegro that is currently in force resulted from the analysis of the previous situation by the experts of international community whose recommendations were adjusted to the legal and financial environment in Montenegro.

Generally speaking it may be stated that the legal framework for the financing of political parties in Montenegro is in accordance with good practices in democratic countries, while all further plans for its reform should head in the direction of strengthening of the institutional framework, and primarily building of the capacity and competence of the State Election Commission of Montenegro.

The legal framework that is described in the answer to this question ensures that the principles of transparency and non-discrimination are fully respected regarding the financing of political parties in Montenegro, i.e. that all political parties and candidates are granted an equal opportunity.

53. Does a legislation on free access to information exist? What is the experience with its implementation?

The right to free access is guaranteed in Montenegro both by the Constitution and the law.

Namely, Article 51 of the Constitution of Montenegro (Official Gazette of Montenegro 1/07) guarantees the right of access to information in the possession of state authorities and organizations exercising public authority. This right may be limited if this is in the interest of: protection of life, public health, moral and privacy, carrying out criminal proceedings, security and defence of Montenegro, its foreign, monetary and economic policy.

Similarly, the Law on Free Access to Information (Official Gazette of the Republic of Montenegro 68/05) regulates the manner and procedure for exercise of the right of citizens to request, receive and use information that is in the possession of the state authorities. Access to information in the possession of state authorities is free, and all domestic and foreign persons have the right to access such information, without discrimination. Under this Law, the right of access to information is guaranteed on the level of principles and standards contained in international documents on human rights and freedoms. The Law is based on the following principles: freedom of information; equal conditions for exercise of the rights; open and public work of public authorities; and

emergency of procedures. Article 3 of the Law stipulates that publication of information in the possession of state authorities is in the public interest.

The Government of Montenegro adopted a Decree on the Compensation of Costs in the Access to Information Procedure. The Decree was published in the Official Gazette of Montenegro 02/07.

In order to ensure efficient and quality implementation of the Law on Free Access to Information, the Ministry of Culture and Media, that drafted this Law, immediately after its adoption, i.e. from December 2005 to May 2006, organized several seminars for heads of the authorities and their employees responsible to act upon the requests for access to information, and also dealing with appeals relating to this matter, as follows:

- On 23 December 2005 in Bijelo Polje, for the state authorities of Zabljak, Kolasin, Mojkovac, Bijelo Polje, Pljevlja, Berane, Rozaje, Andrijevica and Plav; it was attended by 40 representatives of various state authorities;
- On 11 January 2006 in Bar, for the state authorities of Ulcinj, Bar, Budva, Kotor, Tivat and Herceg Novi; it was attended by 39 representatives of various state authorities;
- On 13 January 2006 in Podgorica, for the ministries and other state administration bodies; it was attended by 77 representatives of those authorities;
- On 18 January 2006 in Podgorica, for the municipal authorities of Cetinje, Podgorica, Niksic, Savnik, Danilovgrad and Pluzine; it was attended by 40 representatives of various state authorities;
- On 31 March 2006 in Cetinje, a special seminar was organized for public institutions supervised by this Ministry.

The following was addressed in the above seminars:

- The importance of access to information in the possession of state authorities was pointed out, in addition to the instruments for its implementation regulated under the Law, and the obligations of state authorities in terms of implementation of the Law on Free Access to Information;
- The content of the Guide for Access to Information was explained; the Guide for Access to Information in the Possession of the Ministry of Culture and Media was presented; and the role of this Ministry and other authorities in the implementation of this Law was explained;
- Practical application of the Law was presented by explaining the procedure for acting upon a request, manner of exercise of approved access to information, deciding on the costs of the procedure and their collection and acting on appeals; together with explanations of the prepared forms to be issued by the authorities depending on the outcome of the procedure.

In cooperation with the OSCE office in Podgorica, on 10 Mach 2006, the Ministry organized in Podgorica a round table discussion with the following topic: Implementation of the Law on Free Access to Information, where, apart from the representatives of state authorities, experts from Bulgaria, Ms Gergana Jouleva and Mr Alexander Kasumov also participated, and were involved in the process of implementation of an international project - Programme for Access to Information.

On 18 May 2006 in Kolasin, in cooperation with the Misdemeanour Panel, the Ministry organized a seminar for representatives of regional misdemeanour bodies to discuss and analyze the issues relating to misdemeanour liability as stipulated by the Law on Free Access to Information.

In the period from October 2006 to July 2009, the Human Resources Administration organized the following:

- One conference on free access to information;
- One round table discussion on the occasion of the day of the right to free access to information;
- 46 seminars on practical implementation of the Law on Free Access to Information, attended by approximately 500 public and municipal officials.

In cooperation with the OSCE Office to Podgorica, the Human Resources Administration published, in April 2007, the Rulebook for Practical Implementation of the Law on Free Access to Information, which was amended in August 2008, following the adoption of the Law on the Protection of Confidential Information.

On 29 October 2007, following the proposal of the Ministry of Culture, Sports and Media, the Government of Montenegro adopted the Decree on the Compensation of Costs in the Access to Information Procedure (Official Gazette of Montenegro 02/07).

Based on the practical implementation of the Law so far, it can be stated that a considerable progress has been accomplished in relation to the initial level of responsiveness by the state authorities acting on the submitted requests pursuant to the Law on Free Access to Information. Namely, lack of compliance with the provision of the law stipulating that information is equal to an existing document, and by confusing the concept of access to information with the concept of access to documents, some authorities established a negative practice of putting together information in response to asked questions or about requested data, instead of enabling access to the requested documents.

Additionally, it can be stated that most authorities properly implement the Law with respect to issuing decisions on requests for access to information, which is their legal obligation, and also that they are increasingly enabling access to information. However, in spite of that it should be pointed out that certain number of authorities fail to act upon the requests for free access to information, whereby their legal obligation is not met, which results in initiation of the proceedings before the second instance bodies or the Administrative Court. This considerably complicates acting upon this Law, causes unnecessary expenses and makes it more difficult for the applicants to exercise their legally guaranteed rights. Additionally, the fact that the number of requests submitted to the authorities that publicly announce the information in their possession is decreasing asserts the legal orientation that publishing of information in the possession of state authorities is in the public interest and that the future of this process is public announcement of information and availability of information to all interested persons. Also, the data on number of submitted requests indicate an increasing interest of various subjects in access to information in the possession of state authorities, and especially of the civil sector and media, which cannot be said about the citizens who the Law was primarily intended for.

Following the adoption of the Information Secrecy Act (Official Gazette of Montenegro 14/08) and the Law on Protection of Data on Individuals (Official Gazette of Montenegro 79/08), that complement the Law on Free Access to Information, and through further education of authorized officials of the state authorities on how to act on requests for access to information, a higher quality of implementation of the subject law will be ensured.

Seminars on practical implementation of the Law on Free Access to Information constitute an integral part of the Professional Development Programme for Civil Servants implemented by the Human Resources Administration, and the training program planned for 2009 is available to all state officials working on these tasks.

International legal framework and institutions

54. Please provide succinct information on adhesion to relevant international conventions (e.g. the Council of Europe Civil and Criminal Law Conventions on Corruption, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of proceeds from crime and the OECD Conventions on Combating Bribery of Foreign Public Officials in International Business Transactions and on Bribery in International Business Transactions, UN Convention against corruption).

For the purpose of compliance with international standards relating to efficient fight against corruption, Montenegro signed a number of relevant conventions on anti-corruption actions.

Within the State Union of Serbia and Montenegro, Montenegro joined the Council of Europe on 03 April 2003. In the referendum held on 21 May 2006, Montenegro regained its independence, while Serbia was the successor country in terms of membership to the Council of Europe. As an independent country, Montenegro became a member of the Council of Europe on 11 May 2007.

Immediately after the proclamation of its independence, on 03 June 2006, Montenegro submitted to the Council of Europe a declaration of succession relating to all Conventions of the Council of Europe where the State Union of Serbia and Montenegro was either the signatory of the agreement or a party to the agreement.

The Council of Europe accepted the declaration of succession of Montenegro relating to the Conventions that had been signed or ratified by the State Union of Serbia and Montenegro, starting from 06 June 2006 as the day of entry into force.

Accordingly, until now, Montenegro has signed the following Conventions and Protocols of the Council of Europe relating to the prevention and fight against corruption:

- European Convention on Mutual Assistance in Criminal Matters (ETS No 030), and Additional Protocol to it (ETS no. 099): (Law on Ratification of the European Convention on Mutual Assistance in Criminal Matters and Additional Protocol, Official Gazette of the Federal Republic of Yugoslavia – International Treaties 10/01);
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No 141): (Law on Ratification of Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; Official Gazette of the Federal Republic of Yugoslavia – International Treaties 7/02; Official Gazette of Serbia and Montenegro – International Treaties 18/05);
- Criminal Law Convention on Corruption (ETS No 173): (Official Gazette of the Federal Republic of Yugoslavia – International Treaties 2/02; Official Gazette of Serbia and Montenegro – International Treaties 18/05);
- Additional Protocol to the Criminal Law Convention on Corruption (ETS No 191), ratified on 21 December 2007 (Law on Ratification of the Additional Protocol to the Criminal Law Convention on Corruption, Official Gazette of Montenegro 11/07 of 13 December 2007);
- Civil Law Convention on Corruption (ETS No 174), ratified on 18 January 2008 (Law on Ratification of the Civil Law Convention on Corruption of the Council of Europe, Official Gazette of Montenegro 01/08 of 10 January 2008);
- Second Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No 182), ratified on 15 August 2008 (Law on Ratification of the Second Protocol to the European Convention on Mutual Assistance in Criminal Matters, Official Gazette of Montenegro – International Treaties 5/08 of 7 August 2008);
- The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism (ETS No 198), ratified on 15 August 2008 (Law on Ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism; Official Gazette of Montenegro – International Treaties No 5/08 of 7 August 2008).

As an independent state, Montenegro became the 192nd full member of the United Nations on 28 June 2006. By its declaration of succession that was deposited with the United Nations Secretary General on 23 October 2006, Montenegro joined the United Nations Convention against Corruption.

Montenegro is not a member of the Organization for Economic Co-operation and Development (OECD), but it takes part in its projects (e.g. the SIGMA Program).

55. What are the practical implications of implementation of the above mentioned international conventions?

For the purpose of implementation of international conventions, Montenegro undertook a number of activities over the previous four years, which can be classified as follows: establishment of institutions and authorities; establishment of a legal framework for anti-corruption; education and

strengthening of administrative capacities for implementation of international standards. Considering the above activities, information on implementation of the following documents is contained in the text below: the United nations Convention against Corruption (UNCAC); Criminal Law Convention on Corruption of the Council of Europe, with Additional Protocol; Civil Law Convention of the Council of Europe on Corruption; European Conventions on Mutual Assistance in Criminal Matters, with Additional Protocol; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism of the Council of Europe.

a) Application of UNCAC, Criminal Law Convention on Corruption of the Council of Europe and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism

- Preventive Measures

The strategic framework for the prevention of corruption and organized crime in Montenegro consists of the Program for Fight against Corruption and Organized Crime and the Action Plan for its implementation. The Government of Montenegro, at its session of 28 July 2005, adopted the Program of Fight against Corruption and Organized Crime, and on 24 August 2006, the Action Plan for the period 2006-2008. The document identified specific measures and activities, competent authorities and institutions, deadlines, performance indicators and risk factors. The Action Plan was amended in May 2008, by extending its period of implementation until the end of 2009 and increasing the number of measures and implementing authorities. The Program and the Action Plan consider corruption and organized crime as interrelated phenomena, and representatives of the non-governmental sector participated in the preparation of both documents. The Program defines corruption as any form of abuse of power for a personal or collective benefit, whether in public or private sector. Article 5 of the United Nations Convention against Corruption (UNCAC) is thereby implemented.

Montenegro implements the policy of corruption prevention, whereby Chapter II of UNCAC is implemented. The mentioned model of preventive policy includes adoption of special anti-corruption laws and establishment of specialized bodies for their implementation. The Government of the Republic of Montenegro has, by its Decree of 7 December 2000, established the Administration for Anti-Corruption Initiative (Official Gazette of the Republic of Montenegro 2/01). In accordance to the Strategy of Administrative Reform of Montenegro, the Decree on Organization and the Manner of Work of the State Administration was adopted (Official Gazette of the Republic of Montenegro 54/04 of 9 August 2004; 78/04 of 22 December 2004; 06/05 of 11 February 2005), establishing the competences of the Administration which is, inter alia, responsible for the coordination of implementation of anti-corruption policies (Article 6 of UNCAC). Furthermore, the following additional authorities and bodies were established for the purpose of implementation of anti-corruption and the associated policies:

- Administration for Prevention of Money Laundering and Financing Terrorism (Article 14 of UNCAC; Article 12 and Article 13 and Chapter V of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism);
- Public Procurement Directorate (Article 9 of UNCAC);
- Commission for Control of Public Procurement Procedures (Article 9 of UNCAC);
- Commission for Determining the Conflicts of Interest (Article 8 of UNCAC);
- State Audit Institution (Article 6 of UNCAC); and
- Office of the Protector of Human Rights (Article 6 of UNCAC).

Finally, on the basis of the Government's Decision of 15 February 2007 (Official Gazette 15/07), National Commission for monitoring of implementation of the Action Plan for implementation of the Programme for Fight against Corruption and Organized Crime was established, whereby Article 6 of UNCAC was also implemented.

Furthermore, the requirement for the standards of international conventions to be integrated into the national legislation conditioned further improvement of the legislative framework through adoption of new laws and amendments to the existing ones. The policy of corruption prevention is regulated under:

- The Law on State Administration (Official Gazette of the Republic of Montenegro 38/03 and Official Gazette of Montenegro 22/08), i.e. the principles of legality, public character, timely action by state authorities; the provisions on control of work and sanctions in case of failure to act; the provisions of the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08) regulating the rights and responsibilities of civil servants and state employees, that guarantee legality of work (Article 7 of UNCAC), and which are additionally strengthened by moral standards defined under the Code of Ethics for Civil Servants and State Employees (Official Gazette of the Republic of Montenegro 81/05) and separate codes of ethics (Article 8 of UNCAC) of particular governmental authorities (Police Directorate; Customs Administration; Tax Administration of Montenegro), and by the Law on Public Procurement (Official Gazette of the Republic of Montenegro 46/06) through anti-corruption regulations (Article 9 of UNCAC). Additionally, administration of public finance and the related control are regulated under the Law on Budget (Official Gazette of the Republic of Montenegro 40/01, 44/01, 71/05, 12/07, 73/08) and the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05; and Official Gazette of Montenegro 80/08). The control of public finance expenditures is particularly regulated by the Law on State Audit Institution (Official Gazette of the Republic of Montenegro 28/04, 27/06, 78/06; and Official Gazette of Montenegro 17/07);
- The provisions of the Law on Civil Servants and State Employees whereby the protection of persons who report corruption (known as whistleblowers) is guaranteed. The protection procedures are further addressed under the Technical Instructions on Procedures for Reporting Crimes with Corruption Elements and the protection of persons reporting crimes with corruption elements to the Police Directorate.
- The Law on the Civil Servants and the State Employees, Article 54 and Article 59, regulates the issue of protection of persons who report corruption. Accordingly, Article 54 stipulates that the office of the civil servant or state employee shall not be terminated on such grounds if he or she reports a criminal offence containing elements of corruption to the head of a state body or an authorized official of the competent state authority or gives the related official statement. Those persons are guaranteed the protection against disclosure of identity to unauthorized persons and the protection against abuse, denial or restriction of the rights established under the Law on the Civil Servants and State Employees. When reasonable fear exists that a civil servant or state employee who reported the suspected corruption shall be exposed to severe danger to life, health, physical integrity, freedom or property of large scale, his/her protection shall be ensured in accordance to special regulations on witness protection. Also, Article 59 of the same Law stipulates that any abuse, restriction or denial of the right of civil servants and state employees to report a criminal offence containing elements of corruption or give the related official statement constitutes a severe disciplinary violation.
- For the purpose of more detailed development of legal regulations and to encourage reporting of cases of corruption to the Police Directorate, the Director of the Police Directorate issued the Technical Instructions on Procedures for Reporting Crimes with Corruption Elements and the protection of persons reporting crimes with corruption elements to the Police Directorate in October 2008. These Instructions regulate in more detail the procedures for reporting criminal offences containing elements of corruption to the Police Directorate, action taken by authorized Police officers following a report of corruption, the protection of citizens who report corruption and the manner of promoting the procedure and protection.
- Article 33 of UNCAC is thereby implemented.
- provisions of the Law on Prevention of Conflict of Interests (Official Gazette of Montenegro 01/09), the Law on Civil Servants and State Employees and Law on Public Procurement

regulating this area. In the process of drafting of the Law on Prevention of Conflict of Interests, special attention was paid to the related international standards, and especially the binding recommendations of GRECO and the United Nations Convention against Corruption. Namely, the range of persons that this Law applies to was extended, and also the competences of the Commission for Determining Conflict of Interests that implements this Law, especially so that the Commission may initiate sanctions in case of violation of this Law; whereas the provisions relating to the value of gifts were improved and the new institute was established relating to restriction of the movement of public officials from the public to the private sector, known as pantouflage. However, the GRECO's recommendation relating to Article 9 of this Law was not implemented, whereby members of Parliament may be Presidents or members of management bodies and supervisory boards, Executive Directors, management team members of a public company, public institution or another legal person in a public company or public institution that is owned by the State, i.e. local government members of the Government of Montenegro, judge of the Constitutional Court, judge, Public Prosecutor, and Deputy Public Prosecutor are strictly prohibited from doing so). Article 7 and Article 8 of UNCAC were thereby implemented, although the Law needs to be revised regarding the issue of membership in management and supervisory bodies of public companies.

- the anti-corruption legislative framework will be rounded up following the adoption of the Law on Integrity in the Public Sector. According to the obligation stipulated by the Action Plan, the Law is expected to be passed until the end of 2009.

- Penal and Repressive Policy

The United Nations Convention against Corruption and Criminal Law Convention of the Council of Europe especially affected the criminal legislation, both material and process law. Accordingly, particular laws in Montenegro stipulate special mechanisms for the fight against corruption and organized crime, adjusted to the penal and repressive policy from Chapter III of UNCAC. Namely, one of the characteristics of the Criminal Code (Official Gazette of Montenegro 40/2008) is that new criminal sanctions were introduced. Those innovations are reflected in introduction of a new sanction of work in the public interest, and a different manner of stipulating sentences for specific criminal offences.

In the process of evaluation of the Criminal Code's harmonization with UNCAC, a high level of harmonization with this Convention was confirmed. Incrimination of criminal offences containing elements of corruption is generally harmonized with the global anti-corruption instrument, while the problems are occurring in relation to proving such criminal offences. Criminal offences having some characteristics of corruption are listed in Article 18 paragraph 3 of the Law on Courts (Official Gazette 22/08) whereby the Special Councils of the High Courts in Podgorica and Bijelo Polje were established.

Accordingly, criminal offences containing elements of organized crime and corruption are criminalised and a new penal policy was established, in addition to the strategy for modern crime control. Thereby Articles 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 27 and 29 of UNCAC and Article 9 of the Convention of the Council of Europe on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime and Financing Terrorism, as well as the related provisions of Chapter II of the Criminal Law Convention on Corruption of the Council of Europe are applied. By Additional Protocol to this Convention, its implementation was extended to include arbiters and lay judges.

Through the adoption of the Criminal Procedure Code (Official Gazette of Montenegro 57/09), numerous changes were introduced into the legal system of Montenegro. One of the most important issues was that the concept of investigation was changed by transferring the competence for investigation from the court and entrusting it to the Public Prosecution Office. This entrusting of investigation to the Prosecutor does not mean that the investigation judge is automatically excluded from the investigation; investigation judge retained the competence of acting and deciding on pre-trial confinement, approval of the measure of secret surveillance and search warrants, in accordance with the Convention on the Protection of Human Rights and Freedoms. Article 30 of UNCAC and the recommendations of GRECO relating to the consolidation of the leading role of prosecutors in investigation were thereby implemented.

This Code provides for application of the measures of secret surveillance for criminal offences having the elements of corruption, whereby one of the binding recommendations of GRECO was fully implemented. In relation to that, a Division for Special Verifications was established within the Police Directorate. Article 50 of UNCAC and Article 4 and Article 7 of the Council of Europe Convention on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime and Financing Terrorism, and the corresponding recommendation of GRECO were thereby implemented.

Furthermore, special attention was paid to the seizure of property acquired as a result of criminal offence, where the burden of proof in the case was transferred from the Prosecutor to the defendant. Article 31 of UNCAC was thereby implemented, and the conditions are created to implement Chapter V regulating the return of assets. Additionally, Article 23 of the Criminal Law Convention on Corruption of the Council of Europe was thereby implemented, as well as the corresponding recommendation of GRECO.

The system and procedure of seizure can be divided into three phases: 1) the phase of investigation, where the proceeds from crime are established and located and ownership-related evidence collected (in addition to details relating to the owner's property) – financial investigation. The financial investigation may result in a temporary measure (seizure) in order to ensure later confiscation on the basis of the court's decision; 2. The phase of court trial, where the defendant is found guilty (or acquitted); and 3) the phase of handling, where the State confiscates the property and handles it in accordance to the law, taking into account international exchange, i.e. the return of property. By confiscation of illegal proceeds, the principle of no benefit from criminal offence for any person is implemented. The purpose of this is not only prevention and punishment, but also to protect the interests of the injured party. Focusing on the proceeds from crime represents an efficient instrument in the fight against serious criminal offences and organized crime that are primarily motivated by acquisition of financial benefits. The Code governs the procedure for seizure of financial benefits and assets and a financial investigation for the purpose of extended property confiscation (Article 90). This Article, in addition to Articles 486-489, constitutes the procedure regulating the confiscation of property whose legal origin has not been proven, that is "extended confiscation". The burden of proving the case is transferred from the court to the defendant (Article 93 paragraph 3) who must prove the origin of property by providing a credible document, or make it probable in another manner that that the objects, material benefit or property neither originated from a criminal offence or criminal activity, nor were acquired by means of concealment of origin and sources of acquisition. The mentioned procedure also ensures application of Articles 3, 5 and 6 of the Council of Europe's Convention on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime and Financing Terrorism. Regarding the administration of frozen or seized property, which is contained in Article 6 of the above Convention, it is regulated under the Law on Managing Seized and Confiscated Assets (Official Gazette of Montenegro 49/08).

In relation to that, special divisions within the Police, Judiciary and Prosecution Office were established in order to improve the mechanism of cooperation among those authorities in the penal – repressive process related to criminal offences with elements of corruption. As a part of the Police Directorate, the Division for the Fight against Organized Crime and Corruption was established (Law on Police; Official Gazette of the Republic of Montenegro 28/05); Specialized Divisions for the Fight against Organized Crime, Corruption, Terrorism and War Crimes were established as a part of the High Courts in Podgorica and Bijelo Polje respectively (Law on Courts; Official Gazette of the Republic of Montenegro 22/08, and Official Gazette of Montenegro 40/08); and the Special Division for Combating Organized Crime, Corruption, Terrorism and War Crimes, as a part of the Supreme Public Prosecutor's Office (Law on Public Prosecution Office; Official Gazette of the Republic of Montenegro 69/03, and Official Gazette of Montenegro 40/08). Article 36 of UNCAC and Article 20 of the Criminal Law Convention on Corruption of the Council of Europe were thereby implemented.

The Law on Witness Protection was adopted in October 2004 (Official Gazette of Montenegro 65/04). This matter was regulated for the first time in the Montenegrin legal system by that Law. This Law ensures out-of-court protection of witnesses. The Witness Protection Unit was established for the purpose of implementation of the Witness Protection Programme, including the provision of physical security to the witness and the members of his or her family, change of

identity, concealment of information on property, etc. Internal acts that regulate the Unit's operation have been adopted, enabling an increase of staff (from seven to ten). Additional technical equipment has been procured through the Technical Support Project funded by the United States Department of Justice. Memorandums of Cooperation have been signed with other countries as well, enabling a more efficient and better coordinated protection of witnesses. Article 32 of UNCAC and Article 22 of the Criminal Law Convention on Corruption of the Council of Europe was thereby implemented.

The Law on Liability of Legal Persons for Criminal Offences was adopted on 27 December 2007 (Official Gazette of the Republic of Montenegro 2/07 and 13/07). It stipulates the terms of liability of legal persons for criminal offences, criminal sanctions applied to legal persons, and criminal proceedings resulting in the pronouncement of such sanctions, whereby modern trends for drafting criminal legislation were followed. Article 31 of the Criminal Code of Montenegro (Official Gazette of Montenegro 40/08) constituted the basis for the adoption of this Law. Thereby Article 26 of UNCAC, Article 18 of the Criminal Law Convention on Corruption of the Council of Europe, and Article 10 of the Council of Europe's Convention on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime and Financing Terrorism were implemented.

Finally, implementation of the Criminal Law Convention on Corruption in Montenegro of the Council of Europe was analyzed in the process of round I and II of joint evaluation conducted by GRECO. In relation to that, practical implications of implementation of this Convention are reflected in the realization of obligatory recommendations by the competent authorities of Montenegro (please see the answer to question No 56).

b) International Legal Assistance

Chapter IV of the United Nations Convention against Corruption, Chapter IV of the Criminal Law Convention on Corruption of the Council of Europe, Chapter IV of the Council of Europe's Convention on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime and Financing Terrorism, and the European Convention on Mutual Assistance in Criminal Matters (ETS No 030), with Additional Protocol, were implemented through the Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 04/08).

c) Implementation of the Civil Law Convention on Corruption of the Council of Europe

Information relating to implementation of the Civil Law Convention on Corruption of the Council of Europe is provided in the text below. This Convention is not self-implementable, which is why the conditions for its implementation need to be created within the national legal framework, which was done by Montenegro as follows:

- Compensation of damages was incorporated into the following laws: Criminal Proceedure Code (Official Gazette of Montenegro 57/09); Law on Misdemeanours (Official Gazette of the Republic of Montenegro 25/94, 29/94, 38/96, 48/99); Law on Liability of Legal Persons for Criminal Offences (Official Gazette of Montenegro 02/07, 13/07); Law on Civil Proceedings (Official Gazette of the Republic Montenegro 22/04, 76/06); and Law on Executive Procedure (Official Gazette of the Republic of Montenegro 23/04). Article 1 and Article 3 of the Civil Law Convention were thereby applied;
- Liability was regulated by the Law on Obligations (Official Gazette of Montenegro 47/08), and the Company Law (Official Gazette of the Republic of Montenegro 6/02, 17/07, 80/08), implementing Article 4 of the Convention; the State's liability was regulated under the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08), Company Law (Official Gazette of the Republic of Montenegro No 6/02, 17/07, 80/08), and the Law on Inspection Control (Official Gazette of the Republic of Montenegro 39/03) (Article 5 of the Convention); shared responsibility was regulated under the Law on Obligations (Official Gazette of Montenegro 47/08), implementing Article 6 of the Convention;
- Statute of limitation (Article 7 of the Convention) and contract validity (Article 8 of the Convention) were implemented through the Law on Contractual Obligations (Official Gazette of Montenegro 47/08);

- Employee protection (Article 9 of the Convention) was regulated by the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08) and the Technical Instructions on Procedures for Reporting Crimes with Corruption Elements and the protection of persons reporting crimes with corruption elements to the Police Directorate (October 2008);
- Accounts and audits (Article 10 of the Convention) were regulated by the Law on Accounting and Auditing (Official Gazette of the Republic of Montenegro 69/05 of 18 November 2005 and 80/08 of 26 December 2008); the Law on State Audit Institution (Official Gazette of the Republic of Montenegro 28/04, 27/06, 78/06, 17/07); and the Company Law (Official Gazette of the Republic of Montenegro 6/02, 17/07, 80/08);
- Collection of evidence (Article 11 of the Convention) was regulated by the Law on Civil Proceedings (Official Gazette of the Republic of Montenegro 22/04, 76/06);
- Temporary measures (Article 12 of the Convention) were regulated by the Law on Executive Procedure (Official Gazette of the Republic of Montenegro 23/04).

d) Strengthening of Administrative Capacities

Practical implications of the implementation of the above international standards are also reflected in continuous training courses for the members of competent authorities. Concerning the judges and prosecutors, the training is continuously implemented within the Centre for Education of Judges and Prosecutors, according to the Law on Training in Judicial Authorities (Official Gazette of Montenegro 27/06) and annual training programmes.

In terms of civil servants, the training is organized and conducted by the Human Resources Administration, Police Academy and other authorities competent for anti-corruption policy, as for example the Administration for Anti-Corruption Initiative, Commission for Determining of Conflicts, Public Procurement Directorate, etc.

56. When did the Montenegro become a member of the Council of Europe Group of States Against Corruption (GRECO) and what measures have been taken to implement GRECO recommendations?

The Federal Republic of Yugoslavia (Union of Serbia and Montenegro) ratified the Criminal Law Convention on Corruption on 18 December 2002 which entered into force on 1 April 2003. The State Union of Serbia and Montenegro thereby became a member of GRECO. Following the referendum of 21 May 2006 in Montenegro, and the Declaration of Independence that was adopted by the Parliament of Montenegro on 03 June 2006, and pursuant to Article 60 of the Constitutional Charter, the State Union of Serbia and Montenegro ceased to exist. Montenegro became an independent and sovereign state, so that the Committee of Ministers of the Council of Europe, at its 967th session (14 June 2006), concluded that the Declaration of Succession relating to the Criminal Law Convention on Corruption (ETS No 173) made Montenegro *ipso facto* a member of GRECO.

In relation to the Criminal Law Convention on Corruption of the Council of Europe, the rounds I and II of GRECO evaluation were conducted in Montenegro, in terms of which, in October 2006, GRECO adopted a Report including 24 binding recommendations. GRECO invited the authorities of Montenegro to submit a report on the implementation of recommendations until 31 May 2008, which was done by Montenegro.

GRECO's recommendations related to the following: improvement of legal and regulatory framework for prevention and fight against corruption; more efficient implementation of the legislation; introduction of new institutes into the national legal system (*pantouflage* and *whistleblowers*); investigation of causes and phenomena of corruption; advancement of training and professional development of individuals, especially those engaged in investigation, criminal prosecution and pronouncement of sentences for criminal offences containing elements of

corruption; establishment of efficient mechanisms of cooperation between the police and prosecutors, etc.

Having reviewed the GRECO Report, on 11 January 2007, the Government tasked the Ministries and other administrative authorities that the recommendations of GRECO are related to, to implement the recommendations and submit a report on the undertaken measures and activities to the Administration for Anti-Corruption Initiative (hereinafter referred to as "AAC") which will then submit an all-inclusive overview of implemented obligations from the Report to GRECO. On 28 July 2005, the Programme for the Fight against Corruption and Organized Crime (hereinafter referred to as "The Programme") was adopted by the Government of Montenegro, followed by the adoption of the Action Plan (hereinafter referred to as "AP") for its implementation, on 24 August 2006, whereby the 24 recommendations of GRECO were incorporated into the AP for implementation of the Programme; which ensured control over the quality and dynamics of implementation of GRECO recommendations, through the monitoring of AP implementation.

Following the decision of the Government of 19 July 2007, and having received the required information from the competent authorities, the AAC prepared an analysis of the degree of implementation of the binding recommendations from GRECO Report on the Joint Round I and II Evaluation of Montenegro, which was translated into English and submitted to the Secretariat of GRECO on 30 May 2008.

At its 40th plenary session, on 5 December 2008, GRECO reviewed and adopted the Report on Harmonization for Montenegro, whereby it was concluded that Montenegro had implemented 66.6% of the recommendations, while eight recommendations were assessed as partly implemented. No recommendations were assessed as unaccomplished. At the same time, GRECO stated that "a specific progress was achieved in almost all areas that the corresponding recommendations of GRECO related to. Competent authorities of Montenegro initiated a systematic anti-corruption strategy, based on both preventive and repressive mechanisms, establishing and monitoring the goals, activities, deadlines and performance indicators. Considerable efforts were made to establish a legal framework for the fight against corruption (e.g. introduction of criminal liability of legal persons and establishment of criminal records for legal persons, improvement of the public procurement system), while the degree of efficiency of implementation of new standards and their impact on the level of corruption in Montenegro remained to be subsequently assessed. Comprehensive trainings and public awareness campaigns on anti-corruption efforts were implemented over the previous two years. The initiatives that have been undertaken so far in order to ensure the participation of local authorities, and also general public, in the development of anti-corruption policies represent important steps which will strengthen the feeling of belonging and support to the entire process".

Regarding the eight recommendations that were assessed as partly implemented, GRECO assessed that „further efforts are necessary, inter alia, with respect to the current reform of the judicial system, simplification and shortening of the procedure for issuing permits and approvals, establishment of regulations in the area of conflict of interests (including gifts and moving of officials from the public to the private sector), etc. Furthermore, adoption of the Criminal Procedure Code is of crucial importance, since it includes particular provisions that would further facilitate the prosecution of criminal offences having the characteristics of corruption, for example by enabling the seizure of property at an early stage of investigation, through a wider application of the measures of secret surveillance relating to such criminal offences, through the consolidation of the prosecutor's leading role in criminal investigations, etc.". The deadline for implementation of the remaining eight partly implemented recommendations was 18 months, i.e. June 2010.

The Report was translated into Montenegrin language and published on AAC's website. Additionally, the content of GRECO report was presented to the public at the press conference held on 24 December 2008 in Podgorica.

With respect to additional efforts to implement the eight remaining partly implemented recommendations of GRECO until September 2009, the following activities were undertaken:

With respect to partly implemented recommendations (*xvi, xvii* and *xix)* relating to improvement of the Law on Conflict of Interest, the Parliament of Montenegro adopted the new Law on the Prevention of Conflict of Interest on 27 December 2008 (Official Gazette of Montenegro 1/09),

which applies from 17 January 2009. GRECO's recommendations were included into the text of this Law on the Prevention of Conflict of Interest, so that: the range of people to whom this Law relates was enlarged; the competences of the Commission for Determining Conflict of Interest implementing this Law were expanded so that the sanctions may be initiated by the Commission in case of a violation of this Law; the provisions relating to gift acceptance and recording were improved; a new institute limiting the movement of public officials from public to the private sector was established (pantouflage). GRECO recommendation that was not fully implemented related to Article 9 of this Law. Namely, this Article stipulates that a public official may not be the President or a member of management bodies and supervisory boards, Executive Director, management team member of a public company, public institution or another legal person. However, the same Article stipulates an exception whereby the members of the Parliament of Montenegro may be Presidents or members of management bodies and supervisory boards, Executive Directors, members of the management teams of a public company, public institution or another legal person that is owned by the State or local government.

According to the new Law on the Prevention of Conflict of Interest, the Parliament of Montenegro, at its session of 29 July 2009, adopted the decision on appointment of the President and six members of the Commission for the Prevention of Conflict of Interest whereby the number of members of the Commission was increased from four to six (Official Gazette of Montenegro 51/09), so that the Commission started to work in accordance to the new Law.

With the objective of implementing the recommendations of GRECO (*vi, viii* and *xi*) relating to improvement of the cooperation between the Police and prosecutors, extended possibility to apply the measures of secret surveillance in case of criminal offences of corruption, and seizure of the proceeds from crime at the earliest stage of investigation, the Parliament of Montenegro, on 27 July 2009, adopted the new Criminal Procedure Code (Official Gazette of Montenegro 57/09), whereas its application, in terms of certain provisions, was postponed for six months, i.e. one year following its entrance into force, because of significant innovations requiring both organizational and technical preparations, as well as the training of police officers, prosecutors, etc.

Following the decision of the Vice-President of the Government for European Integration No 10-8045 of 10 October 2007, a Tripartite Commission was established to analyze the cases from the area of organized crime and corruption, and to submit reports and develop a unified methodology of statistical indicators in the field of organized crime and corruption. Furthermore, joint trainings for inspectors, prosecutors and customs officers were organized, inter alia, in order to create a unified framework for the communication and cooperation among the law enforcement authorities.

The new Criminal Procedure Code entrusts the leading role in the stage of investigation to the Prosecutor, while the investigation judge decides on confinement, issue orders to implement the measures of secret surveillance, as well as search warrants during the pre-trial proceedings. The Criminal Procedure Code enables the application of measures of secret surveillance to all criminal offences containing elements of corruption including the following: money laundering; causing false bankruptcy; abuse of appraisal; passive bribery; active bribery; disclosure of an official secret; trading in influence; abuse of authorizations in economy; abuse of an official position; and fraud in the conduct of an official duty, for which a prison sentence of no less than 8 years, or more severe sentence is prescribed. A Special Verification Sector was established as a part of the Police Directorate, in addition to organization of trainings for the application of these measures.

The new Criminal Procedure Code included new provisions which enabled the application of measures of seizure of the material benefit obtained by criminal offence at the earliest stage of investigation, even in cases that do not involve a criminal offence of organized crime. Accordingly, Article 90 of the Law stipulates the procedure for seizure of the material benefit and property and a financial investigation for the purpose of an extended seizure of property. This Article, in addition to Articles 486-489, regulates the confiscation of property whose legal origin has not been proven (known as extended seizure), while the burden of proving the origin of the property is transferred from the court to the defendant (Article 93 paragraph 3).

The remaining two recommendations (*xxi* and *xxiv*) that were assessed by GRECO as partly implemented, relate to removal of business barriers and instructions for national auditors regarding

the procedure to report corruption to Public Prosecutes and are in the process of intense implementation through numerous activities.

With a view to meeting the recommendation *xxi* relating to the elimination of business barriers, the Parliament of Montenegro, on 11 August 2008, adopted the Law on Spatial Development and Construction of Structures (Official Gazette of Montenegro 51/08). By the adoption of this Law, the codification of this area was carried out as through this law the following laws went out of force: the Law on Spatial Planning and Development; the Law on Construction land; the Law on Construction of Structures; and the Law on Urban and Construction Inspection. With a view to removal of business barriers, the most important innovations in terms of applicable regulations governing this area concern the simplification and shortening of administrative procedure relating to the review of technical documentation and issuing of construction and use permits. The proposed solutions shortened the above procedures and made them simpler, so that the investor is enabled to select an auditor of technical documentation by himself/herself (Article 86 of the Law), while a structure and use permits are issued following a single administrative procedure. Previously, investors had to go through seven administrative steps, while following the above activities, the number of steps was decreased to two.

Considering the procedure for the issuing a building permit, according to the Article 93 of this Law, the following documents have to be submitted: conceptual project or main project; Auditor's Report on the conceptual project or main project; and proof of ownership or other right over the construction land. The innovation compared to the previous law concerns the fact that a building permit is issued on the basis of a reviewed conceptual project or main project. The option to obtain a building permit on the basis of conceptual project makes it possible for the investor to secure a loan, as well as to attract potential purchasers, both of the land and the future building, in case the investor is not the final user. If the investor chooses to have a building permit issued on the basis of conceptual project, no approval of the conceptual project shall be required. It should be noted that no special permit for the preparatory works or additional construction works exists any longer.

According to Article 94 of the Law, building permit shall be issued within 15 days from the day of submission of the application, if the requirements from Article 93 of this Law are met, and it is published on the website of the authority, i.e. local authority within seven days from the day of issuance. A significant innovation concerns moving of the obligation for settling the fee for the equipment of construction land with communal infrastructure from the moment of issuing of a building permit to the moment of issuing of use permit, all with a view to avoid putting burden on the investment at the very beginning. Also, since 1 January 2009, citizens and investors are no longer obliged to pay a fee for the use of construction land.

Furthermore, on 4 August 2008, the Law on Internal Trade was adopted (Official Gazette of Montenegro 49/08), stipulating that the companies that initiate a trading activity in the form of a shop are no longer obliged to apply to the municipal authority to be issued a working license (the license was practically cancelled). The businessman shall report the beginning of work to the competent inspection authority and municipal administration authority at least eight days in advance. He/she is, of course, thereby not abolished from the obligation of having his/her business premises to comply with the minimum technical requirements.

The Law on Crafts (Official Gazette of Montenegro 54/09) that came into effect on 18 August 2009 stipulates that companies that start performing a craft activity shall not be required to obtain a license to operate from the competent authority.

Following the adoption of the Programme for Elimination of Barriers to Development of Entrepreneurship (October 2007) and the Operating Plan (April 2008), the Council for Elimination of Business Barriers was established to monitor its implementation and make recommendations to the Government of Montenegro to adopt and amend the regulations relating to elimination of business barriers. In December 2008, the Council adopted a Report on the Activity Plan Implementation for 2008. Accordingly, considering an improvement of the existing legal framework relating to elimination of business barriers, the following activities were implemented: the Ministry of Justice, following a proposal of the Commercial Court, adopted the Instructions amending the Instructions on Operation of the Central Register of the Commercial Court, whereby on-line company registration was legally enabled; a working group for the preparation of the new Law on

Company Insolvency was established and tasked to submit a draft Law to the Government of Montenegro for consideration and adoption in 2009; the Real Estate Administration established a working group to amend the Law on State Land Survey, Cadastre and Registration of Rights on Real Estate; a working group of the Customs Administration was established and has submitted its recommendations for elimination of barriers in foreign trade; a new Labour Law (Official Gazette of Montenegro 49/08) was adopted, simplifying the procedures of employment and termination of employment, and the establishment of employees' responsibility, etc. Since February 2009, the website of the Council for Elimination of Business Barriers has been available (www.biznis-barijere.com) including more detailed information about the Council's activities.

The Council for Elimination of Business Barriers, in the session of 4 September 2009, adopted an Action plan for Elimination of Business Barriers for the period September-December 2009, and concluded that a mid-term Action Plan for Elimination of Business Barriers would be prepared until the end of the year. The adopted Action Plan defined the priority areas which were established on the basis of suggestions and initiatives of business organizations. Accordingly, the Council verified the establishment of operating teams to implement the activities identified under the Action Plan, for the purpose of undertaking specific measures towards elimination of business barriers for the following areas: collection of cinema taxes, recognition of non-tariff barriers in trade and customs procedures, improvement of legal solutions in the area of utility taxes and legislation related to the work of foreigners.

The Council held its next session on 2 October 2009, and on that occasion it considered a report on the ease of doing business, as well as the Action Plan containing the short and medium term priorities for improving the business environment. With a view to realization of these recommendations, the Council has taken actions and measures in the direction of the revision of certain regulations in which existence of business barriers was recorded.

The efforts Montenegro has made towards elimination of business barriers in the past period are best reflected in the Report on the Ease of Doing Business, which is published by the World Bank each year, and which, among other things, analyzes the business barriers and thus helps countries to identify problems and to resolve them. According to the latest Report on the Ease of Doing Business for the period June 2008 - June 2009 (Doing Business 2010), Montenegro has improved the business environment and improved its position for 6 places, taking place 71 out of 183 countries ranked. The progress of Montenegro was recorded in four of the ten indicators (the following ones: starting business, issuing building permits, employing workers and paying taxes), while only 11 states achieved an improvement in a larger number of indicators than Montenegro.

With regard to "Starting a business," Montenegro is mentioned as a reformer when it comes to introduction of unique system of registration of companies and accelerated registration of the taxpayers with the Tax Administration and the Health and Pension and Disability Insurance Funds. Also, the implemented reforms contributed to the shortened or simplified post-registration procedures (tax returns, registration for social protection, licensing). As for the Indicator "Employing workers", benefits and privileges implemented through the new legislation that resulted in a more flexible labour market were confirmed. Montenegro has started to implement fixed- time contracts which are more flexible, with no limits on the cumulative duration. The Indicator "Paying taxes" stressed the significant reduction of tax rates in Montenegro. The reduction of profit tax rate (which was not recorded in previous reports) is emphasized as well as the reduction of burdens on the basis of earnings and contributions paid by employers. Also, progress was recognized in the area of issuing building permits by means of: adoption of new regulations, a simplified procedure of obtaining permits on the basis of a certificate of risk assessment, thus introducing a shortened procedure for smaller buildings, with a focus on larger projects with significant impact on the environment in terms of safety.

With a view to realize the reform of local self-government, in April 2008, a Working Group for Elimination of Business Barriers was formed within the Ministry of Interior and Public Administration. In December 2008, the Working Group produced an analysis of regulations at the municipal level with the proposal of measures and activities to eliminate business barriers, which was adopted by the Council for the Elimination of Business Barriers. In February 2009, the model for elimination of business barriers with conclusions was prepared and submitted to the Council.

With a view to implement the measures on prevention and fight against corruption at the local level, modelled on the basis of previously adopted Models of programme and action plans for fight against corruption in local self-government, 11 units of local self-government adopted the Program and the Action Plan for fight against corruption in the local self-government. Some of them have begun with the realization of the measures provided for by the adopted documents (Niksic and Pljevlja).

Within the Ministry of Spatial Planning and Environmental Protection, a working group involving representatives of the Union of Municipalities and the Capital Podgorica was formed, with a view to making an analysis of all regulations in the field of spatial planning and development and construction of structures, with the task of making proposals for revision of legal regulations and procedures. After consultation with more than a hundred of stakeholders influencing the spatial planning and construction of structures in Montenegro (the representatives of the Secretariats for Spatial Planning of 21 municipalities, Water Management Authority, Regional Water Management Authority, Montenegrin Electric Enterprise, etc.), text of the analysis of administrative business barriers to business in the area of spatial planning and construction of structures was prepared and delivered to the Council for the Elimination of Business Barriers for consideration.

The Chamber of Commerce of Montenegro continuously records business barriers, both through direct contacts with entrepreneurs, and through the work of the board of the association of all branches of activities. Together with proposals for their elimination, the Chamber processes the recorded barriers to the relevant state bodies and as a member of the Council for Business Barriers actively participates in improving the business environment.

In order to implement this recommendation of GRECO more completely, AAC, together with the members of the Council for Elimination of Business Barriers, Ministry of Economy, Ministry of Spatial Planning and Environmental Protection, Union of Employers, Chamber of Commerce, and representatives of the private sector, supported by the OSCE Mission to Montenegro, in July 2009, started to implement a project relating to the exchange of experiences in elimination of business barriers. The members of the above institutions are analyzing the existing legal and institutional framework for the starting of business activity, including a special review of the issuing of building permits. The first of three round table discussions was held in Budva on 16 July, while the remaining two will take place in September and October 2009.

A research on the phenomena, causes and harmful effects of corruption in the private sector was initiated in July 2009, to be completed in October 2009. We believe that the findings of this research and the resulting recommendations will, inter alia, have an effect on the removal of business barriers and circumstances in favour of corruption in that sector.

Finally, for the purpose of implementation of GRECO recommendation *xxiv* relating to the instructions for national auditors in the process of reporting corruption to Public Prosecutors, a project of the Administration for Anti-Corruption Initiative and the OSCE Mission to Montenegro is currently implemented. Guidelines for national auditors were prepared instructing them how to act when a criminal offence containing elements of corruption is suspected in the course of regular auditing procedure, in addition to planned training sessions to be realized in September and October 2009.

For more detailed information, please find enclosed the Report on Joint Round I and II Evaluation of Montenegro and the Report on Harmonization for Montenegro. The Reports are available on the websites of AAC (http://www.gov.me/eng/antikorup/) and GRECO (http: //www.coe.int/t/dghl/monitoring/greco/default_en.asp.).

C. Fundamental rights

General

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

The legal system of Montenegro provides for a high level of protection of human rights and freedoms. In addition to the basic provisions of the Constitution of Montenegro which provide the legal basis for provision and protection of human rights and freedoms, guarantee inviolability of and obligation for every person to respect the rights and freedoms of others, another 68 Articles of the Constitution tackle human rights and freedoms, thus affirming the importance of these rights. The Constitution also prescribes the prohibition of infliction or encouragement of hatred or intolerance, as well as the prohibition of discrimination on any ground, as a general prerequisite for enjoyment of all human rights and freedoms.

The Second Part of the Constitution, dedicated to the human rights and freedoms exercised pursuant to the Constitution and the ratified international treaties, contains 65 Articles stipulating personal rights and freedoms, political rights and freedoms, economic, social and cultural rights and freedoms and special minority rights.

In addition to the constitutional provisions, which guarantee and protect the respect for the basic human rights and freedoms, as well as minority rights; in Article 9 of the Constitution, Montenegro established that the ratified and published international treaties and generally accepted rules of international law shall be an integral part of the national legal system, shall have the supremacy over the national legislation and be directly applied when providing different solutions from the ones stipulated in the national legislation.

Pursuant to the Constitution (Articles 8 and 17) and ratified international treaties, direct or indirect discrimination on any ground shall be prohibited, and all shall be equal before the law, regardless of any distinctive characteristics or personal qualification. Furthermore, as per the Article 18 of the Constitution, the state shall guarantee the equality between men and women and develop the policy of equal opportunities. Equal protection of rights and freedoms, the right to legal remedy and legal aid, the right to local self-government and the right to a healthy environment are also stipulated by the Constitution.

The guaranteed human rights and freedoms may be limited only by law in the scope allowed by the Constitution and to the extent necessary to meet the purpose for which the limitation is allowed, in an open and democratic society. The limitations shall not be introduced for purposes other than those for which they have been provided for. During the proclaimed state of war or emergency, the exercise of certain human rights and freedoms may be limited in the necessary scope. The limitations shall not be introduced on the grounds of sex, nationality, race, religion, language, ethnic or social origin, political or other beliefs, financial standing or any other personal qualification. The following rights shall not be limited: the right to life; the right to legal remedy and legal aid; the right to dignity and respect of person; the right to a fair and public trial and the principle of legality; the right to presumption of innocence and the right of defence; the right to compensation of damage for illegal or ungrounded deprivation of liberty and ungrounded conviction; the right to freedom of thought, conscience and religion; the right to enter into marriage. There shall be no abolishment of the prohibition of: inflicting or encouraging hatred or intolerance; discrimination; re-trial and conviction twice for one and the same criminal offence; forced assimilation. The limitation measures shall be effective for the maximum duration of the state of war or emergency.

The Constitution, in the Section Personal Rights and Freedoms, prescribes the following: the prohibition of death penalty; the guarantee of human dignity and the right to dignity with respect to the application of biology and medicine; the guarantee of dignity and inviolability of a person, as well as the right to personal freedom. Deprivation of liberty shall be allowed only for the reasons and in the procedure provided for by law. Person deprived of liberty shall be notified immediately of the reasons for the deprivation thereof, in his/her own language or in the language he/she understands and shall be informed that he/she has the right to remain silent. The person deprived of liberty shall have the right to the defence counsel of his/her own choosing to attend his/her interrogation. Unlawful deprivation of liberty shall be punishable. The Constitution precisely

prescribes the manner of deprivation of liberty and detention, while guaranteeing: the respect for person; the right to fair and public trial within a reasonable period of time; the right to defence; the right to compensation of damage for illegal action; the right to freedom of movement and residence; the right to privacy and inviolability of home; the confidentiality of letters, telephone conversations and other means of communication; the protection of personal data and the right to asylum.

In terms of political rights and freedoms, the Constitution of Montenegro stipulates the electoral right: guarantees the right to freedom of thought, conscience and religion: provides for the right to freedom of expression and freedom of press; prohibits the censorship; provides for the right to access information held by the state bodies and organisations empowered with public authority; guarantees the freedom of peaceful assembly and freedom of association; provides for the right of recourse to international institutions for the protection of own rights and freedoms guaranteed by the Constitution.

With regard to economic, social and cultural rights and freedoms, the Constitution guarantees property rights; the rights of foreign nationals, so that a foreign national may be the holder of property rights in accordance with law; the freedom of entrepreneurship; the right of inheritance; the right to work; it prohibits forced labour; defines the basic rights of employees; adjustment of social position; provides for the right to strike, defines that the social insurance is mandatory; guarantees special protection of the persons with disability; prescribes that everyone shall have the right to health protection; defines the consumer protection. Family shall enjoy special protection and children born out of wedlock shall have the same rights and responsibilities as children born in marriage; mother and child shall enjoy special protection; a child shall enjoy the rights and freedoms appropriate to his/her age and maturity, and a child shall be guaranteed special protection from psychological, physical, economic or any other exploitation or abuse; the right to education under equal conditions shall be guaranteed, elementary education being the compulsory free education; the freedom of scientific, cultural and artistic work shall be guaranteed, provided that the state encourages and supports the development of education, science, culture, arts, sport, physical and technical culture.

With a view to protect the overall national identity, the Constitution guarantees a whole set of additional rights and freedoms to persons belonging to national minorities and other minority communities, which they can exercise individually or collectively with others, as follows:

- the right to express, preserve, develop, and communicate in public their national, ethnic, cultural and religious characteristics;
- the right to select, 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 public institutions in their own language and alphabet, and the right to have included in the curricula the history and culture of the persons belonging to national minorities and other minority communities;
- in the areas with significant share in total population, the right to have the local self-government bodies, state and judicial bodies to carry out the proceedings in the language of national minorities and other minority communities;
- the right to establish educational, cultural and religious associations, with the financial support provided by the state;
- the right to write and use their own name and surname in their own language and alphabet in the official documents;
- in the areas with significant share in total population, the right to have traditional local toponyms, names of streets and settlements, as well as topographic maps in the language of national minorities and other minority communities;

- the right to authentic representation in the Parliament of the Republic of Montenegro and in the municipal assemblies 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 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 share 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.

The Constitution explicitly prohibits forced assimilation and prescribes that the state shall protect the persons belonging to minority nations and other minority communities from all forms of forced assimilation.

In addition to the above provisions of the Constitution, human rights and freedoms are also regulated by certain laws relating to various areas and aspects of protection of human rights and freedoms. (See the answer to the question 58, Chapter 23, regarding the overview of the legislation and its harmonisation).

58. Provide a list of human rights conventions and related protocols ratified by the 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?

Council of Europe Conventions

Human Rights

Montenegrin title	English title	Legal action	Effective date
1. Konvencija o zaštiti ljudskih prava i osnovnih sloboda, Sl. list SCG (Međunarodni ugovor) br. 9/2003-16 i 5/2005-31;	Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-16 and 5/2005-31);	Notification of succession	06/06/ 2006
2. Protokol uz Konvenciju o zaštiti ljudskih prava i osnovnih sloboda, Sl. list SCG (Međunarodni ugovor) br. 9/2003-16 i 5/2005-31;	Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-16 and 5/2005-31);	Notification of succession	06/06/ 2006
3. Protokol uz Konvenciju o zaštiti ljudskih prava i osnovnih sloboda, Sl. list SCG (Međunarodni ugovor) br. 9/2003-16 i 5/2005-31;	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 (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-16 and 5/2005-31);	Notification of succession	06/06/ 2006
4. Protokol uz Konvenciju o zaštiti ljudskih prava i osnovnih sloboda, Sl. list SCG (Međunarodni ugovor) br. 9/2003-16 i 5/2005-31;	Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-16 and 5/2005-31);	Notification of succession	06/06/ 2006

5. Protokol uz Konvenciju o zaštiti ljudskih prava i osnovnih sloboda, Sl. list SCG (Međunarodni ugovor) br. 9/2003-16 i 5/2005-31;	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 (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-16 and 5/2005-31);	Notification of succession	06/06/ 2006
6. Protokol uz Konvenciju o zaštiti ljudskih prava i osnovnih sloboda, Sl. list SCG (Međunarodni ugovor) br. 9/2003-16 i 5/2005-31;	Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-16 and 5/2005-31);	Notification of succession	06/06/ 2006
7. Protokol uz Konvenciju o zaštiti ljudskih prava i osnovnih sloboda, Sl. list SCG (Međunarodni ugovor) br. 9/2003-16 i 5/2005-31;	Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-16 and 5/2005-31);	Notification of succession	06/06/ 2006
8. Protokol uz Konvenciju o zaštiti ljudskih prava i osnovnih sloboda, Sl. list SCG (Međunarodni ugovor) br. 9/2003-16 i 5/2005-31;	Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-16 and 5/2005-31);	Notification of succession	06/06/ 2006
9. Protokol uz Konvenciju o zaštiti ljudskih prava i osnovnih sloboda, Sl. list SCG (Međunarodni ugovor) br. 9/2003-16 i 5/2005-31;	Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-16 and 5/2005-31);	Notification of succession	06/06/ 2006
10. Konvencija o sprečavanju mučenja i nečovječnih ili ponižavajućih postupaka i kažnjavanja, Sl. List SCG (Međunarodni ugovori) br. 9/2003-7 i 5/2005-31;	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-7 and 5/2005-31);	Notification of succession	06/06/ 2006
11. Evropska povelja o regionalnim i manjinskim jezicima, Sl. List SCG (Međunarodni ugovori) br. 18/2005-3;	European Charter for Regional and Minority Languages (Official Gazette of Serbia and Montenegro - International Treaties 18/2005-3);	Notification of succession	06/06/ 2006
12. Protokol br. 1 uz Konvenciju o sprečavanju mučenja i nečovječnih ili ponižavajućih postupaka i kažnjavanja, Sl. List SCG (Međunarodni ugovori br. 9/2003-7);	Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-7);	Notification of succession	06/06/ 2006
13. Protokol br. 2 uz Konvenciju o sprečavanju mučenja i nečovječnih ili ponižavajućih postupaka i kažnjavanja, Sl. List SCG (Međunarodni ugovori) br. 9/2003-7 i 5/2005-31;	Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-7 and 5/2005-31);	Notification of succession	06/06/ 2006
14. Protokol br. 11 uz Konvenciju o zaštiti ljudskih prava i osnovnih sloboda, Sl. list SCG (Međunarodni ugovor) br. 9/2003-16 i 5/2005-31;	Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-16 and 5/2005-31);	Notification of succession	06/06/ 2006
15. Okvirna konvencija za zaštitu nacionalnih manjina, Sl. list SRJ (Međunarodni ugovor) br. 6/98-3;	Framework Convention for the Protection of National Minorities (Official Gazette of the Federal Republic of Yugoslavia - International Treaties 6/98-3);	Notification of succession	06/06/ 2006
16. Protokol br. 12 uz Konvenciju o zaštiti ljudskih prava i osnovnih sloboda,	Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental	Notification of	06/06/

Sl. list SCG (Međunarodni ugovor) br. 9/2003-16 i 5/2005-31;	Freedoms (Official Gazette of Serbia and Montenegro -International Treaties 9/2003-16 and 5/2005-31);	succession	2006
17. Protokol br. 13 uz Konvenciju o zaštiti ljudskih prava i osnovnih sloboda, Sl. list SCG (Međunarodni ugovor) br. 9/2003-16 i 5/2005-31;	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 (Official Gazette of Serbia and Montenegro - International Treaties 9/2003-16 and 5/2005-31);	Notification of succession	06/06/ 2006
18. Protokol br. 14 uz Konvenciju o zaštiti ljudskih prava i osnovnih sloboda, Sl. list SCG (Međunarodni ugovor) br. 5/2005-25 i 7/2005-47	Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (Official Gazette of Serbia and Montenegro - International Treaties 5/2005-25 and 7/2005-47);	Notification of succession	06/06/ 2006
19. Konvencija Savjeta Evrope o akcijama protiv trgovine ljudima Sl. list CG 4/2008-38	Council of Europe Convention on Action against Trafficking in Human Beings (Official Gazette of Montenegro 4/2008-38)	Ratification Instrument deposited with the depositary 30/07/ 2008	01/11/ 2006

Family law – children's rights (legal cooperation in civil matters)

Montenegrin title	English title	Legal action	Effective date
1. Evropska konvencija o priznanju i izvršenju odluka o staranju o djeci i o ponovnom uspostavljanju odnosa staranja, Sl. List SRJ (Međunarodni ugovori) br. 1/2001-38	European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (Official Gazette of the Federal Republic of Yugoslavia - International Treaties 1/2001-38)	Notification of succession	06/06/ 2006

United Nations Conventions and Protocols

Montenegrin title	English title	Legal action	Effective date
1. Međunarodni pakt o građanskim i političkim pravima, usvojen u Njujorku 16. decembra 1966. godine OBJAVLJEN: Sl.list SFRJ (Međunarodni ugovori) 7/71;	International Covenant on Civil and Political Rights, New York, 16 December 1966 PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 7/71;	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
2. Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima, usvojen u Njujorku 16. decembra 1966. godine OBJAVLJEN: Sl.list SFRJ (Međunarodni ugovori) 7/71;	International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966 PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 7/71;	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
3. Fakultativni protokol uz Međunarodni pakt o građanskim i političkim pravima, usvojen u Njujorku 16. decembra 1966.	Optional Protocol to the International Covenant on Civil and Political Rights, New York, 16 December 1966,	Notification of succession deposited with the depositary	03/06/ 2006

godine, OBJAVLJEN: Sl.list SFRJ (Međunarodni ugovori) 7/1971 i Sl.list SRJ (Međunarodni ugovori) 04/01;	PUBLISHED: 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;	23/10/ 2006	
4. Drugi fakultativni protokol uz Međunarodni pakt o građanskim i političkim pravima, čiji cilj je ukidanje smrtne kazne, usvojen u Njujorku 15. decembra 1989. godine OBJAVLJEN: Sl.list SRJ (Međunarodni ugovori) 04/01;	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 PUBLISHED: Official Gazette of the Federal Republic of Yugoslavia - International Treaties 04/01;	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
5. Konvencija protiv mučenja i drugih svirepih, nehumanih ili ponižavajućih kazni ili postupaka (CAT), usvojena u Njujorku 10. decembra 1984. godine, OBJAVLJEN: Sl.list SFRJ (Međunarodni ugovori) 9/91-3;	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, PUBLISHED Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 9/91-3; DECLARATION: 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: "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. 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."	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
6. Fakultativni protokol uz Konvenciji protiv mučenja i drugih svirepih, nehumanih ili ponižavajućih kazni ili postupaka (OPCAT), usvojen u Njujorku 18. decembra 2002. godine Savezna Republika Jugoslavija je potpisala Fakultativni protokol 25. septembra 2003. godine. Nakon obnove nezavisnosti Skupština Crne Gore je potvrdila pomenuti protokol 17. decembra 2006.	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 18 December 2002 Federal Republic of Yugoslavia signed the Optional Protocol on 25 September 2003. After Montenegro regained its independence, the Parliament of Montenegro ratified the above	Notification on succession in relation to the signature deposited with the depositary 23/10/ 2006 Ratification Instrument deposited with the depositary 06/03/ 2009	Succession in relation to the signature effective as of 03/06/ 2006 Optional protocol effective for Montenegro 05/04/ 2009

godine. OBJAVLJEN: Sl. list SCG (Međunarodni ugovori) 16/2005-28 i 2/2006-60;	mentioned Protocol on 17 December 2006. PUBLISHED: Official Gazette of Serbia and Montenegro - International Treaties 16/2005-28 and 2/2006-60; DECLARATION: "The Government of Montenegro makes the following Declaration in relation to article 24 of the Optional Protocol: 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."		
7. Međunarodna konvencija o ukidanju svih oblika rasne diskriminacije (ICERD), usvojena u Njujorku, 7. marta 1966.godine OBJAVLJEN: Sl. list SFRJ (Međunarodni ugovori) br. 31/67-889 i 6/67-747;	International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966 PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 31/67-889 and 6/67-747; DECLARATION 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: "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. 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."	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
8. Konvencija o eliminisanju svih oblika diskriminacije žena (CEDAW), usvojena u Njujorku 18. decembra 1979. godine,	Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979 PUBLISHED: Official Gazette of the Socialist Federal Republic	Notification of succession deposited with the depositary 23/10/	03/06/ 2006

OBJAVLJENO: Sl. list SFRJ (Međunarodni ugovori) br. 11/81-613;	of Yugoslavia - International Treaties 11/81-613;	2006	
9. Opcioni protokol uz Konvenciju o eliminisanju svih oblika diskriminacije žena, usvojen u Njujorku 6. oktobra 1999. godine, OBJAVLJENO: Sl. list SRJ (Međunarodni ugovori) br. 13/2002-46;	Optional Protocol to the Convention on the Elimination of Discrimination against Women, New York, 6 October 1999 PUBLISHED: Official Gazette of the Federal Republic of Yugoslavia - International Treaties 13/2002-46;	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
10. Konvenciji o pravima djeteta (CRC), usvojena u Njujorku 20. novembra 1989. godine OBJAVLJEN: Sl. list SFRJ (Međunarodni ugovori) br. 15/90-8 i 4/96-68;	Convention on the Rights of the Child, New York, 20 November 1989 PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 15/90-8 and 4/96-68;	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
11. Amandman na član 43 stav 2 Konvencije o pravima djeteta, usvojen u Njujorku 12. decembra 1995. godine OBJAVLJEN: Sl. list SRJ –Međunarodni ugovori 2/97-70	Amendment to Article 43 (2) of the Convention on the Rights of the Child, New York, 12 December 1995 PUBLISHED: Official Gazette of the Federal Republic of Yugoslavia - International Treaties 2/97-70	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
12. (Prvi) Fakultativni protokol o učešću djece u oružanim sukobima uz Konvenciju o pravima djeteta, usvojen u Njujorku 25. maja 2000. godine OBJAVLJEN: Sl. list SRJ (Međunarodni ugovori) br. 7/2002-64;	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, New York, 25 May 2000 PUBLISHED: Official Gazette of the Federal Republic of Yugoslavia -International Treaties 7/2002-64; DECLARATION: “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.”	Notification of succession deposited, with the appropriate declaration, with the depositary 02/05/ 2007	03/06/ 2006
13. (Drugi) Fakultativni protokol o prodaji djece, dječijoj prostituciji i dječijoj pornografiji uz Konvenciju o pravima djeteta, usvojen u Njujorku 25. maja 2000. godine, OBJAVLJEN: Sl. list SRJ (Međunarodni ugovori) br. 7/2002-58;	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 PUBLISHED: Official Gazette of the Federal Republic of Yugoslavia - International Treaties 7/2002-58;	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
14. Međunarodna konvencija o zaštiti prava svih radnika migranata i članova njihovih porodica	International Convention on the Protection of the	Notification of	Succession

(ICRMW), usvojena u Njujorku 18. decembra 1990. godine	Rights of All Migrant Workers and Members of Their Families, New York, 18 December 1990	succession in relation to the signature deposited with the depositary 23/10/ 2006	in relation to the signature effective as of 03/06/ 2006
15. Konvencije o zaštiti svih lica od prinudnog nestanka, usvojena u Njujorku 20. decembar 2006. godine	International Convention for the Protection of All Persons from Enforced Disappearance, New York, 20 December 2006	Signature 06/02/ 2007	
16. Konvencija o pravima osoba sa invaliditetom (ICPRD), usvojena u Njujorku 13. decembra 2006. godine	Convention on the Rights of Persons with Disabilities, New York, 13 December 2006	Signature 27/09/ 2007	
17. Opcioni protokol o pravima osoba sa invaliditetom, usvojen u Njujorku 13. decembra 2006. godine;	Optional Protocol to the Convention on the Rights of Persons with Disabilities, New York, 13 December 2006	Signature 27/09/ 2007	
18. Konvenicija o sprečavanju i kažnjavanju krivičnog djela genocid, usvojena u Njujorku 9. decembra 1948. godine OBJAVLJEN: Sl. Vesnik Prezidijuma narodne skupštine FNRJ, 2/50;	Convention on the Prevention and Punishment of the Crime of Genocide, New York, 9 December 1948. PUBLISHED: Official Gazette of the Presidium of the National Assembly of the Federal People's Republic of Yugoslavia 2/50; RESERVATION: 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."	Notification of succession deposited with the depositary 23/10/2006	03/06/ 2006
19. Konvencija o nezastarijevanju ratnih zločina i zločina protiv čovječnosti, usvojena u Njujorku 26. novembra 1968. godine, OBJAVLJEN: Sl.list SFRJ (Međunarodni ugovori i drugi sporazumi) 50/70;	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, New York, 26 November 1968. PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties and other Agreements 50/70;	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
20. Međunarodna konvencija o suzbijanju i kažnjavanju zločina aparthejda, usvojena u Njujorku, 30. novembra 1973.	International Convention on the Suppression and Punishment of the Crime of Apartheid, New York, 30 November 1973 PUBLISHED: Official Gazette of the Socialist Federal Republic	Notification of succession deposited with the depositary 23/10/	03/06/ 2006

OBJAVLJEN: Sl.list SFRJ (Međunarodni ugovori i drugi sporazumi) 14/75-340;	of Yugoslavia -International Treaties and other Agreements 14/75-340;	2006	
21. Međunarodna konvencija protiv aparthejda u sportu, usvojena u Njujorku 10. decembra 1985. OBJAVLJEN: Tekst nije objavljen, ali je SFRJ ratifikovala konvenciju 4. oktobar 1989. (Instrument o potvrđivanju deponovan kod depozitara 22. decembra 1989.)	International Convention Against Apartheid in Sports, New York, 10 December 1985 PUBLISHED: The text was not published; however the Socialist Federal Republic of Yugoslavia ratified the Convention on 4 October 1989 (The ratification instrument deposited with the depositary on 22 December 1989).	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006

Other UN Conventions related to human rights protection

Montenegrin title	English title	Legal action	Effective date
22. Konvencija o statusu izbjeglica, usvojena u Ženevi 28. jula 1951. godine OBJAVLJEN: Sl.list FNRJ (Međunarodni ugovori i drugi sporazumi) 7/60;	Convention relating to the Status of Refugees, Geneva, 28 July 1951 PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia - International Treaties and other Agreements 7/60; DECLARATION: "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".	Notification of succession deposited with the depositary 10/10/ 2006	03/06/ 2006
23. Protokol o statusu izbjeglica, usvojen u Njujorku 31. januara 1967. godine OBJAVLJEN: Sl.list SFRJ (Međunarodni ugovori i drugi sporazumi) 15/67;	Protocol relating to the Status of Refugees, New York, 31 January 1967 PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties and other Agreements 15/67;	Notification of succession deposited with the depositary 10/10/ 2006	03/06/ 2006
24. Konvencija o statusu lica bez državljanstva, usvojena u Njujorku 28. septembra 1954. godine OBJAVLJEN: Sl.list FNRJ (Međunarodni ugovori i drugi sporazumi) 9/59;	Convention relating to the Status of Stateless Persons, New York, 28 September 1954 PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia - International Treaties and other Agreements 9/59 ;	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
25. Protokol kojim se mijenja Međunarodna konvencija za suzbijanje trgovine ženama i djecom (Ženeva, 30. septembar 1921.), usvojen u Njujorku 12 novembra 1947. godine OBJAVLJEN: Sl.list FNRJ 41/50-774	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 PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia 41/50-774;	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
26. Protokol kojim se mijenjaju međunarodni sporazumi za uspješnu zaštitu od kriminalne trgovine poznate pod imenom »trgovina bijelim robljem« i međunarodne konvencije o	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	Notification of succession deposited with the depositary	03/06/ 2006

suzbijenju trgovine bijelim robljem OBJAVLJEN: Sl. list FNRJ-Dodatak 2/51	1949 PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – Appendix 2/51;	23/10/ 2006	
27. Konvencija o suzbijanju trgovine ljudskim bićima i iskorišćavanja prostitucije drugih, usvojena u Njujorku 21. marta 1950. OBJAVLJEN: Službeni glasnik Prezidijuma Narodne skupštine FNRJ, br. 2/1951	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 PUBLISHED: Official Gazette of the Presidium of the National Assembly of the Federal People's Republic of Yugoslavia 2/1951	Notification of succession deposited with the depositary 23/10/ 2006/	03/06/ 2006
28. Konvencija o ropstvu potpisana u Ženevi 25. septembra 1926, izmijenjena Protokolom od 7. decembra 1953. OBJAVLJEN: Sl. list FNRJ, Međunarodni ugovori i drugi sporazumi, br. 4/1956 Konvencija o ropstvu, usvojena u Ženevi 25. septembra 1926. godine OBJAVLJEN: Zbirka Ugovora Kraljevine Jugoslavije 1929. str. 607 Protokol o izmjenama Konvencije o ropstvu potpisane u Ženevi 25. septembra 1926, usvojen u Njujorku 7. decembra 1953. godine OBJAVLJEN: Sl. list FNRJ, Međunarodni ugovori i drugi sporazumi, br. 6/1955 * * * UZIMAJUĆI U OBZIR STAV PRAVNE KANCELARIJE UN DA CRNA GORA NE MOŽE IZVRŠITI SUKCESIJU U ODNOSU NA MEĐ. SPORAZUME LIGE NARODA, NOTIFIKACIJA O SUKCESIJI JE PRIHVAĆENA SAMO ZA KONVENCIJU O ROPSTVU IZMIJENJENU PROTOKOLOM OD 7. DECEMBRA 1953, KOJA PREDSTAVLJA ZASEBAN MEĐUNARODNOPRAVNI INSTRUMENT UJEDINJENIH NACIJA	Slavery Convention, signed at Geneva on 25 September 1926 and amended by the Protocol, New York, 7 December 1953 PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia - International Treaties and other Agreements 4/1956 Slavery Convention signed at Geneva on 25 September 1926 PUBLISHED: Collection of Agreements of the Kingdom of Yugoslavia 1292, p.607 Protocol amending the Slavery Convention signed at Geneva on 25 September 1926, adopted in New York, 7 December 1953. PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia - International Treaties and other Agreements 6/1955 TAKING INTO ACCOUNT THE POSITION OF THE UN LEGAL OFFICE THAT MONTENEGRO CANNOT CARRY OUT SUCCESSION IN RELATION TO THE LEAGUE OF NATIONS INTERNATIONAL TREATIES, THE NOTIFICATION OF SUCCESSION WAS ACCEPTED ONLY FOR THE SLAVERY CONVENTION AMENDED BY THE PROTOCOL FROM 7 DECEMBER 1953, WHICH PRESENTS A SEPARATE INTERNATIONAL LEGAL INSTRUMENT OF THE UNITED NATIONS	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
29. Dopunska konvencija o ukidanju ropstva, trgovine robljem i ustanova i prakse sličnih ropstvu, usvojena u Ženevi od 7. septembra 1956. godine	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Geneva, 7 September 1956	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006

OBJAVLJEN: Sl. list FNRJ, Međunarodni ugovori i drugi sporazumi, br. 7/1958	PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia - International Treaties and other Agreements 7/1958		
30. Rimski statut Međunarodnog krivičnog suda, usvojen 17. jula 1998. godine; OBJAVLJEN: Sl. list SRJ, Međunarodni, br. 5/2001-3	Rome Statute of the International Criminal Court, Rome, 17 July 1998; PUBLISHED: Official Gazette of the Federal Republic of Yugoslavia 5/2001-3 NOTIFICATION : Notification of succession included the confirmation of the notification by Serbia and Montenegro upon accession which reads as follows: "... 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."	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
31. Konvencija o političkim pravima žena, usvojena u Njujorku 31. marta 1953. godine OBJAVLJEN: Službeni list FNRJ, Međunarodni ugovori i drugi sporazumi, br. 7/1954	Convention on the Political Rights of Women, New York, 31 March 1953 PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia - International Treaties and other Agreements 7/1954	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
32. Konvencija o državljanstvu udatih žena, usvojena u Njujorku 20. februara 1957. godine OBJAVLJEN: Sl. list FNRJ, Međunarodni ugovori i drugi sporazumi, br. 7/1958	Convention on the Nationality of Married Women, New York, 20 February 1957 PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia - International Treaties and other Agreements 7/1958	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
33. Konvencija o pristanku na brak, minimalnoj starosti za sklapanje braka i registraciju brakova, usvojena u Njujorku 10. decembra 1962. godine OBJAVLJEN: Službeni list SFRJ, Međunarodni ugovori i drugi sporazumi, br. 13/1964	Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, New York, 10 December 1962 PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties and other Agreements 13/1964	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006
34. Protokol za sprečavanje, suzbijanje i kažnjavanje trgovine ljudskim bićima, posebno ženama i djecom uz Konvenciju UN o borbi protiv transnacionalnog organizovanog kriminala, usvojen u Njujorku, 15. novembra 2000. godine	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 PUBLISHED:	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006

OBJAVLJEN: Sl.list SRJ –Međunarodni ugovori, br. 6/2001 - 3	Official Gazette of the Federal Republic of Yugoslavia - International Treaties 6/2001-3		
35. Protokol protiv krijumčarenja migranata kopnom, morem i vazduhom OBJAVLJEN: Sl.list SRJ –Međunarodni ugovori, br. 6/2001 - 3	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 PUBLISHED: Official Gazette of the Federal Republic of Yugoslavia - International Treaties 6/2001 – 3	Notification of succession deposited with the depositary 23/10/ 2006	03/06/ 2006

Conventions and Protocols of the Hague Conference on Private International Law (HCCH)

Montenegrin title	English title	Legal Action	Effective date
1. Konvencija o građanskopravnim vidovima međunarodne otmice djece, potpisana u Hagu 25. oktobra 1980 OBJAVLJEN: Sl. List SFRJ (Međunarodni ugovori) br. 7/91-19	Convention of 25 October 1980 on the Civil Aspects of International Child Abduction PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 7/91-19	Notification of succession deposited with the depositary 10/04/ 2007	Legal continuity, based on the succession, effective as of 01/12/ 1991

Conventions of the International Labour Organizations (ILO)

Montenegrin title	English title	Succession	Effective date
1. Konvencija br. 2 o nezaposlenosti, usvojena 1919. godine;	Unemployment Convention, No 2 , adopted in 1919;	Notification of succession deposited with the depositary 25/05/ 2007	03/06/ 2006
2. Konvencija br. 3 o zaštiti materinstva, usvojena 1919. godine;	Maternity Protection Convention, No 3, adopted in 1919;	Succession 25/05/ 2007	03/06/ 2006
3. Konvenicja br. 8 o naknadi za nezaposlenost u slučaju gubitka broda zbog brodoloma, usvojena 1920. godine ;	Unemployment Indemnity (Shipwreck) Convention, No 8, adopted in 1920;	Succession 25/05/ 2007	03/06/ 2006
4. Konvencija br. 9 o namještenju mornara, usvojena 1920. godine;	Placing of Seamen Convention, No 9, adopted in 1920;	Succession 25/05/ 2007	03/06/ 2006
5. Konvencija br. 11 o pravu na udruživanje u poljoprivredi, usvojena 1921. godine;	Right of Association (Agriculture) Convention, No 11, adopted in 1921;	Succession 25/05/ 2007	03/06/ 2006
6. Konvencija br. 12 o obeštećenju radnicima u poljoprivredi, usvojena 1921. godine;	Workmen's Compensation (Agriculture) Convention, No 12, adopted in 1921;	Succession 25/05/	03/06/ 2006

		2007	
7. Konvencija br. 13 o upotrebi olovnog bjelila u bojadisanju, usvojena 1921. godine;	White Lead (Painting) Convention, No 13, adopted in 1921;	Succession 25/05/ 2007	03/06/ 2006
8. Konvencija br. 14 o nedjeljnom odmoru u industriji, usvojena 1921. godine;	Weekly Rest (Industry) Convention, No 14, adopted in 1921;	Succession 25/05/ 2007	03/06/ 2006
9. Konvencija br. 16 o obaveznom ljekarskom pregledu mladih lica zaposlenih na brodovima, usvojena 1921. godine;	Medical Examination of Young Persons (Sea) Convention, No 16, adopted in 1921;	Succession 25/05/ 2007	03/06/ 2006
10. Konvencija br. 17 o nadoknadi radnicima za slučaj nesreće na radu, usvojena 1925. godine;	Workmen's Compensation (Accidents) Convention, No 17, adopted in 1925;	Succession 25/05/ 2007	03/06/ 2006
11. Konvencija br. 18 o obeštećenju zbog oboljenja od profesionalnih bolesti, usvojena 1925. godine;	Workmen's Compensation (Occupational Diseases) Convention, No 18, adopted in 1925;	Succession 25/05/ 2007	03/06/ 2006
12. Konvencija br. 19 o jednakom tretmanu stranih i domaćih radnika u pogledu nesreće na radu, usvojena 1925. godine;	Equality of Treatment (Accident Compensation) Convention, No 19, adopted in 1925;	Succession 25/05/ 2007	03/06/ 2006
13. Konvencija br. 22 o ugovoru o najmu mornara, usvojena 1926. godine;	Seamen's Articles of Agreement Convention, No 22, adopted in 1926;	Succession 25/05/ 2007	03/06/ 2006
14. Konvencija br. 23 o repatrijaciji mornara, usvojena 1926. godine;	Repatriation of Seamen Convention, No 23, adopted in 1926;	Succession 25/05/ 2007	03/06/ 2006
15. Konvencija br. 24 o osiguranju za slučaj bolesti u industriji, usvojena 1927. godine;	Sickness Insurance (Industry) Convention, No 24, adopted in 1927;	Succession 25/05/ 2007	03/06/ 2006
16. Konvencija br. 25 o osiguranju za slučaj bolesti u poljoprivredi, usvojena 1927. godine;	Sickness Insurance (Agriculture) Convention, No 25, adopted in 1927;	Succession 25/05/ 2007	03/06/ 2006
17. Konvencija br. 27 o označavanju težine tereta koji se prevozi brodovima, usvojena 1929. godine;	Marking of Weight (Packages Transported by Vessels) Convention, No 27, adopted in 1929;	Succession 25/05/ 2007	03/06/ 2006
18. Konvencija br. 29 o prinudnom ili obaveznom radu, usvojena 1930. godine;	Forced Labour Convention, No 29, adopted in 1930;	Succession 25/05/ 2007	03/06/ 2006
19. Konvencija br. 32 o zaštiti za slučaj nesreće, usvojena 1932. godine;	Protection against Accidents (Dockers) Convention (Revised), No 32, adopted in 1932;	Succession 25/05/ 2007	03/06/ 2006
20. Konvencija br. 45 o radu žena na	Underground Work (Women) Convention, No	Succession	03/06/

podzemnim radovima, usvojena 1935. godine;	45, adopted in 1935;	25/05/ 2007	2006
21. Konvencija br. 48 o očuvanju migranata za slučaj bolesti, starosti i smrti, usvojena 1935. godine;	Maintenance of Migrants' Pension Rights Convention, No 48, in case of sickness, old age or death, adopted in 1935;	Succession 25/05/ 2007	03/06/ 2006
22. Konvencija br. 53 o stručnoj sposobnosti zapovjednika mornarice, usvojena 1936. godine; OBJAVLJENO: Sl.list FNRJ – Međunarodni ugovori, br. 9 /61-26	Officers' Competency Certificates Convention, No 53, adopted in 1936; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties, 9/61-26	Succession 25/05/ 2007	03/06/ 2006
23. Konvencija br. 56 o osiguranju za slučaj bolesti pomoraca, usvojena 1936. godine; OBJAVLJENO: Sl.list FNRJ – Dodatak, br. 12 /58-1	Sickness Insurance (Sea) Convention, No 56, adopted in 1936; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – Appendix 12/58-1	Succession 25/05/ 2007	03/06/ 2006
24. Konvencija br. 69 o diplomi o sposobnosti brodskog kuvara, usvojena 1946. godine; OBJAVLJENO: Sl.list FNRJ –Dodatak, br. 7 /61-10	Certification of Ships' Cooks Convention, No 69, adopted in 1946; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – Appendix 7/61-10	Succession 25/05/ 2007	03/06/ 2006
25. Konvencija br. 73 o ljekarskom pregledu mornara, usvojena 1946. godine;	Medical Examination (Seafarers) Convention, No 73, adopted in 1946;	Succession 25/05/ 2007	03/06/ 2006
26. Konvencija br. 74 o sertifikatu sposobnosti za mornara, usvojena 1946. godine; OBJAVLJENO: Sl.list FNRJ – Međunarodni ugovori, br. 3 /62-41	Certification of Able Seamen Convention, No 74, adopted in 1946; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties 3/62-41	Succession 25/05/ 2007	03/06/ 2006
27. Konvencija br. 80 o djelimičnoj reviziji konvencija usvojenih od strane Generalne Konferencije MOR-a na 28 prvih zasijedanja, usvojena 1946. godine;	Final Articles Revision Convention, No 80, on partial revision of Conventions adopted by the ILO General Conference, at first 28 sessions, adopted in 1946;	Succession 25/05/ 2007	03/06/ 2006
28. Konvencija br. 81 o inspekciji rada, usvojena 1947. godine;	Labour Inspection Convention, No 81, adopted in 1947;	Succession 25/05/ 2007	03/06/ 2006
29. Konvencija br. 87 o sindikalnim slobodama i zaštiti sindikalnih prava, usvojena 1948. godine; OBJAVLJENO: Sl.list FNRJ – Dodatak, br. 8/58-1	Freedom of Association and Protection of the Right to Organise Convention, No 87, adopted in 1948; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – Appendix 8/58-1	Succession 25/05/ 2007	03/06/ 2006
30. Konvencija br. 88 o organizaciji službe za posredovanje rada, usvojena 1948. godine;	Employment Service Convention, No 88, adopted in 1948;	Succession 25/05/ 2007	03/06/ 2006

31. Konvencija br. 89 o noćnom radu žena (revidirana), usvojena 1948. godine;	Night Work (Women) Convention (Revised), No 89, adopted in 1948;	25/05/ 2007	03/06/ 2006
32. Konvencija br. 90 o noćnom radu djece u industriji, usvojena 1948. godine;	Night Work of Young Persons (Industry) Convention (R Revised), No 90, adopted in 1948;	Succession 25/05/ 2007	03/06/ 2006
33. Konvencija br. 91 o plaćenom odmoru pomoraca (revidirana), usvojena 1949. godine; OBJAVLJENO: Sl.list SFRJ –Međunarodni ugovori, br. 7 /67-773	Paid Vacations (Seafarers) Convention (Revised), No 91, adopted in 1949; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 7/67 – 773	Succession 25/05/ 2007	03/06/ 2006
34. Konvencija br. 92 o smještaju posade na pomorskom brodu (revidirana), usvojena 1949. godine; OBJAVLJENO: Sl.list FNRJ – Dodatak, br. 3 /67	Accommodation of Crews Convention (Revised), No 92, adopted in 1949; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – Appendix 3/67	Succession 25/05/ 2007	03/06/ 2006
35. Konvencija br. 97 o migraciji u cilju zapošljavanja (revidirana), usvojena 1949. godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 5 /68-335	Migration for Employment Convention (Revised), No 97, adopted in 1949; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 5/68 – 335	Succession 25/05/ 2007	03/06/ 2006
36. Konvencija br. 98 o pravima radnika na organizovanje i na kolektivne pregovore, usvojena 1949. godine; OBJAVLJENO: Sl.list FNRJ –Dodatak, br. 11 /58-4	Right to Organise and Collective Bargaining Convention, No 98, adopted in 1949; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – Appendix 11/58 - 4	Succession 25/05/ 2007	03/06/ 2006
37. Konvencija br. 100 o jednakosti nagrađivanja muške i ženske radne snage za rad jednake vrijednosti, usvojena 1951. godine;	Equal Remuneration Convention, No 100, on equal remuneration for men and women workers for work of equal value, adopted in 1951;	Succession 25/05/ 2007	03/06/ 2006
38. Konvencija br. 102 o minimalnoj normi socijalnog obezbjeđenja, usvojena 1952. . godine; OBJAVLJENO: Sl.list FNRJ –Dodatak, br. 1 /55-41	Social Security (Minimum Standards) Convention, No 102, adopted in 1952; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – Appendix 1/55 - 41	Succession 25/05/ 2007	03/06/ 2006
39. Konvencija br. 103 o zaštiti materinstva (revidirana), usvojena 1952. godine; OBJAVLJENO: Sl.list FNRJ – Dodatak, br.9/55-9	Maternity Protection Convention (Revised), No 103, adopted in 1952; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – Appendix 9/55 - 9	Succession 25/05/ 2007	03/06/ 2006
40. Konvencija br. 105 o ukidanju prinudnog rada, usvojena 1957. godine; OBJAVLJENO: Sl.list SRJ – Međunarodni ugovori, br. 13 /2002-29	Abolition of Forced Labour Convention, No 105, adopted in 1957; PUBLISHED: Official Gazette of the Federal Republic of	Succession 25/05/ 2007	03/06/ 2006

	Yugoslavia – International Treaties 13/2002-29		
41. Konvencija br. 106 o nedjeljnom odmoru (trgovina i berza), usvojena 1957. godine; OBJAVLJENO: Sl.list FNRJ – Dodatak, br. 12 /58-18	Weekly Rest (Commerce and Offices) Convention, No 106, adopted in 1957; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – Appendix 12/58 – 18	Succession 25/05/ 2007	03/06/ 2006
42. Konvencija br. 111 o diskriminaciji u pogledu zapošljavanja i zanimanja, usvojena 1958. godine; OBJAVLJENO: Sl.list FNRJ – Međunarodni ugovori, br. 9 /61-83	Discrimination (Employment and Occupation) Convention, No 111, adopted in 1958; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties 9/61-83	Succession 25/05/ 2007	03/06/ 2006
43. Konvencija br. 113 o ljekarskom pregledu mornara, usvojena 1959. godine; OBJAVLJENO: Sl.list FNRJ – Međunarodni ugovori, br. 2 /62-23	Medical Examination (Fishermen) Convention, No 113, adopted in 1959; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties 2/62-23	Succession 25/05/ 2007	03/06/ 2006
44. Konvencija br. 114 o o ugovoru o zapošljavanju ribara, usvojena 1959. godine; OBJAVLJENO: Sl.list FNRJ – Međunarodni ugovori, br. 2 /62-23	Fishermen's Articles of Agreement Convention, No 114, adopted in 1959; PUBLISHED: Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties 2/62-23	Succession 25/05/ 2007	03/06/ 2006
45. Konvencija br. 116 o djelimičnoj reviziji konvencija usvojenih od strane Generalne Konferencije MOR-a na prva 32 zasijedanja radi standardizacije odredaba koje se odnose na pripremanje izvještaja o primjeni konvencija MOR-a, usvojena 1961. godine;	Final Articles Revision Convention, No 116, on partial revision of the Conventions adopted by the ILO General Conference at its first 32 sessions, for the purpose of standardising the provisions related to the preparation of reports on the implementation of the ILO Conventions, adopted in 1961;	Succession 25/05/ 2007	03/06/ 2006
46. Konvencija br. 119 o zaštiti mašina, usvojena 1963. godine; OBJAVLJENO: Sl.list SFRJ - Dodatak, br. 54 /70	Guarding of Machinery Convention, No 119, adopted in 1963; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – Appendix 54/70	Succession 25/05/ 2007	03/06/ 2006
47. Konvencija br. 121 o davanjima za slučaj povrede na radu, usvojena 1964. godine; OBJAVLJENO: Sl.list SFRJ - Dodatak, br. 27 /70	Employment Injury Benefits Convention, No 121, adopted in 1964; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – Appendix 27/70	Succession 25/05/ 2007	03/06/ 2006
48. Konvencija br. 122 o politici zapošljavanja, usvojena 1964. godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 34 /71-523	Employment Policy Convention, No 122, adopted in 1964; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 34/71-523	Succession 25/05/ 2007	03/06/ 2006
49. Konvencija br. 126 o smještaju na ribarskim brodovima, usvojena 1966. godine;	Accommodation of Crews (Fishermen) Convention, No 126, adopted in 1966; PUBLISHED: Official Gazette of the Socialist Federal	Succession 25/05/ 2007	03/06/ 2006

OBJAVLJENO: Sl.list SFRJ, br. 43 /74-676	Republic of Yugoslavia 43/74-676		
50. Konvencija br. 129 o inspekciji rada u poljoprivredi, usvojena 1969. godine; OBJAVLJENO: Sl.list SFRJ, br. 22 /75-725	Labour Inspection (Agriculture) Convention, No 129, adopted in 1969; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia 22/75-725	Succession 25/05/ 2007	03/06/ 2006
51. Konvencija br. 131 o utvrđivanju minimalnih plata, usvojena 1970. godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 14 /82-667	Minimum Wage Fixing Convention, No 131, adopted in 1970; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14/82-667	Succession 25/05/ 2007	03/06/ 2006
52. Konvencija br. 132 o plaćenom godišnjem odmoru (revidirana), usvojena 1970. godine; OBJAVLJENO: Sl.list SFRJ, br. 52 /73-1579	Holidays with Pay Convention (Revised), No 132, adopted in 1970; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia 52 /73-1579	Succession 25/05/ 2007	03/06/ 2006
53. Konvencija br. 135 o predstavnicima radnika, usvojena 1971. . godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 14 /82-672	Workers' Representatives Convention, No 135, adopted in 1971; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14/82-672	Succession 25/05/ 2007	03/06/ 2006
54. Konvencija br. 136 o zaštiti od opasnosti trovanja benzolom, usvojena 1971. godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 16 /76-431	Benzene Convention, No 136, adopted in 1971; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 16/76-431	Succession 25/05/ 2007	03/06/ 2006
55. Konvencija br. 138 o minimalnim godinama za zapošljavanje, usvojena 1973. godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 14 /82-676	Minimum Age Convention, No 138, adopted in 1973; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14/82-676	Succession 25/05/ 2007	03/06/ 2006
56. Konvencija br. 139 o profesionalnom raku, usvojena 1974. . godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 3 /77	Occupational Cancer Convention, No 139, adopted in 1974; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 3/77	Succession 25/05/ 2007	03/06/ 2006
57. Konvencija br. 140 o plaćenom odsustvu za obrazovne svrhe, usvojena 1974. . godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 14 /82-684	Paid Educational Leave Convention, No 140, adopted in 1974; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14/82-684	Succession 25/05/ 2007	03/06/ 2006

58. Konvencija br. 142 o razvoju ljudskih resursa, usvojena 1975. . godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 14 /82-689	Human Resources Development Convention, No 142, adopted in 1975; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14/82-689	Succession 25/05/ 2007	03/06/ 2006
59. Konvencija br. 143 o radnicima migrantima, usvojena 1975. godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 12 /80-725	Migrant Workers (Supplementary Provisions) Convention, No 143, adopted in 1975; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 12/80-725	Succession 25/05/ 2007	03/06/ 2006
60. Konvencija br. 144 o tripartitnim konsultacijama, usvojena 1976. godine; OBJAVLJENO: Sl.list SCG – Međunarodni ugovori, br. 1 /2005-11	Tripartite Consultation (International Labour Standards) Convention, No 144, adopted in 1976; PUBLISHED: Official Gazette of Serbia and Montenegro – International Treaties 1/2005-11	Succession 25/05/ 2007	03/06/ 2006
61. Konvencija br. 148 o zaštiti radne snage (zagađenje vazduha, buka, vibracija), usvojena 1977. godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 14 /82-694	Working Environment (Air Pollution, Noise and Vibration) Convention, No 148, adopted in 1977; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14/82-694	Succession 25/05/ 2007	03/06/ 2006
62. Konvencija br. 155 o zaštiti na radu i radnoj sredini, usvojena 1981. godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 7/87-17	Occupational Safety and Health Convention, No 155, adopted in 1981; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 7/87-17	Succession 25/05/ 2007	03/06/ 2006
63. Konvencija br. 156 o radnicima sa porodičnim obavezama, usvojena 1981. godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 7 /87-30	Workers with Family Responsibilities Convention, No 156, adopted in 1981; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 7/87-30	Succession 25/05/ 2007	03/06/ 2006
64. Konvencija br. 158 o prestanku radnog odnosa, usvojena 1982. godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 4 /84-139, 7/91-28	Termination of Employment Convention, No 158, adopted in 1982; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 4/84-139, 7/91-28	Succession 25/05/ 2007	03/06/ 2006
65. Konvencija br. 159 o profesionalnoj rehabilitaciji i zapošljavanju invalidnih lica, usvojena 1983. godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 3 /87-6	Vocational Rehabilitation and Employment (Disabled Persons) Convention, No 159, adopted in 1983; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 3/87-6	Succession 25/05/ 2007	03/06/ 2006
66. Konvencija br. 161 o službama medicine rada, usvojena 1985. godine;	Occupational Health Services Convention, No 161, adopted in 1985; PUBLISHED:	Succession 25/05/	03/06/ 2006

OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 14 /89-8	Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14/89-8	2007	
67. Konvencija br. 162 o bezbjednosti pri korišćenju azbesta, usvojena 1986. godine; OBJAVLJENO: Sl.list SFRJ – Međunarodni ugovori, br. 4 /89-3	Asbestos Convention, No 162, adopted in 1986; PUBLISHED: Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 4/89-3	Succession 25/05/ 2007	03/06/ 2006
68. Konvencija br. 182 o najgorim oblicima dječijeg rada, usvojena 1999. godine. OBJAVLJENO: Sl.list SRJ – Međunarodni ugovori, br. 2 /2003-15	Worst Forms of Child Labour Convention, No 182, adopted in 1999; PUBLISHED: Official Gazette of the Federal Republic of Yugoslavia – International Treaties 2/2003-15	Succession 25/05/ 2007	03/06/ 2006

Compliance of National Legislation

Compliance of the national legislation with the obligations arising from the ratified and published international treaties, i.e. their status in relation to the national legal system, is regulated by Article 9 of the Constitution, which stipulates that the ratified and published international treaties and generally accepted rules of international law shall become integral part of the national legal system, shall have supremacy over the national legislation, and shall be directly applied when providing different solutions from the ones stipulated in the national legislation.

Implementation and Monitoring of Implementation

In cases when an international treaty cannot be directly implemented, the competent state administration bodies initiate the proceedings for the adoption of laws and secondary legislation, which will enable direct implementation of the treaty. As a result of this approach, the exercise and protection of certain rights or freedoms is regulated by a number of regulations. Primarily, the basic provisions of the Constitution represent the essential and general guarantee of the protection and enjoyment of human rights and freedoms, and prescribe prohibition of incitement of hatred or intolerance on any ground, as well as the prohibition of discrimination, as a general prerequisite for the enjoyment of all human rights and freedoms. In addition to the shared provisions and the provisions on the protector of human rights and freedoms, constitutional norms on human rights and freedoms are organised into four groups, as follows: personal rights and freedoms; political rights and freedoms; economic, social and cultural rights and freedoms; and special minority rights.

The following institutions are participating in different segments of monitoring of the implementation of protection and promotion of human rights and freedoms: 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 Environment Protection, Ministry of Finance, Ministry of Foreign Affairs, Protector of Human Rights and Freedoms, Police Directorate, Office for Gender Equality, Office for Cooperation with Non-Governmental Organisations, Office for Sustainable Development, Office of the National Coordinator for Fight against Trafficking in Human Beings, Office for Refugee Care and Support, and others.

In the field of human rights and freedoms, the most important roles are those of the Protector of Human Rights and Freedoms, the courts and the Constitutional Court.

The basic principle of work and activities of the Protector of Human Rights and Freedoms entails the protection of citizens from unlawful, improper and poor functioning of the state administration or local self-government, and other entities empowered with public authority, by acting upon complaints of citizens or on his/her own initiative. The Protector acts in two directions: he/she provides a timely warning in case of violations of human rights of citizens and assists the exercise of rights, while contributing to the democratic control of the administration and its improvement and promotion.

The role of courts in the protection of human rights and freedoms arises from the fact that all procedural laws in Montenegro provide for the right to effective legal remedy through regular and extraordinary legal remedies. The Civil Procedure Law introduced a new institute of renewal of proceeding when the European Court of Human Rights determines 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 of Montenegro prescribes a number of criminal offences against: the rights and freedoms of man and the citizen, against electoral rights, against honour and reputation, against humanity and rights guaranteed under international law, criminal offence of domestic violence, and others.

The Constitutional Court is in charge of deciding upon constitutional complaints for the reason of violation of human rights and freedoms guaranteed by the Constitution, after all effective legal remedies have been exhausted. Namely, the Constitution prescribes everyone shall be entitled to a legal remedy against the decision concerning his/her right or lawful interest.

General legal framework, strategies and action plans for exercise and protection of human rights and fundamental freedoms

- Constitution of Montenegro (Official Gazette of Montenegro 01/07)
- Law on Protector of Human Rights and Freedoms (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-Contentious Procedure (Official Gazette of the Republic of Montenegro 27/06)
- Law on Civil Procedure (Official Gazette of the Republic of Montenegro 22/2004-1, 76/06-1)
- Law on Enforcement Procedure (Official Gazette of the Republic of Montenegro 23/04)
- Law on Administrative Dispute (Official Gazette of the Republic of Montenegro 60/03-49)
- Law on Misdemeanours (Official Gazette of the Republic of Montenegro 25/94, 29/94 and 48/99)
- Law on Inheritance (Official Gazette of Montenegro 74/08-1)
- Law on Non-Governmental Organisations (Official Gazette of the Republic of Montenegro 27/99, 09/02, 30/02, Official Gazette of Montenegro 11/07)
- Judiciary Reform Strategy (2007-2012) and the Action Plan for its implementation
- Strategy for Development and Poverty Reduction (2003-2007)
- Strategy for Poverty Reduction and Combating Social Exclusion (2007-2011)
- National Strategic Response to Drugs (2008-2012).

Legal framework, strategies and action plans for ensuring full compliance with the prohibition of discrimination on any ground, and for ensuring the exercise of minority rights, gender equality, rights of persons with the status of refugee or asylum-seeker, 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 Use of National Symbols (Official Gazette of the Republic of Montenegro 55/00-38)
- Law on Gender Equality (Official Gazette of the Republic of Montenegro 46/07-1)

- Law on the Legal Status of Religious Communities (Official Gazette of the Socialist 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 Montenegro 12/07-107)
- Law on Travel Documents (Official Gazette of Montenegro 21/2008-1 and 25/08-26)
- Law on Register (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 Travel Concessions for Persons with Disabilities (Official Gazette of Montenegro 80/08)
- Law on Moving of Blind Persons using Guide Dogs (Official Gazette of Montenegro 18/08)
- Law on Protection of Combatants and Disabled Persons (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 UN Convention on the Rights of Persons with Disabilities with the Optional Protocol (Official Gazette of Montenegro – International Agreements 2/09)
- Law on Vocational Training and Employment of Persons with Disabilities (Official Gazette of Montenegro 49/08)
- Law on Protection and Exercise of the Rights of the Mentally Ill Persons (Official Gazette of the Republic of Montenegro 32/05 of 27 May 2005)
- 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)
- Minority Policy Strategy (2008-2012)
- Strategy for Improvement of the Status of RAE Population in Montenegro (2008-2012)
- National Action Plan for the *Decade of Roma Inclusion 2005-2015* in the Republic of Montenegro
- Action Plan for the Achievement of Gender Equality in Montenegro (2008-2012)
- Strategy for Resolving the Issues of Refugees and Internally Displaced Persons in Montenegro (2005-2008)
- Strategy for Integration of Persons with Disabilities in Montenegro (2008-2016)
- Action Plan for the Strategy for the Integration of Persons with Disabilities in Montenegro (2008-2009)
- Strategy for Development of Social Protection of the Elderly.

Legal framework, strategies and action plans for exercise of the rights of child and the right to education and cultural rights

- Family Law (Official Gazette of the Republic of Montenegro 1/07-1)
- Law on General Education (Official Gazette of the Republic of Montenegro 64/02, 31/05, 49/07 and 04/08)

- Law on Elementary 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 Gymnasium (Official Gazette of the Republic of Montenegro 64/02, 49/07)
- Law on Secondary School (Official Gazette of the Socialist 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 of 29 December 2004)
- Law on Pre-Primary 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 Adult Education (Official Gazette of the Republic of Montenegro 64/02-49 and 49/2007-12)
- Law on Higher Education (Official Gazette of the Republic of Montenegro 60/03)
- Law on Education Inspection (Official Gazette of the Republic of Montenegro 80/04-37)
- Law on Scientific Research Activity (Official Gazette of the Republic of Montenegro 71/05-1)
- Law on Recognition and Assessment of Education Documents (Official Gazette of Montenegro 4/08-37)
- Law on Culture (Official Gazette of Montenegro 49/08-24)
- Law on Publishing (Official Gazette of the Republic of Montenegro 20/95-254 and 22/95-300)
- Law on Cinematography (Official Gazette of Montenegro 14/2008-1)
- Law on Theatre Activities (Official Gazette of the Republic of Montenegro 60/01-1)
- Law on Copyright and Related Rights (Official Gazette of the Serbia and Montenegro 61/04-2)
- 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 Programme for Prevention of Unacceptable Behaviour of Children and Youth in Montenegro (2004-2006)
- Strategy for the Development of Social and Child Protection System in Montenegro (2008-2012)
- Strategy for Inclusive Education in Montenegro (2008-2012).

Legal framework, strategies and action plans for protection of dignity and inviolability of a person, respect of the right 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 the Right to Trial within a Reasonable Period of Time (Official Gazette of Montenegro 11/07-18)
- Law on Police (Official Gazette of the Republic of Montenegro 28/05)

- Law on Public Order and Peace (Official Gazette of the Republic of Montenegro 41/94)
- Law on Secrecy of Data (Official Gazette of Montenegro 14/08-7)
- Strategy for Judiciary Reform (2007-2012) and the Action Plan for its implementation
- Police Code of Ethics
- Rulebook on conditions of the premises for accommodation of persons deprived of liberty.

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

- Law on Media (Official Gazette of the Republic of Montenegro 51/02, 62/02)
- 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 of the *Radio of Montenegro* and the *Television of Montenegro* (Official Gazette of the Republic of Montenegro 51/02-25 and 62/02-1).

Legal framework, strategies and action plans for exercise of the rights pertaining to work and from work

- Labour Law (Official Gazette of Montenegro 49/08)
- Law on Social and Child Protection (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, 21/08 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 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 exercise of the right to a healthy environment

- Law on Environmental Protection (Official Gazette of Montenegro 48/08)
- Law on Integrated Environment Pollution Prevention and Control (Official Gazette of the Republic of Montenegro 80/05)
- Law on Strategic Environmental Impact Assessment (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 Waste Management Policy.

59. What is the rank of these conventions in your domestic legal system including your constitution?

By virtue of the provision of Article 9 of the Constitution, Montenegro has established that ratified and published international treaties and generally accepted rules of international law shall become

integral part of the national legal system, have supremacy over the national legislation, and be directly applied when providing different solutions from the ones stipulated in the national legislation. This provision, does not only verify the legal effect of international treaties by considering them an integral part of the national legal system and stipulating their supremacy over the national legislation, but also implies the requirement for state bodies to harmonise the national legislation with the international law, particularly with respect to guaranteeing, promoting and protecting the fundamental human rights and freedoms.

60. What steps have been taken to co-operate with UN bodies dealing with human rights issues, including visits by UN special mechanisms (such as special rapporteurs), reporting to Treaty bodies and responding to Treaty body recommendations?

As party to all relevant international legal instruments pertinent to human rights, Montenegro prepared the following reports:

- Initial Report on Implementation of the UN Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, presented at the 41st Session of the Committee against Torture (CAT), 11-12 November 2008 in Geneva
- National Report on Human Rights Situation in Montenegro, within the Universal Periodic Review (UPR) of the UN Human Rights Council, presented at the session of Working Group for UPR, held on 3-5 December 2008 in Geneva. During the interactive debate, the National Report was positively assessed, as well as the dedication of Montenegro to promote and respect human rights and freedoms.
- Initial Report on Implementation of the Convention on the Elimination of Racial Discrimination, presented at the 74th Session of UN Committee on the Elimination of Racial Discrimination, held on 2-3 March 2009 in Geneva.

The Initial Report on Implementation of the Convention on the Rights of the Child[2] was submitted in December 2008, while the Reports on Implementation of the First and Second Protocol to the Convention were submitted on 1 June 2009.

The Initial Report on Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is currently being prepared.

Montenegro fully cooperates with the UN Contracting Parties on the implementation of the relevant conventions pertinent to human rights, by means of reporting and responding to queries of the UN Special Rapporteurs.

On the occasion of its 84th Session, the Working Group of the United Nations on Enforced or Involuntary Disappearances (WGEID) presented the Report adopted on 14 March 2008. A part of the Report deals with the situation in Montenegro with respect to the enforced or involuntary disappearances, in particular to the "unresolved cases", i.e. to the arrest of 10 persons of Albanian nationality near the border crossing point Bozaj, the arrest of four persons, also of Albanian nationality, near Herceg Novi, and to the unproved accusations relating to the deportation of 83 persons in 1992.

In cooperation with the Ministry of Justice, the Supreme Public Prosecutor and the Police Directorate, the Ministry of Foreign Affairs has prepared the response of the Government of the Republic of Montenegro to the allegations made in the Report, which was submitted to the Working Group on 14 August 2008 via Permanent Mission of Montenegro to the United Nations and other international organisations in Geneva.

The Special Rapporteur of the Secretary General of the United Nations on human rights defenders, Ms. Hina Jelani, requested, on 11 May 2007, the information regarding the allegations on violation of rights of Mr. Aleksanadar Sasa Zekovic, the member of the Council for Civil Control of Police

[2] The Committee for the Rights of the Child has not yet decided on the date of the consideration of the Report.

Work in the Republic of Montenegro and researcher of human rights' violations. The response of the Government of Montenegro to the query of the Special Rapporteur was issued on 29 June 2007.

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Ambeyi Ligabo, referred to the Government of Montenegro on 2 May 2008, with a view to obtaining information in relation to the judgement of the High Court in the case against the weekly magazine *Monitor* and the journalist Andrej Nikolaidis. In relation to this, the Ministry of Foreign Affairs has gathered the information, in cooperation with relevant institutions, and issued it to the Special Rapporteur on 30 June 2008.

On 4 June 2008, the Special Rapporteur Ligabo referred to the Government of Montenegro regarding the allegations in relation to the case of the sports journalist Mr. Mladen Stojovic. The response of the competent authorities on actions taken to resolve this case was sent to the Special Rapporteur on 3 July 2008.

In the previous period, Montenegro has responded to the following queries from the Office of the High Commissioner for Human Rights (OHCHR):

- Questionnaire of the UN Human Rights Council Advisory Committee regarding the right to education and science, dated 4 November 2008;
- Questionnaire on existence of secret prisons at the territories of member states, dispatched by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and Chairperson-Rapporteur of the Working Group on Enforced or Involuntary Disappearance, dated 16 April 2009<,
- Questionnaire of the UN Working Group on Arbitrary Detention, dated 15 June 2009;
- Questionnaire inviting the UN member states to, in accordance with the UN Human Rights Council Resolution 11/3, submit an opinion on the document Recommended Principles and Guidelines on Human Rights and Human Trafficking, dated 9 July 2009.

Montenegro has also responded to the questionnaire of the UN Commission on the Status of Women, in accordance with the Resolution 61/143 of the General Assembly on the extent, nature and consequences of all forms of violence against women, dated 11 December 2008, and the UNECE Questionnaire on implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000), dispatched by the Office of the Executive Secretary on 19 January 2009.

61. What steps have been taken to ratify and implement into domestic law the Rome Statute on the International Criminal Court?

Montenegro strongly supports the process of development of the international criminal law as a supranational law, and the functioning of the international criminal justice system. In compliance with such commitment, Montenegro has supported the idea of establishment the International Criminal Court, from the very beginning, and provided critical contribution in defining the policy on this issue within the national legal framework, shared with Serbia at the time.

After having restored its independence, as an independent state with full international and legal subjectivity, Montenegro has assumed the obligation of implementation of international treaties and agreements, which were acceded to by the State Union of Serbia and Montenegro, as the legal successor of the Federal Republic of Yugoslavia. This commitment is expressed in the Decision on Declaration of Independence of the Republic of Montenegro (Official Gazette of the Republic of Montenegro 36/06) and the Constitution of Montenegro (Official Gazette of Montenegro 1/07). Thus, by virtue of the ratification of the Rome Statute by the Federal Republic of Yugoslavia, and by applying its constitutional principles, Montenegro has assumed the obligation to regulate the cooperation with the International Criminal Court with respect to the aspects of criminal procedure.

To that end, Montenegro has adopted strategic documents and laws and met these obligations. Thus, in the Strategy for the Reform of Judiciary 2007-2012, a separate Title is dedicated to strengthening the international judicial cooperation. The Law on International Legal Assistance in Criminal Matters was adopted as part of these activities. Furthermore, by adoption of the Criminal Code, Montenegro has fully harmonised its criminal law with substantive legal requirements set forth in the Rome Statute of the International Criminal Court. Namely, in Title 35 of the Criminal Code, under *Criminal Offences against Humanity and other Rights Guaranteed under International Law*, Articles 6, 7 and 8 of the Rome Statute relating to the criminalization of genocide, crimes against humanity and war crimes have been implemented. The issue of command responsibility has been resolved by stipulating the responsibility of military commander or other person performing the function, i.e. other supervisor. The responsibility for negligent criminal offences has also been provided for.

By virtue of the adoption of the Law on Cooperation with the International Criminal Court, at the Parliament's session held on 27 July 2009, Montenegro has fully implemented the obligations arising from the Rome Statute. This Law regulates the cooperation with the International Criminal Court and performance of other duties, in accordance with the Rome Statute of the International Criminal Court. It also defines other issues concerning the prosecution of perpetrators of criminal offences under Article 5 of the Statute, i.e. criminal offences against humanity and other rights guaranteed under international law, which are related to violations of international humanitarian law in the Criminal Code of Montenegro.

In accordance with the Law, the Government and the International Criminal Court may conclude a special agreement on the issues of transfer of cases or on mutual cooperation.

Furthermore, the law provides for the participation of Montenegro in the work of the Assembly of States Parties to the International Criminal Court, as well as in the work of other bodies of the Court. The Law also provides for the allocation of funds for financing of the International Criminal Court, which Montenegro shall provide in accordance with the Statute, from the Budget of Montenegro.

Finally, it has been prescribed that the provisions of this Law pertinent to the cooperation with the International Criminal Court shall apply to criminal offences from Article 5 of the Rome Statute that have been committed after 1 July 2002, i.e. the effective date of the Statute.

62. Is there an Ombudsman with general competence in the field of human rights, the rights of women, the 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 Constitution of Montenegro prescribes that the Protector of Human Rights and Freedoms shall be independent and autonomous authority that takes measures for protection of human rights and freedoms. The Protector shall perform duties pursuant to the Constitution, law and the ratified international treaties, observing also the principles of justice and fairness.

The Protector of Human Rights and Freedoms (Ombudsman) was established by the Law on Protector of Human Rights and Freedoms (Official Gazette of the Republic of Montenegro 41/03), as an independent and autonomous authority protecting human rights and freedoms guaranteed by the Constitution, law, ratified international treaties on human rights and generally accepted rules of international law, when these are violated by an act, action or omission to act of state and local self-government bodies and public services and other entities empowered with public authority. In October of the same year, the Parliament of the Republic of Montenegro appointed the first Protector.

The Protector acts upon individual complaints of citizens who believe some of their rights or freedoms have been violated by an act, action or omission to act of public administration body, but may also initiate the procedure at his/her own initiative.

In addition to dealing with individual cases of violations of human rights and freedoms, the Protector also tackles general issues of importance to protection and promotion of human rights and freedoms and cooperates with appropriate organisations and institutions dealing with human rights and freedoms.

With a view to better performance of the function of the Protector of Human Rights and Freedoms with respect to the rights of citizens, the initiation and the course of procedure before the Protector were simplified. This procedure is free for the party, and formal requests for initiating the procedure are reduced to the minimum measure necessary for conducting examination procedure and establishing violation of law. Namely, the complaint should contain: name of the authority to whose action it refers, description of the violation of human rights and freedoms, facts and evidence substantiating the complaint, information on legal actions that have been undertaken, name and address of the complainant and the indication on whether or not the complainant agrees for his/her name to be disclosed in the procedure. The complainant may be any person who believes that some of his/her rights or freedoms have been violated by an act, action or omission to act of the public administration bodies. Complaint may be submitted personally or via appropriate association, as well as via elected representatives. The complaint shall be submitted in writing, all means of electronic communication included, or an oral statement can be made and registered at the Protector's Office. A person deprived of liberty may submit the complaint in the sealed envelope, which must not be opened by the prison authorities. The Protector informs the complainant on initiating the examination procedure and on any action that he/she undertakes during the procedure.

The complaint shall be filed within one year from the date of violation, i.e. the date of becoming aware of the violation. Exceptionally, the Protector may act after the expiration of the deadline, if he/she assesses the utter significance of the case.

Further to the request of the complainant, the Protector shall protect the confidentiality of his/her personal data. Namely, the procedures before the Protector are confidential. The person filing a complaint or otherwise participating in the examination undertaken by the Protector may not be held liable or put into a less favourable position on that ground.

A special complaint form has been prepared, so as to facilitate the access of citizens to this institution. The complaint form is available to citizens in the institution's premises, as well as at the Protector's website.

When the Protector determines the complaint meets the conditions required for action, he/she shall inform both the authority it refers to, i.e. the head of that authority, and the complainant, on that matter. According to the Law on the Protector of Human Rights and Freedoms, the public administration bodies and other entities empowered with public authority shall provide the Protector, upon his/her request, with access to all information and notifications within their competences, regardless of the level of secrecy, as well as provide him/her with free access to all premises.

Failure to act upon the request of the Protector shall be considered an obstruction of his/her work, of which the Protector may inform the direct superior authority, the Parliament or the public.

Prior to his/her consideration of the complaint, the Protector may request from the complainant, to use other legal actions to remedy the violation which the complainant refers to, should he/she deem such procedure more efficient.

The outcome of the conducted examination procedure may vary. Should it be determined that the violation of right referred to in the complaint did not take place, the procedure would end with such statement; thus indicating that in this case the authority acted properly. If during the examination procedure an authority remedies the committed violation of freedom or rights, the Protector shall end the procedure with the statement that the violation was remedied during the examination procedure. However, after having established that a violation of rights or freedoms took place, and the same was not resolved or its resolution is not definite, the Protector shall draft the final opinion and send recommendation to the authority on actions to be taken in order to remedy the determined violation and at the same time, he or she shall set a deadline for such remedy. Should the authority fail to comply with the recommendation, the Protector may address the direct superior

authorities, the Parliament, or perhaps more importantly, the public. The Protector may also submit proposal to the competent authorities for initiating the disciplinary procedures, i.e. the procedure for dismissal of the person whose action caused the violation of human rights and freedoms.

The Protector is entitled to legislative initiative, if he/she believes that the problem in functioning of the administration, i.e. that the violation of right occurred due to legislative drawbacks, that is the non-compliance of legislation with internationally recognised standards in the area of human rights and freedoms.

In addition, the Protector may propose the initiation of proceeding before the Constitutional Court of the Republic of Montenegro for the purpose of assessing the constitutionality and legality of legislation and general acts relating to human rights and freedoms.

In exercising his/her duties, the Protector may not make legally binding decisions, but he/she is entitled to making public the facts on determined irregularities in the work of public administration, i.e. the violations of human rights and freedoms.

The possibility of informing the public on irregularities in the work of public administration and violations of human rights and freedoms through the media, presents one of the main tools at Protector's disposal for ensuring that his/her opinions, initiatives, proposals and recommendations are complied with. In this manner, the Protector turns and focuses the public attention, and influences the public to become increasingly sensitive to irregularities, inactivity, injustice and any other form of poor performance of public authorities, and thus, works towards the elimination of the causes of and opportunities for violations of human rights and freedoms. The media have very important role in this, being the most powerful tool of the Protector. On the other hand, the media and the Protector have a common goal, and that is the promotion and protection of human rights and freedoms.

As for the number of complaints received by the Ombudsman, the number of recommendations the Protector submitted to the state bodies, and the number of recommendations implemented by those bodies, the statistics is as follows:

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

*Source: The Protector's Activity Reports

In the process of harmonisation of Montenegrin legislation with the EU legislation, and the Constitution of Montenegro, and recognizing the need to include all areas from the domain of protection of human rights and freedoms, Montenegro is currently working on the adoption of the Law on Amendments to the Law on Protector of Human Rights and Freedoms. The Draft Law stipulates that the Protector shall have at least four Deputy Protectors and that in the process of specialising the deputies for certain areas, particular attention shall be given to the protection of the rights of persons deprived of liberty, protection of minority rights and rights of other minority communities, protection of children's rights, gender equality, protection of the rights of persons with disabilities and protection from discrimination. The Draft Law defines the Protector as the national mechanism for prevention of torture and other forms of inhuman or degrading treatment or punishment, as well as the national mechanism for the protection from discrimination.

63. Which resources and personnel are available to enable the Ombudsman to carry out his office? Is his budget voted separately?

The Law on the Protector of Human Rights and Freedoms prescribes that the Protector shall have at least one Deputy Protector, while the decision on the number of Deputy Protectors shall be brought by the Parliament of Montenegro, upon proposal of the Protector. Pursuant to the Law, one of the Deputy Protectors shall deal with the protection of minority rights. At the moment of providing answers, the Protector of Human Rights and Freedoms has three Deputy Protectors.

Article 4 of the Rulebook on Internal Organization and Job Description of the Professional Service of the Protector of Human Rights and Freedoms prescribes 18 positions to carry out the affairs of the professional service, as follows: Secretary to the Protector; Junior Adviser to the Protector; Junior Adviser to the Protector for State Administration; Senior Adviser I to the Protector for Local Self-Government; Junior Adviser to the Protector for Judiciary, Prosecution and Execution of Criminal Sanctions; Junior Adviser to the Protector for Protection of Minority and Religious Rights, Gender-based and other Equality of Citizens; Junior Adviser to the Protector for Protection of Children's Rights, and Rights stemming from Social Protection, Social Security and Employment; Senior Adviser I for Public Relations and International Cooperation; Senior Adviser I to the Protector; Senior Adviser II to the Protector; Junior Adviser to the Protector for Finances; Junior State Employee I or IV – Registrar/ Archivist; Junior State Employee IV – Technical Secretary; Junior State Employee IV – PC Operator; Junior State Employee VI – Driver/ Courier; Junior State Employee IV – Receptionist/ Operator; State Employee III for Maintenance of Information Systems with the Protector.

The professional service carries out expert and research tasks, administrative and technical affairs and auxiliary tasks for the needs of the Protector of Human Rights and Freedoms, as a single organizational unit. The expert and research tasks are those tasks aimed at exercise of the Protector's competences, in accordance with the Law on the Protector of Human Rights and Freedoms, and other regulations. The administrative and technical affairs and the auxiliary tasks are those tasks necessary for the timely discharge of functions of the Protector of Human Rights and Freedoms.

Article 50 of the Law on the Protector of Human Rights and Freedoms (Official Gazette of the Republic of Montenegro 41/03), prescribes that financial means for the work of the Protector shall be determined in a separate section of the Budget of the Republic of Montenegro. The Protector shall draft a budget proposal and submit it to the Government. In the Budget Law for 2009, the budget item for the Protector amounts to EUR 422,136.93.

64. Is access to all official documents granted to the Ombudsman? Is he entitled to suspend the execution of an administrative act if he determines that the act may result in irreparable prejudice to the rights of a person? If so, how is this implemented in practice? Does the Ombudsman have the right to contest the conformity of laws with the Constitution and, if so, how is this implemented in practice?

The Law on the Protector of Human Rights and Freedoms (Official Gazette of the Republic of Montenegro 41/2003) prescribes that authorities shall provide the Protector, upon his/her request, with access to all information and notifications within their competences, regardless of the level of secrecy, as well as with free access to all premises. Should an authority fail to act upon the request of the Protector within the specified deadline, it shall, without delay, inform the Protector on the reasons for not acting upon the request. The authorities shall provide the Protector, upon his/her request, with direct examination of the official files, documents, information, as well as to submit to the Protector the copies of the requested files and documents, in compliance with the rules on handling official files and documents.

Failure to act upon the request of the Protector shall be considered an obstruction of his/her work, and the Protector may inform the direct superior authority, the Parliament or the public on that matter.
The Protector has no authority to suspend the execution of an administrative act, if he/she determines that the act is contrary to law, given that the review of legality of administrative acts is provided by the Administrative Court. The Administrative Court may, in the administrative procedure, order temporary postponement of the execution of the disputed administrative act, in cases when the execution of that act would cause such damage to the prosecutor, which would be difficult to compensate, and when the postponement of the execution is not contrary to public interest. According to the Constitution, the review of constitutionality and legality is conducted by the Constitutional Court, and the request for constitutional review may be submitted by court, other state body, local self-government body and five members of the Parliament. During that procedure, the Constitutional Court may order the stay of execution of an individual act or actions that have been taken pursuant to law, other regulation or general act, of which the constitutionality or legality is being reviewed, if the enforcement thereof could cause irreparable damage.

65. Are there decentralised offices of the Ombudsman?

The Office of the Protector of Human Rights and Freedoms is not decentralised. Namely, Article 6 of the Law on the Protector of Human Rights and Freedoms (Official Gazette of the Republic of Montenegro 41/03), prescribes that the head office of the Protector shall be in Podgorica, and that the Protector may organise the Protector Days outside the head office.

66. What strategies and measures are in place to ensure the respect for fundamental rights?

With a view to ensuring full respect for fundamental rights and freedoms, apart from the existing legislation and ratified international documents, the Government of Montenegro adopted a set of strategic documents, which define measures for improvement of current situation in certain areas. The most important strategies in the area of protection and improvement of basic human rights and freedoms include:

- Minority Policy Strategy (2008-2012);
- Strategy for Improvement of the Status of the RAE Population in Montenegro (2008-2012);
- National Action Plan for the *Decade of Roma Inclusion 2005-2015* in the Republic of Montenegro;
- Action Plan for Achievement of Gender Equality (2008-2012);
- Strategy for Development and Poverty Reduction (2003-2007);
- National Action Plan for Youth (2007-2011);
- National Action Plan for Children (2004-2010);
- National Programme for Prevention of Unacceptable Behaviour of Children and Youth in Montenegro (2004-2006);
- Strategy for Resolving the Issues of Refugees and Internally Displaced Persons in Montenegro (2005- 2008);
- Strategy for Poverty Reduction and Combating Social Exclusion (2007-2011);
- Strategy for the Development of Social and Child Protection System in Montenegro (2008-2012);
- Strategy for 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 Inclusive Education in Montenegro (2008-2012);
- National Strategic Response to Drugs (2008-2012);
- Strategy for Development of Social Protection of the Elderly;
- Strategy for Judiciary Reform (2007-2012);

- Action Plan for Implementation of the Strategy for Judiciary Reform (2007-2012);
- National Strategy for Fight Against Trafficking in Human Beings;
- Action Plan for Fight Against Trafficking in Human Beings (2009);
- Action Plan for Prevention of Torture;
- Strategy for Mental Health Improvement;
- Action Plan for Mental Health;
- Education Strategy.

Human rights

- Right to life and to the integrity of the person

67. Please provide an overview of legislation and case law relevant to the right to life. Also provide an overview of national legislation, case law and custom/practice relating to the death penalty. How does your legislation cover extrajudicial killings and crimes in the name of honour? What are the practical results in investigating such crimes?

In order to comply with provisions of the European Convention on Human Rights, Protocol No. 6 and Protocol No. 13 relating to the right to life, in Montenegro, after amending the Criminal Code of 2002, the death penalty was abolished and conditions for imposition of prison sentences of 40 years were stipulated, which replaced the death penalty.

The Constitution of Montenegro prohibits death penalty. In previous case law and period when it was allowed to stipulate and impose death penalty for most aggravated forms of serious criminal offences, the death penalty was imposed restrictively, only in the most aggravated cases, and in the period after World War II it was performed only in two cases until its abolition.

Constitution of Montenegro (Article 27), guarantees the right of man and the dignity of human beings in terms of application of biology and medicine. The same article stipulates two prohibitions in relation to: the intervention relating to cloning, performing medical and other experiments, without the permission of the individual in question.

The right to life is guaranteed also by the Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 13/04 and 47/06), through a series of provisions.

Criminal Code of Montenegro stipulates the criminal offences against life and body: murder, aggravated murder, manslaughter, killing a child at birth, mercy killing, negligent manslaughter, instigation to suicide and assisted suicide, illegal termination of pregnancy (Art. 143-150).

Thus for murder a prison sentence from five to fifteen years is stipulated, while for aggravated murder, deprivation of life in a cruel or insidious manner; deprivation of life in an unscrupulous and violent manner; deprivation of life and in this endangering someone else's life with guilty mind; deprivation of life out of greed in view of commission or concealment of other criminal offence, from unscrupulous revenge or other base motives; deprivation of life of a person in official capacity or a military person while serving or related to serving an official duty; deprivation of life of a child or a pregnant woman; deprivation of life of a member of his/her own family or a family community he/she previously molested or who deprives of life several persons with guilty mind, such offences being not regarded as manslaughter, killing a child at birth or mercy killing, prison sentence of at least ten years or a forty-year imprisonment sentence is stipulated. (Article 144 of the Criminal Code).

The same sentence is stipulated for the criminal offence of assassination of the highest representatives of the state with the intent to endanger the constitutional system or security of Montenegro (Article 363 of the Criminal Code), as well as for deprivation of life while executing criminal offence of robbery or assault and robbery. (Articles 241 and 242 of the Criminal Code).

For manslaughter, a sentence from one to eight years of imprisonment is stipulated, and for killing a child at birth, mercy killing, negligent manslaughter a sentence of six months to five years of imprisonment is stipulated. (Article 146-148 of the Criminal Code).

For a criminal offence of instigating other person to suicide or assisting him/her in committing suicide, should suicide be committed or attempted, a sentence of one to eight years of imprisonment is stipulated. Anyone who assists other to commit suicide out of mercy due to his/her serious health condition, at his/her serious and explicit request, should suicide be committed or attempted, is to be sentenced to three months to five years of imprisonment; for an offence committed against a juvenile or a person in the state of significantly reduced mental capacity, sentence from two to ten years of imprisonment is stipulated; if the offence was committed against a child or a mentally incapacitated person, the offender is to be sentenced under Article 144 of the Criminal Code with the manslaughter, and if anyone treats with cruelty or inhumanity a person subordinate or dependant on him/her, and should the person in question due to such treatment, commit or attempt suicide which may be attributed to the offender's negligence, he/she is to be sentenced to six months to five years of imprisonment.

For illegal termination of pregnancy of a pregnant woman with her consent sentence from three months to three years of imprisonment is stipulated, and if the woman subjected to illegal termination of pregnancy die or her health be heavily impaired or another grievous bodily injury be inflicted upon her, the offender is to be sentenced from six months to six years of imprisonment.

If the offence was committed without her consent, a prison sentence from one to eight years is stipulated, and if the woman subjected to illegal termination of pregnancy die or her health be heavily impaired or another grievous bodily injury be inflicted upon her, the offender is to be sentenced from two to twelve years of imprisonment.

Within the scope of criminal offences against life and body criminalized are also grievous bodily injuries, light bodily injury, participation in an affray, endangerment by dangerous tools in affrays or brawls, exposure to danger, abandonment of a disabled person and denial of help.

Also the Criminal Code contains a group of criminal offences against humanity and international law, namely: genocide, crimes against humanity, war crimes, terrorism etc. The Criminal Code establishes the criminal offences against human health: failure to act according to health regulations during epidemics, transmitting contagious diseases, transmitting an HIV infection, unconscientious provision of medical assistance, failure to provide medical assistance. Criminalization of these offences against human health in a broader context protects the right to life. A special chapter includes offences against the environment, against the general safety of people, against the security of public transport, which also protects the right to life. The right to life is further protected in cases when the criminal action of another criminal offence results in the death of one or more persons, which is treated as qualified - serious form of that offence.

In all said cases, the state is obliged to prevent the execution of criminal offences or to punish the offenders. According to existing criminal regulations of Montenegro, the use of force resulting in the loss of one's life is not be considered a criminal offence and will not entail criminal liability in cases of legitimate self-defence, extreme necessity or threat, which are included in the Criminal Code. In all these cases, especially in the case of legitimate self-defence the first condition for exclusion of liability is the lack of other ways to avert from self or someone else a concurrent or imminent unlawful attack, or a concurrent or imminent danger - which fulfils the basic requirement of paragraph 2 of Article 2 of the Convention relating to the "absolutely necessary use of force." The second requirement of Article 2 of the Convention is developed in court practice that "force must be strictly in proportion - proportional to objectives to be achieved. In case of extreme necessity the harm done must not exceed the one which was threatening, while in cases of legitimate self-defence and force and threat, the court is left to determine in each individual case the proportionality between the force used and resulting consequences, or the legality and justification of objectives to be achieved.

In cases exceeding limits of legitimate self-defence, extreme necessity, force and threat, offender may be punished more leniently, and if exceeding of legitimate self-defence has been done due to strong excitement or fear caused by an assault, the offender may also be remitted of penalty.

The principle of "use of force for lawful arrest or to prevent escape of persons lawfully deprived of liberty" in accordance with Article 2 of the Convention, is stipulated as a basis for exclusion of the existence of the criminal offence and criminal liability in certain situations. The question of the use of force by persons in an official capacity while performing official duties, including firearms and possible consequences for one's life, is stipulated by the Law on Police and Law on Execution of Criminal Sanctions.

Law on Police stipulates that the police authority is exercised in proportion to danger which should be removed and that among several authorities the one with least harmful consequences for a person against whom the means of coercion is used should be exercised. Also this law stipulates the use of firearms only if necessary to avert direct attack with firearms, dangerous tools or other items which may endanger life, attack by two or more persons or attack at place and time when you can not expect help, and with the aim to protect human lives; prevent escape of a person who is caught committing the offence and pursued ex officio, for which the prison sentence of ten years or more serious sentence is stipulated; prevent escape of a person deprived of liberty or a person for whom an order was issued to be deprived of liberty because of the execution of serious criminal offences or persons for whom an order was issued to be deprived of liberty because of the execution of criminal offence for which the prison sentence of ten years or more serious sentence is stipulated; avert direct attack which threatens his/her life; avert attack on a facility if it is certain that the attack will endanger the life of a person securing the facility or other person. Use of firearms is in all cases conditioned by the existence of immediate danger to life of a police officer; warning the person that he/she will use weapons against him/her in case of attempting escape or attack and under the obligation to save the life of others.

Law on Execution of Criminal Sanctions stipulates that an authorized official may use firearms only if he/she can not avert the direct attack in any other way and which threatens his/her life or life of another person; to avert the attack on the facility he/she secures; to prevent escape of sentenced persons serving a prison sentence in closed or half-open section; to prevent escape of sentenced person he/she escorts or secures only if the person is convicted of a criminal offence for which the prison sentence of ten years or more serious sentence is stipulated.

In case of a doubt that the death of a person is caused by a criminal offence, as well as in the situation when it is obviously caused by a criminal offence, an autopsy of the corpse will always be undertaken, and if the corpse is already buried, the exhumation will be ordered to review it and perform the autopsy, which determines the immediate cause of death, what led to that cause and when did death occur. If there is a reasonable suspicion that the death was caused by committing a criminal offence, established obligation is to perform an investigation as a positive obligation of the state.

The investigation is to collect evidence and data needed to decide whether to bring charges or suspend proceedings, evidence for which there is a danger that it will not be possible to repeat them at the main hearing or that their execution might be difficult, as well as other evidence that can be of use for the procedure, the performance of which, given the circumstances of the case, proves to be purposeful.

We have already stated that the Criminal Code qualifies deprivation of life from unscrupulous revenge as a serious form of murder for which the sentence of 10 years or 40 years of imprisonment is imposed. For the existence of such offence it is not enough to establish that the murder was committed from revenge, but that the motive was such to make the revenge unscrupulous which is estimated in each case, based on objective and subjective circumstances. In theory of criminal law and judicial practice, cases are singled out when the revenge is considered unscrupulous. Such was the case when there was an obvious disproportion between the murder and evil due to which the murder was done (murder due to the previous insult, defamation, light bodily injury). Unscrupulous revenge exists when the murder is done to a person who has nothing to do with the evil which caused the revenge (ex. to a relative) as well as in situations when the revenge is done after a long time period, although there was ratio between evil inflicted and evil which caused the revenge. As an example of a murder from unscrupulous revenge, a case of revenge on a person who was punished or acquitted from punishment for previous offence is also qualified, as well as revenge on a person, who under the law, performed

an action (deprivation of life of a judge or other official who participated in decision-making, murder of a witness because of his/her statement, etc.).

In all the given cases characteristics of murder from unscrupulous revenge are achieved, as a serious form of criminal offence. But when revenge, as a motive of execution of a criminal offence, is not treated as the unscrupulous revenge, modern judicial practice qualifies it as aggravating circumstance which leads to fixing more severe sentence within the statutory range.

68. What strategies and measures are in place to ensure the respect of the right to integrity of the person?

The Constitution guarantees rights which guarantee physical and mental integrity of a personality, namely: right to personality, right to equality and dignity, right to life, personal freedom and freedom of movement and residence, freedom of thought, conscience and religion. Death penalty is prohibited in Montenegro. The Constitution guarantees the right of an individual and dignity of a human being in terms of applying biology and medicine. Any intervention directed at creation of a human being genetically identical to other human being, living or dead, is prohibited. It is forbidden to carry out medical and other experiments on human beings without their permission. Also, dignity and safety of individuals and the inviolability of physical and mental integrity of individuals, their privacy and personal rights are guaranteed. No one can be subjected to torture or inhuman or degrading treatment. No one can be kept in slavery or servile position. Everyone has the right to personal freedom. Deprivation of liberty is allowed only for a reason and under procedure provided for by law. Persons deprived of liberty must be immediately informed in their language or language which they understand about reasons for deprivation of liberty. Persons deprived of liberty must be informed at the same time that they are not obligated to make any statement. At the request of a person deprived of liberty, authority is under an obligation to immediately inform about deprivation of liberty a person designated by the person deprived of liberty. A person deprived of liberty has the right to choose a legal representative to attend his/her hearing. Unlawful deprivation of liberty is punishable. The respect of human personality and dignity in criminal or other procedure, in case of deprivation or restriction of liberty and during the execution of sentence is guaranteed. Any violence, inhuman or humiliating treatment of a person deprived of liberty or having restricted liberty, as well as extortion of confessions and statements, is prohibited and punishable. The Constitution guarantees the right to freedom of movement and residence, as well as the right to leave Montenegro. Freedom to move, reside and leave Montenegro may be restricted if needed for conducting criminal procedure, preventing the spread of contagious diseases or for reasons of security of Montenegro. The Constitution guarantees protection of personal data and prohibits the usage of personal data which is not for purposes for which they were collected. Everyone has the right to be informed about data collected about his/her personality and the right to judicial protection in case of misuse. Everyone is guaranteed the right to freedom of thought, conscience and religion as well as the right to change religion or belief and freedom to, either alone or in community with others, in public or privately, express religion or belief through prayer, sermons, custom or ceremony. Nobody is obliged to declare his/her religious and other beliefs. Freedom of expressing religious beliefs may be restricted only if necessary to protect life and health of people, public order and peace, as well as other rights guaranteed by the Constitution.

Criminal Code starting from the fact that protection of individual and other basic social values is the basis and limit for determining criminal offences and prescribing criminal sanctions and their application, prescribes several criminal offences in relation to criminal protection of personal integrity. These criminal offenses are classified in groups of criminal offences according to protected object, in special chapters of the Criminal Code and they are: criminal offences against life and body, against rights and freedoms of an individual and citizen, against health of people, against humanity and other goods protected by international law.

Violation of the right to personal integrity results in processing and sanctioning of perpetrators of this violation, and a person whose integrity has been violated is entitled to compensation of material as well as non-material damage caused, in accordance with domestic legislation.

Previously stated rights which the Constitution guarantees and which are the guarantee of personal integrity are guaranteed and elaborated in a number of laws in accordance with the constitutional definition of these rights and relevant international conventions which Montenegro acceded. (See answer to question number 58 Chapter 23)

Montenegro has acceded to almost all relevant conventions which guarantee the right to personal integrity and its strategic commitment is to join all international instruments and to fully harmonize national legislative and institutional framework with international standards which guarantee respect of human rights and the right to personal integrity.

In order to ensure full respect of fundamental rights and freedoms, in addition to statutory legislation and accepted international documents, the Government of Montenegro has adopted a series of strategic documents which define measures for improving the existing situation in some areas. (See answer to question number 66 Chapter 23)

69. In the fields of medicine and biology, do precise rules exist 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 Constitution of Montenegro, as the highest legal act, in Article 27 stipulates that it guarantees the right of man and the dignity of human beings in terms of application of biology and medicine, and that it prohibits any intervention focused on the creation of a human being that is genetically identical to another human being, living or dead. The same provision stipulates it is prohibited to carry out medical and other experiments on human beings, without their permission. This constitutional definition is a guarantee of protection of the dignity of personality, as a fundamental human right. The provision of Article 28 of the same legal act provides that the dignity and safety of individuals and inviolability of physical and psychological integrity of individuals are guaranteed, including their privacy and personal rights.

The Constitution stipulates that the law regulates the manner of exercising human rights and freedoms, when it is necessary for their exercise, which is a precondition met in this specific case. Therefore, the Government of Montenegro adopted the Law on the Treatment of Infertility by Assisted Reproductive Technologies (Official Gazette of Montenegro, 74/09) and the Law on the Removal and Transplantation of Human Body Parts for Therapeutic Purposes (Official Gazette of Montenegro, 76/09). The laws in question are currently subject to a Parliamentary procedure.

1) Law on the Treatment of Infertility by Assisted Reproductive Technologies

    a) Answer concerning things permitted by this Law

The provision of Article 2 of this Law stipulates that everyone is entitled to treatment of infertility by applying procedures of assisted reproductive technologies, under equal conditions and under their freely expressed will, in accordance with this Law. Therefore, this legal provision guarantees equality in the exercise of rights by this kind of treatment of infertility, regardless of racial, religious, social and any personal characteristics.

The same provision stipulates that by applying biomedical achievements in the treatment of infertility, everyone is guaranteed the right to dignity, protection of identity, respect for personal integrity and other personal rights and freedoms, and that special care must be devoted to health care, protection of rights and interests of the child conceived and born by applying assisted reproductive technologies procedures, as well as protection of maternal health. These provisions in a clear and unambiguous way guarantee the protection of life and health, dignity of personality, identity protection, respect for personal integrity and other personal rights and freedoms in the application of biomedical procedures. Internal legal regulations place in an equal position marital community and customary marriage, so that this type of treatment is a right of both spouses and partners to a customary marriage under equal conditions if at the time of the procedure they live in such community. Application of assisted reproductive technology procedures is performed, in the spirit of freedom of personality, based on the written consent of spouses or partners to a customary marriage, which is provided by the provisions of Articles 25-27 of the Law, if the procedure is

performed by sex cells of spouses, and if the procedure is performed by sex cells of a male or female donor, it is stipulated in provision of Article 28 of the Law. In other words, these provisions stipulate (for procedures with sex cells of spouses or partners to a customary marriage) provision of full information to spouses by the physician who manages the procedure. Before the fertilization procedure, the physician informs them about the possibilities of success, possible risks inherent in the procedure and all necessary instructions and advice, and may, based on his/her assessment instruct them, in order to receive full information, to go to another institution for consultations. The physician informs the spouses of the purpose of collecting and processing their personal data and informs them that those data are kept as secret personal data. S/he also informs them on the rules of storing sex cells and embryos and on their right to decide on the period of their preservation and procedures concerning the potentially unused embryos. After being fully informed, the spouses give their written consent, which they can revoke and abandon the treatment until the sperm cells, unfertilized eggs or early embryos are placed in a body of a woman. Fertilization procedures using the donated sex cells are also performed with the written consent of spouses, which is given after receiving complete information, and may be revoked until the moment of formation of a zygote.

This Law also stipulates providing information to the donors regarding donated sex cells and regarding the rights concerning the child conceived by donated cells, according to which the donor has neither rights nor obligations (Articles 29-34). Thus, donation of sperm cells and unfertilized egg cells can be done only under written consent, which can be revoked until these cells are used.

Care for life and health, as well as the birth of healthy offspring is provided by a provision of Article 11 of this Law, which stipulates that apart from spouses who, given the experience of medical science and already undertaken manners of treatment, cannot expect to get pregnant in a natural way, the right to treatment by this procedure, also belongs to spouses whose transfer of a serious hereditary disease to a child should be prevented. The same objective is also included in the provision of Article 33 which provides that a physician is obliged, before the removal of the donated sex cells, to determine the health of a male or female donor, and the condition of the removed sex cells which can be used only if, in accordance with biomedical achievements and experiences, it can be expected that they are suitable for fertilization and that their usage will not cause danger to the health of woman and child.

A provision of Article 4 stipulates that all data related to the procedure of assisted reproductive technologies, especially personal data about the woman, her spouse or common law partner, a child conceived in the process of assisted reproductive technology, male or female donor, is a business secret. This statutory definition guarantees personal data protection.

Freedom of birth of children by applying procedures of assisted reproductive technologies, along with care about life and health, is provided in Article 12 of the Law which stipulates that the right to infertility treatment by assisted reproductive technologies is available to spouses and partners to a customary marriage who are adult, with capacity to exercise rights and have sufficient age to perform parental duties, raising, education and enabling of the child for independent life and who are in such a mental and social condition upon which it can be expected that the child will be provided with conditions for proper and complete development. In view of exercising the right to birth of healthy offspring, a provision of Article 14 para. 1 of the Law stipulates the possibility to use sex cells of male or female donors when there is no possibility of conception by using sex cells of one of spouses, or when necessary to prevent transmission of a serious hereditary disease. For the purpose of birth of healthy offspring and control of the donated sex cells, provision of Article 22 stipulates that the sex cells of male or female donors may be taken only in one medical institution for the application of these procedures. A provision of Article 24 stipulates that the legal representative of the child and the child, provided that the child has reached 15 years of age and is capable of reasoning may, when required by health reasons of the child, request that the medical institution inform him/her about important health information on male or female donor of sex cells that a child has been conceived with. Physicians also have the right to inspect the register of data on male and female donors of sex cells used to conceive a child, if required so by justified medical reasons concerning the child, in accordance with the medical profession rules. For the purposes of judicial procedure, data from the register of male or female donors of sex cells can be made available, upon request, in accordance with the law governing that procedure.

Sperm cells, unfertilized egg cells and early embryos can be used for scientific research in a scientifically verified test procedure, with the consent of spouses, the opinion of the Ethical Committee and the Medical Board of the medical institution, and consent of the Ministry (Article 36, in conjunction with Article 40, paragraph 3 and Article 41 paragraph 3).

In medically indicated cases it is allowed to intervene on genetic bases of sex cells or embryos with a view of changing the child's hereditary basis, in order to protect life and health (Article 37, para. 1)Fertilization of egg cells with a sperm cell that was specially designated for use to determine the sex of the child can be done only to prevent serious hereditary disease associated with the sex (Article 37, paragraph 3).

Pre-implant genetic testing of embryos, and detection of chromosomal and/or genetic anomalies before the transfer of embryos, are allowed only in case of medical indications for the specified testing (Article 37. paragraph 2).

Within the generally accepted rules of ethical conduct, scientific and research work on early embryos obtained by applying the procedures of assisted reproductive technologies is allowed if for the purpose of scientific progress, preservation and improvement of human health, prevention and suppression of serious hereditary diseases, provided that animal experimental model cannot be applied, due to inability to perceive the side effects. Early embryos can be tested only in the scientifically verified procedure and with the written consent of the spouses who are assisted by this procedure, the opinion of the Ethical Committee and Medical Board of medical institution, and the consent of the Ministry (Article 41, paragraphs 2 and 3). It also allows the testing of early embryos, which, according to biomedical achievements and experiences of Biomedical Sciences, are not eligible for entry into the body of a woman or testing stored embryos that would otherwise have to be left to die, with the consent of spouses, the opinion of the Ethical Committee and the Medical Board of the medical institution, and upon the approval of the Ministry (Article 42).

b) Answer concerning things prohibited by this Law

In the interest of preserving life and health of a woman, it is prohibited to include into treatment procedures of assisted reproductive technologies women, who are not in the suitable age for childbirth or who, under her general health, is unable to give birth. This decision is also taken in accordance with medical standards, and it is taken by the Medical Board of the medical institution for the application of assisted reproductive technologies procedures (Article 12, paragraphs 2 and 3).

Surrogate motherhood is explicitly prohibited by the provision of Article 13 which stipulates that the treatment of infertility by applying procedures of assisted reproductive technologies is prohibited to a woman who intends to give away the child after birth to a third party, for a fee or no fee.

A special form of misuses of biology and medicine is prohibited by a provision of Article 14, paragraphs 2, 3, and 4, and that is prohibition of treatment by applying assisted reproductive technologies procedures by simultaneously using donated sperm cells and donated egg cells, and the usage of mixture of sperm cells from two or more men, or egg cells from two or more women. The use of sex cells of persons who are cognates is prohibited, as follows: direct-line relatives, brothers and sisters, half-brothers and half-sisters, (paternal) uncles and nieces, (maternal) uncles and female cousins, aunts and nephews, nor children of brothers and sisters, or half-brothers and half-sisters, nor children relatives on the basis of full adoption, or open adoption between the adopter and the adoptee and his/her descendants. Use of sex cells of in-laws is also prohibited: father-in-law and daughter-in-law, son-in-law and mother-in-law, step-father and step-daughter, step-mother and step-son.

The decision to donate sex cells is an expression of the freely expressed will. Thus, a provision of Article 15 of this Law prohibits donation of sex cells to parties who are underage, not healthy and without the capacity to exercise rights. The same provision also stipulates prohibition of giving away human embryos for application of procedures of assisted reproductive technologies.

Donation of sex cells is a voluntary act and a provision of Article 16 prohibits any form of commercialization. In this respect, it is prohibited to give or receive any compensation or benefit for donated sex cells. It is also prohibited to mediate in the giving away of sex cells, or to advertise the

offer and need of sex cells in the media or on any other carrier of ads, except in the authorized medical institution, within the rules of medical profession.

Protection of personal identity of persons involved in the procedure of assisted reproductive technologies is based on a provision of Article 24, paragraph 4, which stipulates that all persons who came to the knowledge of the data from the register of male or female donors of sex cells, while performing official business, are obliged to keep such data secret as data on personality. This means that it is prohibited to disclose data about male or female donors of sex cells without authorisation.

Protection of fundamental human rights and genetic identity is guaranteed by a provision of Article 37 of the Law that stipulates that the genetic basis of sex cells or embryos may not be altered with the goal to change the hereditary characteristics of the child, because genetic identity of that human being must be protected.

Abuses of assisted reproductive technology procedures, in relation to determining the sex of the child, are prevented by the prohibition to fertilize egg cells with a sperm cell that is specially identified for that purpose (Article 37, paragraph 3).

A significant number of prohibitions, in order to protect the fundamental human rights, are stipulated in Article 39 of the Law, as follows: facilitating the development of in vitro embryo that is more than 14 days old or after the development of a primitive furrow; enabling the creation of an embryo solely for research purposes; enabling the creation of an embryo with the same hereditary basis or embryos that are according to their hereditary basis identical with another alive or dead person for the purpose of reproductive cloning; fertilization of an egg cell of a human being with sperm cells of animals or of animal egg cells with sperm cells of a human being or changing an embryo by transplanting parts of other human or animal embryos (enabling the creation of hybrids and chimeras); entry of embryo which originated from the procedure given in indents 3 and 4 of this paragraph, into the body of a woman or animal; entry of sex cells of human beings or embryos of human beings into animals; entry of animal sex cells or animal embryos in the body of a woman; change of hereditary basis of cells that are part of the embryo, except in medically indicated cases within a treatment of hereditary diseases; use of embryonic material for production of biological weapons; creation of embryos from cells or cell parts taken from the embryo or foetus, as well as transplantation of embryos thus created into the body of a woman; creation of human beings outside the womb or ectogenesis; creation of identical twins; application of primitive furrow gene therapy. This provision also gives a generalized prohibition of implementation of other activities that are contrary to this Law.

Misuse of scientific-research work in biology and medicine and protection of human dignity and integrity are also contained in the provision of Article 41 paragraph 1, which states that it is prohibited to take sex cells and create "in vitro" embryos, or to use unused embryos for these purposes, which would violate the dignity of the human entity.

2) Law on the Removal and Transplantation of Human Body Parts for Therapeutic Purposes

- Answer concerning things permitted by this Law

Protection of life and health is emphasized by this Law, as well, so as to ensure its availability to everyone to whom it is the only manner of treatment, without discrimination and under equal terms on the basis of waiting lists kept by the Ministry, based on lists of persons for whom it has been determined that the transplantation of body parts is their only manner of treatment. Lists of these persons are submitted to the Ministry by medical institutions where removal or transplantation of body parts takes place.

Waiting list is drawn up per types of needed body parts. Removed body parts are allocated to recipients on the basis of waiting lists in accordance with transparent, fair and generally accepted medical criteria (Article 12).

A provision of Article 2 of this Law provides that the removal and transplantation of body parts for therapeutic purposes is done in accordance with appropriate professional standards of medical science and practice and with respect for ethical principles, and that this treatment is performed only if it is medically justified, if it is the only manner of treatment and under conditions provided by this Law. Therefore, this provision provides how, to whom and under which conditions the

implementation of the treatment procedure by means of removal and transplantation of human body parts is to be allowed.

Furthermore, a provision of Article 3 stipulates the principles which underlie this procedure in order to protect the dignity of a person and protect human integrity and other fundamental human rights and freedoms, so that this procedure is performed by applying the principles of: consent, or consent of the recipient and donor; giving for purpose of treatment; non-commercial giving and anonymity of donor and recipient.

A provision of Article 4 excludes the possibility of abuse and stipulates that the procedure of removal and transplantation of body parts is done after conducting medical examinations and other methods of treatment, under which it was established that this procedure represents a benefit for the recipient, and according to the medical criteria it is an acceptable risk to the health of the donor and there is a likelihood of successful intervention.

The Law stipulates with definiteness in Article 5 that during the procedures of removal and transplantation of body parts, the donors and recipients are guaranteed the protection of their identity, dignity of personality and other personal rights and freedoms. A provision of Article 9 stipulates that the recipient's physician has the right to examine the health information of the donor, when required so by medically justified reasons.

Health-care workers who participate in the procedure of removal and transplantation of body parts are obliged to take all the standard measures and activities to prevent the risk of transmission of any infectious or other diseases to the recipient and avoid impacts on the preservation of body parts for transplantation, in accordance with the regulation of the ministry competent for health-care affairs, which will be adopted after the adoption of the Law (Article 8, paragraph 2).

Protection of human integrity is also ensured by a provision of Article 13 which stipulates that body parts of a living donor can be taken solely for the purpose of treatment of the recipient, if there is no corresponding body part of a deceased donor or other form of medical intervention. The same meaning has a provision of Article 16 which provides that the removal of body parts from living donors is allowed if the donor gave written consent for that intervention, which includes freely expressed will of the donor, and which can be revoked until the beginning of intervention. The consent of the donor of body parts applies only to the planned medical intervention, and to removal of certain body parts, and can be given under the condition that transplantation is to be performed on a certain person only.

Protection of the integrity of personality is also stipulated by a provision of Article 15, by stating that removal of body parts may be performed only from a person who is adult, has ability to exercise rights, and capable of reasoning. Prior to the removal of body parts, appropriate medical examinations and interventions are conducted for assessment and reduction of physical and mental health risk to the health of donors. The same provision stipulates that removing of body parts can only be performed if the life and health of the donor are under a risk which, according to medical criteria, is within the limits of acceptable and proportional to the expected benefits for the recipient. The donor is entitled to be informed about the results achieved in these procedures, which are important for his/her health.

Removing parts of body is performed on the basis of informed consent, as stipulated by the provision of Article 17, stating that the physician who participates in the process of removing body parts is required to inform the donor of the nature, purpose and procedure of intervention, the likelihood of its success and the usual risks of removing body parts.

The donor is also informed about the right to impartial advice regarding the health risk given also by a physician who will not participate in the removal or transplantation of body parts, or who is not the selected physician of the recipient, and about other rights stipulated by this Law.

A provision of Article 8 provides that the Ethics Committee of the medical institution may grant removal of regenerative tissue of underage persons and adults who are not capable of reasoning, if the following conditions are cumulatively met: no compatible donor available who is capable of giving consent; the recipient is the donor’s brother or sister; donation has a purpose to save the recipient’s life; that the required consent of the legal representative has been obtained, or by a guardian of the donor, and if there is none, an opinion of the competent centre for social work, and

that the possible donor and recipient do not oppose it. The same Article stipulates it is allowed to remove cells in order to donate them with the purpose of saving the life of the recipient, when the required consent of the legal representative, or guardian of the donor has been obtained, and if there is none, an opinion of the competent centre for social work, if it is determined that their removal includes only a minimal risk and minimal burden for the donor.

A provision of Article 19 stipulates the collection and storage of blood-producing stem cells extracted from the umbilical cord of a live-born child. The cells collected in that manner may be used for transplantation to relatives and other persons.

A provision of Article 21 stipulates that the removing of body parts from the deceased donor is performed with respect for his/her dignity and feelings of his/her family members and by undertaking all measures to restore the exterior appearance of the deceased donor.

Taking into account the customs and traditions of our society, a provision of Article 22 stipulates that the removal of body parts from deceased donors can be done only if that person as an adult, having the capacity to exercise rights, and capable of reasoning, gave his/her written voluntary consent for this procedure to his/her selected physician. A provision of Article 23 stipulates that transplantation to another person for therapeutic purposes from a deceased minor is allowed only with the written consent of both parents. The consent can be given by one parent only if the other parent died or was declared dead.

Removing body parts from deceased donors may be done for transplantation to another person, once his/her death has been confirmed with certainty, according to medical criteria, and in the provided manner. The death of a person whose body parts are removed for transplantation has occurred, in terms of this law, if termination of brain activity has been determined and confirmed with certainty, based on medical criteria. Removing body parts from deceased donors is preformed when the Commission of medical institution consisting of at least three physicians has established the death of the person whose body parts can be taken for transplantation purposes.

A provision of Article 24 stipulates it is allowed to take body parts of a dead person who is a foreign national or who does not reside in Montenegro, for transplantation, under the same conditions as to Montenegrin nationals, unless it is differently regulated by an international treaty.

Transplantation of body parts is performed when it is the only manner of treatment of persons whose body part(s) was (were) fully damaged or persons who have reduced quality of life due to damage to their body part(s) eligible for transplantation and who cannot be treated by other methods of comparable effectiveness, if previously all methods of treatment were conducted, in accordance with medical standards and practice. Transplanting body parts for therapeutic purposes is performed upon the approval of the Medical Board of the medical institution. Therefore, this provision also guarantees the protection of physical and personal integrity of persons.

Voluntary participation in the transplantation of body parts is stipulated by a provision of Article 27 by stating that it can be performed only with the written consent of the informed recipient who is of age, has capacity to exercise rights and who is capable of reasoning. Legal representatives or guardians will give consent for minors and adults without the capacity to exercise rights or who are incapable of reasoning. For persons who are not able to provide or deny consent, the consent can be given by a spouse, parent, and direct blood relative or collateral blood relative up to the second degree of kinship. Possession of information is the basic element of these procedures, so a provision of Article 28 stipulates that a physician who participates in the procedure of body parts transplantation is required to inform the recipient of the nature, purpose and course of transplantation, the possibilities for success and the usual risks, whereon s/he has to drawn up an annotation in the medical documentation. If reasons of urgency require, due to recipient's life being imperiled, and a compatible human body part exists, the physician can perform transplantation without consent, whereon s/he has to make an annotation in the medical documentation. Therefore, it is on no account, that life and health of persons may be put at risk; instead, it is to be acted in accordance with the rules of the medical profession.

- Answer concerning things prohibited by this Law

The fear of instrumentalization and commercialization of human body has led to the formation of an undivided standpoint that human organs cannot be the subject of sale, which has been made specific by the provision of Article 6 which stipulates that it is not allowed to give and receive compensation for body parts. Also, a provision of Article 7 stipulates it is prohibited to trade in body parts, to advertise requests and offers of body parts in the media or at any other carrier of ads or to mediate in these matters.

Protection of personal rights and dignity is also contained in a provision of Article 9 which states that data on the donor and recipient of body parts represent a professional secret and that it is not allowed to give personal data about the deceased donor to the recipient, and the personal data on the recipient to the family members of the deceased donor.

3) Supervision of enforcement of these laws

Supervision of enforcement of these laws and regulations that are to be adopted for its enforcement is done by the Ministry of Health, which is stipulated in laws themselves. The Law on Assisted Reproductive Technologies stipulates in a provision of Article 8 that the Ministry of Health forms a special Commission for application of procedures of assisted reproductive technologies, as a professional advisory body, and Article 9 stipulates its competences and scope of work. The process of constant supervision also implies reporting of every procedure of assisted reproductive technologies, both in-vitro fertilizations and gamete intrafallopian transfers. The Ministry keeps a single registry for all procedures for assisted reproductive technologies. This process of monitoring procedures of assisted reproductive technologies is provided for in provision of Article 10 of the Law. Provision 43 of the Law stipulates keeping records on procedures on assisted reproductive technologies, and a provision of Article 45 stipulates that medical institutions submit reports to the Ministry on the number and type of performed procedures, their success, frozen sperm cells and unfertilized egg cells, early embryos and performed scientific-research tests. Reports are submitted annually, and upon the request of the Commission they may be submitted earlier. Additionally, the Commission examines reports of medical institutions on the performed procedures and their application, and gives an opinion on the scientific testing of the early embryos. Suggestions, proposals and opinions on these reports are submitted to the Ministry.

Supervising the enforcement of the Law on the Removal and Transplantation of Human Body Parts for Therapeutic Purposes is done by the Ministry to which medical institutions in which body parts are removed and transplanted deliver reports containing data on donors and recipients, each removal and transplantation of body parts, exchange of body parts, the success of procedures, possible complications, donor and recipients' health after implemented procedure, measures taken to ensure the quality of interventions, which is stipulated by a provision of Article 38 of the Law. Reports are submitted annually, and if needed they can be delivered earlier.

In addition, it should be emphasized that the check of the quality of professional work of medical institutions is conducted in continuity, as internal, in accordance with the statutes of these institutions and as external, which is organized and implemented by the Ministry through a special Commission. Articles 112-118 of the Law on Health Care regulate this control. In addition, the Ministry exercises supervision of work of medical institutions through the Health Inspectorate as well, whose competences and authorizations were laid down in the Law on Health Inspectorate.

- Prohibition of torture and inhuman or degrading treatment or punishment

70. What strategies and measures are in place to ensure the respect of particularly following fundamental rights: human dignity, the prohibition of torture and inhuman or degrading treatment or punishment.

In order to ensure respect for fundamental human rights, one of the strategic documents adopted by the Government of Montenegro in various areas of human rights is the Judicial Reform Strategy and the Action Plan for implementation of the Judicial Reform Strategy, as well as the Action Plan

for the Prevention of Torture. These documents define objectives aimed at ensuring respect of fundamental human rights of persons deprived of liberty, thereby taking into account that the issue of respect and protection of human rights and freedoms is of particular importance when it comes to this category of persons.

Judicial Reform Strategy was adopted in late 2007, it has eleven chapters, including a chapter with defined goals for improving the prison system, and they are related to:

- creating conditions for mutual separation of categories of convicted and detained persons, particularly for separating categories of convicted juveniles and detained persons, and providing accommodation and staffing capacities for enforcement of juvenile custody,
- reconstruction and renovation of existing prison facilities, and construction of new prison facilities,
- equipping the prison hospital,
- improving security system, through the acquisition of modern technical equipment, particularly devices for video surveillance,
- continuous vocational education, training and knowledge tests of prison officers,
- improving the treatment of convicts, through the introduction of various programs of educational, business, cultural, sport character and other types of treatment.

The Action Plan for Judicial Reform Strategy Implementation defines a series of concrete measures to achieve the goals envisaged by the Strategy and the implementation of these measures is linked to the period from 2007 to 2012. An integral part of the Action Plan is the assessment of resources necessary to achieve the planned measures. Implementation of the Action Plan is monitored by an inter-agency Commission, established by the Government of Montenegro.

Action Plan for the Prevention of Torture was adopted in early 2009, and its adoption followed the first periodic visit to Montenegro by the CoE's Committee for the Fight against Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Action Plan is of inter-agency character, and it includes relevant ministries, and it makes recommendations and requirements given by the Committee operational, by establishing specific goals, measures and activities of line ministries, administration bodies and institutions. The Action Plan also determined the dynamics of the implementation of planned measures and activities, and it established performance indicators, as well as the financial aspects of the defined measures and activities.

The objectives defined in the Action Plan for the Prevention of Torture, refer to:

- solving the problem of overcrowded prison units, and improving material conditions in them,
- improving the health treatment of persons deprived of liberty,
- improving the treatment of detained persons,
- improving the system of keeping records,
- implementation of standards to ensure protection against torture of persons detained by the police,
- improvement of the exercise of control of legality and effectiveness of performing police affairs,
- ensuring that the police premises for detention meet the necessary hygienic and technical conditions,
- improving the conditions of residence of developmentally delayed persons,
- improving accommodation of persons with disabilities,
- solving the problem of overburdened capacities for accommodating forensic patients,
- improving the health treatment of persons with imposed court measure of mandatory psychiatric treatment and confinement,

- ensuring the exercise of duties of securing forensic and psychiatric department in the Special Hospital for Psychiatry,
- ensuring the reintegration of chronic patients.

Action Plan for the Prevention of Torture envisages the establishment of a national mechanism for the prevention of torture, in accordance with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

In order to ensure respect for human dignity and the prohibition of torture and inhuman or degrading treatment or punishment, there are a number of measures more closely described in the answer to the Question No. 48 (Political Criteria - Democracy and the Rule of Law), and Question No. 116c (Chapter 23: Judiciary and Fundamental Rights).

71. 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 etc. In this respect, what measures are in place providing for the inspections of detention centres or police stations? Is legal redress foreseen for victims?

Dignity and security of individuals, inviolability of physical and mental integrity of individuals, their privacy and personal rights are guaranteed by the Constitution of Montenegro (Official Gazette of Montenegro 1/07), with a definition that no one may be subjected to torture or to inhuman or degrading treatment, and that no one may be kept in slavery or servile position. Respect for human personality and dignity in criminal or other proceedings in the case of detention or restriction of freedom, as well as during the enforcement of the sentence are guaranteed. Any violence, inhuman or degrading treatment over the person who was deprived of his/her liberty or his/her freedom was limited is prohibited and punishable, as well as the extortion of confessions or statements.

Torture and abuse is a crime under the Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 47/06 and 40/08), which also provides for punishment for the person in official capacity while performing his/her duties who commits an act qualified as torture and abuse.

One of the basic principles of the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03 and 47/06) is prohibition and punishment of violence against persons deprived of liberty and persons with limited freedom, and the extortion of confession or any other statements from the accused or other persons who participate in the proceedings, and judicial decisions cannot be based on the confession or any other statement obtained by extortion, torture or inhuman treatment.

Under the new Criminal Procedure Code (Official Gazette of Montenegro 57/09), which entered into force on 26 August 2009 and which will be applied one year from the date of its entry into force, one of the basic rules is that it is prohibited to threaten or exert violence against the suspect, accused or other person who participates in the proceedings, as well as extortion of confession or other statements from these persons, and judicial decisions cannot be based on the confession or other statement obtained by extortion, torture, inhuman or degrading treatment.

The Law on Enforcement of Criminal Sanctions (Official Gazette of the Republic of Montenegro 25/94, 29/94, 69/03 and 65/04) and the secondary legislation adopted under this law, regulates the rules of procedure during the enforcement of imprisonment sentences. In the enforcement of criminal sanctions, offenders may be deprived of or limited certain rights only to the extent that corresponds to the nature and content of the sanction and in a manner that ensures respect for the personality of perpetrator and his/her human dignity. Actions which subject the sentenced person to any form of torture, abuse and humiliation, medical and scientific experiments, are prohibited, and prohibited actions are primarily considered as actions that are disproportionate to maintaining order and discipline in a prison organizational unit or are illegal, and can produce suffering or inappropriate restriction of the fundamental rights of convicted persons. During the enforcement of

an imprisonment sentence convicted persons must not be put into mutually unequal position with respect to race, skin colour, sex, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics. Coercive measures may apply to the sentenced person only under the conditions and in the manner specified by this Law and regulations adopted on the basis of that Law. Means of coercion (physical force, tying up, separation, baton, water hose, specially trained dogs, chemicals and firearms) may be applied only when necessary to prevent escape, physical attack on the official or sentenced person, inflicting injuries on another person, self-infliction of injury or causing material damage, and when it is necessary to prevent resistance to the lawful orders of officers.

Under the conditions provided by the Law, every convicted person has the right to: legal aid, work, information, health care, correspondence, visits, receiving parcels, conjugal visits, religious life, as well as other rights provided by this Law and secondary legislation. Convicted persons are entitled to complaints, if they consider that their right is violated in relation to serving the sentence, or because of other irregularities that were caused to that person. Convicted persons are ensured protection of the rights established by this Law, through the protection at the level of the organization competent for enforcement of imprisonment sentence - the Institution for Enforcement of Criminal Sanctions (objection to the decision of the head of organizational unit, which is decided by the head of the Institution), and through the judicial protection of the rights of convicted persons, that is exercised in administrative disputes (action against the decision of the head of the Institution).

In the case of the use of coercive means against the sentenced person, the obligation of the Institution for Enforcement of Criminal Sanctions is to draw up and submit to the Ministry of Justice a report with established facts and the assessment of overstepped authorities.

Supervision over the legality and effectiveness of the work of Institution for Enforcement of Criminal Sanctions is the competence of the Ministry of Justice, as well as control of the legality of enforcement of imprisonment sentences, which is done by authorized officers of the Ministry. The exercising of this control permits the following: inspection of premises in which convicted persons reside, conversations with convicted persons, review of general and individual acts, records and other documents relating to convicted persons, establishing the necessary facts, and acting upon complaints of convicted persons.

The Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03 and 47/06) regulates rules of enforcing detention. During the detention, the personality and dignity of detainees must not be offended. Only those restrictions may be applied against the detainee which are necessary to prevent escape, inciting a third party to destroy, conceal, alter and falsify evidence or traces of criminal offences and direct or indirect contacts of the detainee for the purpose of influencing witnesses, accomplices and accessories by virtue of concealment. Persons of different sex cannot be placed in the same room, nor can persons serving sentences be placed in the same room with the persons in detention. Every day, for at least eight hours, the detainee has the right to uninterrupted night rest, and will be provided a walk in the open for at least two hours a day. Detainees have the right to wear their clothes, to use their own bedding, and may at their own expense procure and use food, books, professional publications, newspapers, stationery and drawing supplies, and other things related to their daily needs, with the exception of those suitable for infliction of injures, impairment of health or preparation of escape.

Upon the approval of the investigative judge and where appropriate and under the judge's supervision or the supervision of a person designated by the judge, the detainees may, in compliance with the rules of conduct, be visited by their close relatives and upon their requests – by a physician and other persons. Diplomatic and consular representatives of foreign states are entitled to visit and communicate unsupervised with detainees who are nationals of their state. With the approval of the President of the Court, the detainee may receive visits from the representatives of domestic and foreign organizations for human rights protection. Detainees may exchange letters with persons outside of prison, pursuant to knowledge and under supervision of the investigative judge, who may prohibit sending and receiving of letters and other parcels that are detrimental to the conduct of proceedings. The prohibition does not relate to the letters sent by the detainee to international courts and domestic legislative, judicial and executive authorities or received from them. The prohibition does not apply to any letters that detainee sends to or receives

from his/her legal representative, unless the review of correspondence with the defence counsel proved justified. The sending of a petition, complaint or appeal will never be forbidden.

According to the new Criminal Procedure Code (Official Gazette of Montenegro 57/09) the detained person may be visited by their spouse or common law spouse and their close relatives and upon their requests – by a physician and other persons.

If the accused person is in detention, a defence counsel may correspond with him/her and talk. Exceptionally, the investigating judge may order that the letters which the accused sends from detention to the defence counsel, or the defence counsel sends them to the accused person in detention, be submitted only after the investigating judge has previously reviewed them, if there is reasonable grounds to believe that they are used to attempt to organize an escape, to influence witnesses, to intimidate witnesses or for other obstruction of investigation. The investigative judge will make an official annotation on retention and revision of letters. When the investigation is completed or when the indictment or bill of indictment is brought without investigation, the accused cannot be forbidden to freely and without supervision correspond and talk with his/her defence counsellor.

Under the new Criminal Procedure Code (Official Gazette of Montenegro 57/09), correspondence and discussion of the counsel with the accused who is in detention, can be performed without supervision. Defence counsel is entitled to a confidential conversation with the suspect who was apprehended even before the suspect has been heard, and the control of the conversation before the first hearing is allowed only by observing, not by listening.

For disciplinary offences of detainees, the investigating judge or the presiding judge may impose a disciplinary penalty to restriction of visits, and this limit does not apply to detainees' conversation with the defence counsel. An appeal against the decision on disciplinary penalty may be submitted to the chamber of the competent court within 24 hours from the hour of receiving the decision, and the chamber shall decide on the appeal within 3 days as of its receipt. The appeal does not suspend the enforcement of the decision.

Under the new Criminal Procedure Code (Official Gazette of Montenegro 57/09) for disciplinary offences of detained person, the person who manages the prison facility or person authorized by him/her may impose a disciplinary sanction of restriction on visits or may place the detainee into solitary confinement for 15 days. This restriction does not apply to communications between the defence counsel and the detained person. An appeal against the decision on disciplinary penalty may be submitted to the investigative judge within 24 hours from the hour of receiving the decision, and the investigating judge shall decide on the appeal within 3 days as of its receipt. The appeal does not suspend the enforcement of the decision.

Authorised President of the Court exercises supervision of the enforcement of detention and supervision of detainees. The President of the Court or a judge appointed by the President is obliged to visit detainees at least once a month and, if s/he finds it appropriate, without the presence of supervisors and guards, to receive information about the food served to detainees, how they are supplied regarding other needs and how they are treated. The President of the Court or an appointed judge is obliged to take the necessary measures to eliminate irregularities ascertained during the tour of the prison. President of the Court and the investigating judge may, at any time, visit all detainees, talk with them and receive complaints from them.

Under the new Criminal Procedure Code (Official Gazette of Montenegro 57/09), the President of the Court or a judge appointed by the President is obliged, at least two times a year, to visit detained persons, and to draw up a report on the visit which is submitted to the President of the Supreme Court and delivered to the Ministry in charge of judicial affairs.

Adoption of regulations which provide in more detail the manner of enforcing detention is under the competence of the ministry in charge of judicial affairs.

In the case of use of coercive means against the detained person, the obligations of the Institution for Enforcement of Criminal Sanctions is to draw up and submit to the Ministry of Justice a report with established facts and the assessment of overstepped authority, and the head of the Institution is obliged to notify the President of the Court, which supervises legal treatment of detainees, thereof.

Activities of the management of the Institution for the Enforcement of Criminal Offences are directed to eliminate any form of torture by officers at the Institution, with emphasis on training, especially of security staff on issues in the field of human rights, with emphasis on the fight against torture and inhuman and degrading treatment or punishment of persons deprived of liberty. Convicted and detained persons are allowed to report any cases of torture to the competent persons in the Institution, by using mailboxes that were placed in all organizational units, as well as to state bodies and representatives of NGOs.

The Law on Police (Official Gazette of the Republic of Montenegro 28/05) governs police work, as well as police powers and duties. According to this law, a police officer is obliged to execute orders given by his/her immediate supervisor or police head and to act upon them, if they are within the limits of law, except for those orders that imply an action that constitutes a criminal offence. Therefore, the police officer cannot justify his/her actions as being ordered by the immediate supervisor in the case of performing actions that contain elements of cruelty and torture of detained persons.

The Law precisely regulates situations when police officers are authorized to apply means of coercion. Within that meaning, means of coercion can be used to prevent the escape of persons deprived of liberty or caught while committing criminal offences that are prosecuted ex officio, in order to overcome the resistance of persons who violate public peace and order or who need to be caught or apprehended in situations stipulated down by law, in cases of averting attacks from themselves, other persons or objects that are being protected. The police officer will use the means of coercion so that the official duty is preformed in proportion to the danger that needs to be eliminated and with the least harmful consequences for the person against whom the means of coercion are used. Means of coercion are physical strength, baton, devices for bonding, devices for forcible stopping of motor vehicles, police dogs, and chemical devices for temporary disabling, special vehicles and special types of weapons, explosives and firearms.

The Law on Police stipulates that firearms and other means of coercion are to be used only upon the orders of police officer who is managing the execution of official tasks. The police officer who used or ordered the use of firearms and other means of coercion, is obliged to inform immediately the head of police. If the head of police evaluates that the means of coercion were used illegally, s/he is obliged, within 3 days from receiving the information at the latest, to take measures for ascertaining the responsibility of police officers who used, or ordered the use means of coercion. Police officers who used or ordered illegal use of means of coercion are responsible for illegal use of means of coercion.

The Internal Control and Enforcement of Powers Division of the Police Directorate evaluates the justifiability of each use of means of coercion.

Rulebook on the Manner of Performing Certain Police Affairs and the Exercise of Powers in Performing These Affairs provides that a police officer who performs the detention of persons is responsible for their safety from the moment they were placed in premises for detention until being released. According to this Rulebook a sick or injured person, who obviously needs medical assistance or a person who shows signs of heavy alcohol or another type of poisoning cannot be accommodated in premises for detention. The police officer, who performs detention, must provide transportation to sick or injured persons to the health institution where they will be provided assistance. When a person detained requests medical assistance, police officers provide assistance within the detention premises or by transporting detained persons to the nearest health institution. Persons detained for more than 12 hours are provided with food, three meals a day, and detained persons are entitled to an uninterrupted eight-hour rest during 24 hours. If the person was brought to detention premises in wet clothes or clothes otherwise inappropriate for his/her health, appropriate clothing is provided during the detention period.

According to the Code of Police Ethics, police officers are responsible for the safety of any person deprived of liberty and their protection.

In training programs at all levels, police officers gain knowledge in the field of fundamental human rights, with special emphasis on international conventions, rules and declarations on human rights of persons deprived of liberty, which, inter alia, deal with the prohibition of torture and other

inhuman acts. As special subjects of primary and subsidiary training, subjects taught are ethics, police ethics and human rights.

In addition to internal control, the Law on Police also provides civilian control of police work which is performed by the Council for Civilian Control of the Police, as the body that assesses the application of police powers in view of protection of human rights and freedoms. The law also provides parliamentary control over police work, performed by the Parliament of Montenegro, through the competent working body.

Civil servants and state employees, including officers working in prisons and police officers, have disciplinary responsibility for the performance of their duties, that is, for violation of employment related duties, and they are subject to criminal responsibility if their actions contain elements of criminal offence.

Anyone who believes that their rights and freedoms were violated by an act, action or failure to act on the part of an authority may address the Protector of Human Rights and Freedoms. According to the Law on the Protector of Human Rights and Freedoms (Official Gazette of the Republic of Montenegro 41/03) it is the competence of the Protector to examine violations of human rights and freedoms when they are violated by an act, action or failure to act by authorities, in accordance with this law, and to take actions for their elimination. There is a possibility for the Protector to submit to the competent authority an initiative against the person whose work caused violations of human rights and freedoms, to initiate disciplinary proceedings or proceedings for removal from office.

Legal satisfaction for victims of torture and other inhuman or degrading treatment is provided through the right to complaint, the right to damages, the right to submit proposals for the enforcement of a property request, the right to legal remedy.

72. Is there any independent body which oversees the conditions in such institutions? Give details on disciplinary and criminal sanctions for State agents accused of ill treatment or torture during the exercise of their duties.

The Protector of Human Rights and Freedoms exists and acts as an autonomous and independent body which takes measures for the protection of human rights and freedoms in Montenegro. It performs its function based on the Constitution, laws and ratified international treaties, with adherence to the principles of justice and equity. The Law on Protector of Human Rights and Freedoms (Official Gazette of the Republic of Montenegro 41/03) regulates competence of this body. Within its jurisdiction, the Protector has special powers to protect the rights of persons deprived of liberty, which inter alia includes the possibility for the Protector, without notice, to inspect all the facilities in prisons and other places where persons are deprived of their liberty, and the right to talk to persons deprived of their liberty, without the presence of officials.

In addition to the fact that the Protector of Human Rights and Freedoms already has the legal authority to protect the rights of persons deprived of their liberty, certain activities are taken at the level of additional strengthening of the institution of Protector, given the commitment that the Protector can adequately respond to the requirements of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, i.e. that it can act as a national mechanism for the prevention of torture. In this regard, the Action Plan for the Prevention of Torture envisages concrete measures concerning the creation of normative preconditions that are necessary, according to Optional Protocol, to determine or establish a national mechanism for the prevention of torture.

Pursuant to the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03 and 47/06), supervision of enforcement of detention and detainees is performed by the President of the Court authorized thereof. President of the Court or a judge appointed by the President of the Court, is obliged to visit the detainees at least once a month and, if s/he finds it necessary, without the presence of supervisors and guards, to receive information on food provided to the detainees,

about their fulfillment of other needs and the manner in which they are treated. The President of the Court or a judge designated by the President is obliged to take necessary measures to remove the irregularities noticed on the occasion of the prison visit. The President of the Court and the investigating judge may at any time visit all detainees, talk to them and receive complaints from them.

According to the report of the President of the High Court in Bijelo Polje in charge of the supervision of detainees in the remand prison in Bijelo Polje, over the last three years there were no complaints by prisoners regarding detention conditions.

According to the report of the President of the High Court in Podgorica, over the last three years, there were complaints of detained persons, as follows:

On 1 July 2005, ten detainees from the remand prison in Podgorica informed the President of the Court that they joined the hunger strike due to dissatisfaction with conditions in detention (overcrowded detention units, and detainees are not enabled guaranteed walk lasting 120 minutes). Acting on that complaint, the President of the High Court ordered the Head of the prison that a number of detained persons should be moved from prison in Podgorica to prison in Bijelo Polje to relieve overcrowded detention units and create conditions to ensure the detainees' right to walk.

In September 2005, a number of detainees submitted a complaint to the President of the Court related to conduct of police members during the enforcement of an order of the investigating judge for the search of a number of detainees by claiming that police members came into the detention units with balaclavas on their heads, have used force during search and have inflicted bodily injuries to a number of detained persons. Under the complaint in question, the Director of the Institution was ordered that a medical examination of persons who have complained about inflicted bodily injuries be carried out, that an official annotation be drawn up thereon and to be delivered to the Public Prosecutor for evaluation of whether police actions had the elements of criminal offence.

On 17 September 2008, a complaint was filed regarding the treatment of an official towards one female detainee. Upon order of the President of the Court, the female detainee was taken to a medical examination and it was determined that she was inflicted a light bodily injury.

During 2008, a complaint was submitted due to gross abuse of a detainee. Regarding that complaint, a written report was requested from the Director of the prison, and official annotations from the shift leader and employees of security department were obtained, as well as medical documentation of injuries of officials. Therefore, the Chief of prison submitted a criminal complaint to the competent Public Prosecutor due to the detainee's assault against an official.

The Criminal Procedure Code also provides the possibility for the detainee to be visited by representatives of national and international organizations dealing with human rights protection, therefore, visits are carried out by the International Committee of the Red Cross pursuant to its mandate.

The new Criminal Procedure Code (Official Gazette of Montenegro 57/09) which came into force on 26 August 2009, which will be applied one year from the date of its entry into force, provides for the possibility, when provided so by a ratified international agreement, for a detained person to be visited by representatives of international committees against torture, the International Committee of the Red Cross and representatives of international organizations dealing with protection of human rights, and the possibility for such a visit by representatives of national organizations dealing with human rights protection, upon an approval of the President of the Court.

Interest for conditions of police premises for detention, and for treatment of detained persons is shown by nongovernmental organizations such as Investigator of Human Rights Violations, the Youth Initiative for Human Rights, and Helsinki Committee for Human Rights and the Permanent OSCE Mission to Montenegro.

According to the Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 47/06 and 40/08), if the official (which is considered to be the person that performs an official duty in a state body) in performing services, by applying force, threat or in some other illegal manner, inflicts great pain or suffering to another person, s/he will be punished by imprisonment of one to eight years,

and if that person abuses or acts towards another person in a manner that offends human dignity, s/he will be punished by imprisonment of three months to three years.

In addition to criminal liability, civil servants, or employees, have disciplinary responsibility for task performance. According to the Law on Civil Servants and State Employees (Official Gazette of the Republic of Montenegro 27/04 and 31/05), abuse of official position or overstepping powers is considered as a more serious disciplinary offence for which this law provides for disciplinary measures: a fine from 20 to 30% of salary paid for the month in which the offence was committed, and termination of employment.

- Prohibition of slavery, servitude, and forced or compulsory labour

73. Please provide information on specific national legislative, strategies as well as measures designed to prevent the occurrence of slavery, servitude and forced or compulsory labour.

The Constitution of Montenegro stipulates that the rights and freedoms are inviolable and that everyone is obliged to respect the rights and freedoms of others. The Constitution of Montenegro guarantees prohibition of slavery – Article 28 stipulates that no person can be held in slavery or servile position. Article 62 provides that every person has the right to work, free choice of profession and employment, just and humane conditions of work and protection during unemployment. The Constitution prohibits forced labour, and stipulates that forced labour is not considered to be standard work as a part of serving sentence of deprivation of liberty; performance of a service of military type or service required instead of military service; work that is required in case of crisis or disaster that threatens human lives or property.

Constitutional commitment that international treaties and generally accepted rules of international law are integral part of international law and order, and they have supremacy over national legislation when regulating relations differently from national legislation, deserves a special attention. This definition confirms the legal effect of international treaties by considering them a part of domestic law and order, with supremacy in relation to domestic legislation.

Montenegro assumed by means of succession the conventions of International Labour Office, namely: the 1930 ILO Convention on Forced and Compulsory Labour (No. 29), the Convention on the Elimination of Forced Labour from 1957 (No. 105), the Convention on the Worst Forms of Child Labour (No. 182), the Convention on the Inspection Work (No. 81), the Convention on the Inspection Work in Agriculture (No.129), the UN Convention against Transnational Organized Crime (Palermo, 12-15 December 2000), and the Protocol to the above-mentioned Convention to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

In accordance with the UN Convention on Transnational Organized Crime (Palermo Convention), with Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the strategy of the Government of Montenegro to combat trafficking in persons and recommendations on cooperation between the Governmental sector, the Supreme Public Prosecutor and non-governmental organizations, and in cooperation with the Office of National Coordinator for Combating Trafficking in Human Beings and the Mission of the Organization for Security and Cooperation in Europe (OSCE) to Montenegro, an agreement on joint cooperation between the Supreme Public Prosecutor, Ministry of Labour, Ministry of Education and Science, Police Directorate and nongovernmental organizations “Montenegrin Women's Lobby”, "Safe Women's House” and “Centre Plus” was signed, in view of practical cooperation in the fight against trafficking in persons through prevention, education, criminal prosecution of offenders and protection of potential victims of trafficking, especially women and children.

Additionally on 25 August 2008, the 2009 Action Plan for Combating Trafficking in Human Beings was adopted, which specified the obligations of all parties in this field in 2009.

Criminal Code of Montenegro in Title 35 defines the crimes against humanity and other rights protected by international law.

Thus, Article 444 stipulates the criminal offense of "Trafficking in Persons", which stipulates that any person who by force or threat, misleading or keeping mislead, by abuse of authorizations, trust, relation of dependency, using difficult position of another person, by keeping back personal documents or giving or receiving money or other benefit in view of obtaining consent of a person having control over another person: recruits, transports, transfers, delivers, sells, buys, mediates in sale, hides or keeps another person for the purpose of forced labour, submission to servitude, commission of criminal activities, prostitution or beggary, use in pornography, for removal of body parts for transplantation or for use in armed conflict, will be punished by imprisonment of one to ten years. If the specified offense is committed against a minor the offender will be punished by a sentence stipulated for that offense, even when force, threat or some other of the said manners of commission were not used. If the act is committed against a minor, the offender will be punished by imprisonment sentence of at least three years.

If the consequence of the above mentioned acts is serious bodily injury of a person, the offender can be punished by imprisonment from one to twelve years. If acts from paragraphs 1 and 3 of that Article caused death of one or more persons, the offender can be punished by imprisonment sentence of at least ten years. Those who commit criminal offences from paragraphs 1 to 3 of that Article or participate in their organised commission together with several persons can be punished by imprisonment of at least five years.

Trafficking of children for adoption (Article 445) is a criminal offense which has criminalized abductions of persons under the age of fourteen for adoption in breach of valid regulations or adoptions of such persons or mediations in such adoption or cases of buying, selling or giving another person a child under the age of fourteen for that purpose or transporting, providing accommodation, or concealing that child, whereby the perpetrator of the offense can be punished with imprisonment of one to five years. Person dealing with activities referred to in paragraph 1 of that Article or if the offence was committed in an organized manner together with several persons, can be punished by imprisonment of at least three years.

Furthermore, Article 446 of the Criminal Code stipulates as a criminal offense "Submission to Slavery and Transportation of Enslaved Persons", which criminalizes acts of submitting another person to slavery or similar relation, or keeping another person in such a relation, purchasing, sale, handing over to another person or mediation in purchases, sales or handing over such person or inciting another person to sell his/her freedom or freedom of a person s/he supports or cares for. The sentence for the said criminal offense is one to ten years. For a more serious form of this criminal offence, which is committed against a minor, the stipulated sentence is imprisonment of five to fifteen years.

As one of the measures aimed at combating human trafficking, the Government of Montenegro has founded an Office of the National Coordinator for Fight against Trafficking in Human Beings at the General Secretariat, to perform tasks related to application of international regulations, conventions and agreements in the field of combating human trafficking, to start initiatives for harmonization of national legislation with international standards in this field, establish relations and achieve cooperation of national and international entities, in order to create effective mechanisms to combat human trafficking, and to perform other activities in this field.

74. Has Montenegro ratified relevant international conventions and agreements?

The Constitution of Montenegro (Official Gazette of the Republic of Montenegro 1/07) provides that ratified and published international treaties and generally accepted rules of international law constitute an integral part of the internal law and order, and have primacy over domestic legislation and are directly applied when they govern relations differently from the internal legislation.

This constitutional definition confirms the legal effect of international treaties, by which they are considered part of the internal law and order with supremacy in relation to domestic legislation.

Montenegro has ratified the following conventions:

Council of Europe Conventions

Title in Montenegrin	Title in English	Legal action	Entry into force
1. Evropska konvencija o zaštiti ljudskih prava i osnovnih sloboda	European Convention for the Protection of Human Rights and Fundamental Freedoms *Official Gazette of Montenegro (International treaties) 9/2003-16 and 5/2005-31;*	Notification of succession	6 June 2006
2. Protokol uz Evropsku konvenciju o zaštiti ljudskih prava i osnovnih sloboda,	Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-16 and 5/2005-31;*	Notification of succession	6 June 2006
3. Protokol uz Evropsku konvenciju o zaštiti ljudskih prava i osnovnih sloboda,	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 *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-16 and 5/2005-31;*	Notification of succession	6 June 2006
4. Protokol uz Evropsku konvenciju o zaštiti ljudskih prava i osnovnih sloboda,	Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-16 and 5/2005-31;*	Notification of succession	6 June 2006
5. Protokol uz Evropsku konvenciju o zaštiti ljudskih prava i osnovnih sloboda,	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 *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-16 and 5/2005-31;*	Notification of succession	6 June 2006
6. Protokol uz Evropsku konvenciju o zaštiti ljudskih prava i osnovnih sloboda,	Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-16 and 5/2005-31;*	Notification of succession	6 June 2006
7. Protokol uz Evropsku konvenciju o zaštiti ljudskih prava i osnovnih sloboda,	Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-16 and 5/2005-31;*	Notification of succession	6 June 2006
8. Protokol uz Evropsku konvenciju o zaštiti ljudskih prava i osnovnih sloboda,	Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-16 and 5/2005-31;*	Notification of succession	6 June 2006
9. Protokol uz Evropsku konvenciju o zaštiti ljudskih prava i	Protocol No. 8 to the Convention for the	Notification of	6 June

osnovnih sloboda,	Protection of Human Rights and Fundamental Freedoms *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-16 and 5/2005-31;*	succession	2006
10. Konvencija o sprečavanju mučenja i nečovječnih ili ponižavajućih postupaka i kažnjavanja	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-7 and 5/2005-31;*	Notification of succession	6 June 2006
11. Protokol br. 1 uz Konvenciju o sprečavanju mučenja i nečovječnih ili ponižavajućih postupaka i kažnjavanja,	Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-7;*	Notification of succession	6 June 2006
12. Protokol br. 2 uz Konvenciju o sprečavanju mučenja i nečovječnih ili ponižavajućih postupaka i kažnjavanja,	Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-7 and 5/2005-31*;	Notification of succession	6 June 2006
13. Protokol br. 11 uz Evropsku konvenciju o zaštiti ljudskih prava i osnovnih sloboda,	Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-16 and 5/2005-31*;	Notification of succession	6 June 2006
14. Protokol br. 12 uz Evropsku konvenciju o zaštiti ljudskih prava i osnovnih sloboda,	Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-16 and 5/2005-31*;	Notification of succession	6 June 2006
15. Protokol br. 13 uz Evropsku konvenciju o zaštiti ljudskih prava i osnovnih sloboda,	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 *Official Gazette of Serbia and Montenegro (International treaties) 9/2003-16 and 5/2005-31*;	Notification of succession	6 June 2006
16. Protokol br. 14 uz Evropsku konvenciju o zaštiti ljudskih prava i osnovnih sloboda,	Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention *Official Gazette of Serbia and Montenegro (International treaties) 5/2005-25 and 7/2005-47*	Notification of succession	6 June 2006
17. Konvencija Savjeta Evrope o akcijama protiv trgovine ljudima	Council of Europe Convention on Action against Trafficking in Human Beings *Official Gazette of Montenegro 4/2008-38*	Instrument of confirmation deposited with the depositary 30 July 2008	1 November 2006

Conventions and protocols of the United Nations

Title in Montenegrin	Title in English	Legal action	Entry into force
1. Konvencija protiv mučenja i drugih svirepih, nehumanih ili ponižavajućih kazni ili postupaka (CAT) usvojena u Njujorku 10. decembra 1984. godine,	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984 PUBLISHED: *Official Gazette of Socialist Federal Republic of*	Notification of succession deposited with the depositary 23 October 2006	3 June 2006

	Yugoslavia (International treaties) 9/91-3; DECLARATION: 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: "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. 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."		
2. Fakultativni protokol uz Konvenciji protiv mučenja i drugih svirepih, nehumanih ili ponižavajućih kazni ili postupaka (OPCAT), usvojen u Njujorku 18. decembra 2002. godine	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 18 December 2002 Federal Republic of Yugoslavia signed the Optional Protocol on 25 September 2003. After renewal of independence, the Montenegrin Parliament confirmed the mentioned protocol on 17 December 2006. Published: *Official Gazette of Serbia and Montenegro (International treaties) 16/2005-28 and 2/2006-60*; DECLARATION: "The Government of Montenegro makes the following Declaration in relation to article 24 of the Optional Protocol: 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."	Notification of succession in relation to the signature deposited with depositary 23 October 2006 Instrument of confirmation deposited with depositary 6 March 2009	Succession in relation to the signature in effect as of 3 June 2006 Optional Protocol entered into force in relation to Montenegro on 5 April 2009

3. Konvencija o ropstvu potpisana u Ženevi 25. septembra 1926, izmijenjena Protokolom od 7. decembra 1953. Konvencija o ropstvu, usvojena u Ženevi, 25. septembra 1926 Protokol o izmjenama Konvencije o ropstvu potpisane u Ženevi 25. septembra 1926, usvojen u Njujorku 7. decembra 1953. godine	Slavery Convention, signed at Geneva on 25 September 1926 and amended by the Protocol, New York, 7 December 1953 PUBLISHED: *Official Gazette of the Federal People's Republic of Yugoslavia (International treaties and other agreements) 4 / 1956* Slavery Convention signed at Geneva on 25 September 1926 PUBLISHED: *Compilation of Treaties of the Kingdom of Yugoslavia 1929. Page 607* Protocol amending the Slavery Convention signed at Geneva on 25 September 1926 PUBLISHED: *Official Gazette of the Federal People's Republic of Yugoslavia (International treaties and other agreements) 6/1955* * * * TAKING INTO ACCOUNT THE VIEWS OF THE UN OFFICE OF LEGAL AFFAIRS THAT MONTENEGRO CANNOT PERFORM SUCCESSION IN RELATION TO INTERNATIONAL TREATIES OF LEAGUE OF NATIONS, NOTIFICATION OF SUCCESSION IS ACCEPTED ONLY FOR SLAVERY CONVENTION AMENDED BY PROTOCOL OF 7 DECEMBER 1953, WHICH IS A SEPARATE INTERNATIONAL LEGAL INSTRUMENT OF THE UNITED NATIONS.	Notification of succession deposited with the depositary 23 October 2006	3 June 2006
4. Dopunska konvencija o ukidanju ropstva, trgovine robljem i ustanova i prakse sličnih ropstvu, usvojena u Ženevi od 7. septembra 1956. godine.	Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Geneva, 7 September 1956 PUBLISHED: *Official Gazette of the Socialist Federal Republic of Yugoslavia (International treaties and other agreements) 7/1958*	Notification of succession deposited with the depositary, 23/10/ 2006	3 June 2006
5. Rimski statut Međunarodnog krivičnog suda, usvojen 17. jula 1998. godine;	Rome Statute of the International Criminal Court, Rome, 17 July 1998 PUBLISHED: *Official Gazette of the Federal Republic of Yugoslavia (International treaties) 5/2001-3*	Notification of succession deposited with the depositary 23 October 2006	3 June 2006

	NOTIFICATION : Notification of succession included the confirmation of the notification by Serbia and Montenegro upon accession which reads as follows: "... 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."		
6. Protokol za sprečavanje, suzbijanje i kažnjavanje trgovine ljudskim bićima, posebno ženama i djecom uz Konvenciju UN o borbi protiv transnacionalnog organizovanog kriminala, usvojen u Njujorku, 15. novembra 2000. godine	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 PUBLISHED: *Official Gazette of the Federal Republic of Yugoslavia (International treaties) 6/2001 - 3*	Notification of succession deposited with the depositary 23 October 2006	3 June 2006
7. Protokol protiv krijumčarenja migranata kopnom, morem i vazduhom	Protocol against the Smuggling of Migrants by Land, Sea and Air PUBLISHED: *Official Gazette of the Federal Republic of Yugoslavia (International treaties) 6/2001 - 3*	Notification of succession deposited with the depositary 23 October 2006	3 June 2006

The Hague Conference on Private International Law (HCCH)

Title in Montenegrin	Title in English	Legal action	Entry into force
1. Konvencija o građanskopravnim vidovima međunarodne otmice djece, potpisana u Hagu 25. oktobra 1980 **PUBLISHED:** ***Official Gazette of the Socialist Federal Republic of Yugoslavia (International treaties) 7/91-19***	Convention of 25 October 1980 on the Civil Aspects of International Child Abduction	Notification of succession deposited with the depositary 10 April 2007	Legal continuity, based on succession, effective from 1 December 1991

Conventions of the International Labour Organization (ILO)

Title in Montenegrin	Title in English	Succession	Entry into force
69. Konvencija br. 29 o prinudnom ili obaveznom radu, usvojena 1930. godine;	Convention (No. 29) concerning Forced or Compulsory Labour, adopted in 1930	Succession 25 May 2007	03 June 2006
70. Konvencija br. 81 o inspekciji rada, usvojena 1947. godine;	Labour Inspection Convention, (No. 81), adopted in 1947	Succession 25 May 2007	03 June 2006
71. Konvencija br. 89 o noćnom radu žena (revidirana), usvojena 1948.	Night Work (Women) Convention (Revised), No. 89, adopted in 1948	25 May	03 June

godine;		2007	2006
72. Konvencija br. 90 o noćnom radu djece u industriji, usvojena 1948. godine;	Night Work of Young Persons (Industry) Convention (Revised), No. 90, adopted in 1948	Succession 25 May 2007	03 June 2006
73. Konvencija br. 105 o ukidanju prinudnog rada, usvojena 1957. godine;	Abolition of Forced Labour Convention, No. 105, adopted in 1957 PUBLISHED: *Official Gazette of the Federal Republic of Yugoslavia – International treaties, 13 /2002-29*	Succession 25 May 2007	03 June 2006
74. Konvencija br. 106 o nedjeljnom odmoru (trgovina i berza), usvojena 1957. godine;	Weekly Rest (Commerce and Offices) Convention, No. 106, adopted in 1957 PUBLISHED: *Official Gazette of the Federal People's Republic of Yugoslavia – Appendix 12 /58-18*	Succession 25 May 2007	03 June 2006
75. Konvencija br. 129 o inspekciji rada u poljoprivredi, usvojena 1969. godine;	Labour Inspection (Agriculture) Convention, No. 129, adopted in 1969 PUBLISHED: *Official Gazette of the Socialist Federal republic of Yugoslavia, 22 /75-725*	Succession 25 May 2007	03 June 2006
76. Konvencija br. 131 o utvrđivanju minimalnih plata, usvojena 1970. godine;	Minimum Wage Fixing Convention, No. 131, adopted in 1970 PUBLISHED: *Official Gazette of the Socialist Federal Republic of Yugoslavia – International treaties - 14 /82-667*	Succession 25 May 2007	03 June 2006
77. Konvencija br. 132 o plaćenom godišnjem odmoru (revidirana), usvojena 1970. godine;	Holidays with Pay Convention (Revised), No. 132, adopted in 1970 PUBLISHED: *Official Gazette of the Socialist Federal Republic of Yugoslavia, 52 /73-1579*	Succession 25 May 2007	03 June 2006
78. Konvencija br. 138 o minimalnim godinama za zapošljavanje, usvojena 1973. godine;	Convention concerning Minimum Age for Admission to Employment, No. 138, adopted in 1973 PUBLISHED: *Official Gazette of the Socialist Federal Republic of Yugoslavia – International treaties - 14 / 82-676*	Succession 25 May 2007	03 June 2006
79. Konvencija br. 182 o najgorim oblicima dječijeg rada, usvojena 1999. godine.	Worst Forms of Child Labour Convention, No. 182, adopted in 1999 PUBLISHED: *Official Gazette of the Federal Republic of Yugoslavia – International treaties, 2 /2003-15*	Succession 25 May 2007	03 June 2006

75. What is the practical experience with implementing the legislation in this area?

The Criminal Code of Montenegro in Title XXXV stipulates the crimes against humanity and other rights protected by international law. Article 446 stipulates a criminal offense of submission to slavery and transportation of enslaved persons. For the period from 2006 to 1 August 2009 according to the Supreme Public Prosecutor's Office, Public Prosecution offices had no pending cases against the perpetrators of these crimes.

Over the recent five years, the courts having jurisdiction in Montenegro have brought 13 indictments for the criminal offense of trafficking in persons referred to in Article 444 of the Criminal Code.

In one of the cases for the criminal offense of trafficking in persons referred to in Article 444 paragraph 6 of the Criminal Code, the indictment was brought against two persons, whereas the victims were two female persons. In this case the sentences imposed were of 4 years and 4 months imprisonment and 3 years and 6 months imprisonment respectively.

In one of the cases the indictment was brought against three persons for the criminal offence referred to in Article 444 paragraph 6 in conjunction with paragraph 1 of the Criminal Code. The victim in this case is an individual female. The trial in this case is in progress.

In one of the cases, an indictment was brought against one person, because of the criminal offense of trafficking in persons referred to in Article 444 paragraph 3 in conjunction with paragraph 1 of the Criminal Code. The victim in this case is an individual female. In that case, a prison sentence of four years was imposed.

In one of the cases during the trial the competent prosecutor changed the legal and factual description of acts in the indictment which was brought and charged the accused with the criminal offence of violence in a family or a family community referred to in Article 220 paragraph 3 in conjunction with paragraph 1 of the Criminal Code.

In one of the cases an indictment was brought against three persons for the criminal offense of trafficking in persons referred to in Article 444 paragraph 6 in conjunction with paras. 1 and 2 of the Criminal Code. The victims in this case were two female persons. In this case the imposed sentenced were those of imprisonment of five years.

In one of the cases one person was accused of the criminal offense of trafficking in persons referred to in Article 444, paragraph 6 in conjunction with paragraph 1 of the Criminal Code, but the court found that the actions of that defendant satisfied the elements of criminal offences of mediation in prostitution referred to in Article 210 paragraph 1 of the Criminal Code. For that offense the defendant was sentenced to a prison sentence of 11 months. The victim in this case is an individual female.

In one of the cases an indictment was brought against four persons for the criminal offence of criminal enterprise referred to in Article 401 paragraph 2 in conjunction with paragraph 1 of the Criminal Code in concurrence with the criminal offence of trafficking in person referred to in Article 444 para. 6 in conjunction with para. 1 of the Criminal Code. Victims in this case are two female persons. In this case, three persons were found guilty and sentenced to imprisonment of 6 years and 10 months, 5 years and 10 months, and 3 years and 6 months respectively, while one of the accused was acquitted of the charges.

In one of the cases an indictment was brought against three persons for the criminal offense of trafficking in persons referred to in Article 446 para. 6 in conjunction with paras. 1 and 3 of the Criminal Code. The defendants are nationals of the Republic of Albania, and one of them is unavailable to the court, therefore and an international arrest warrant was issued. The victim in this case is a female individual. The procedure is in progress.

In one of the cases, an indictment was brought against three persons for the criminal offense of trafficking in persons referred to in Article 444 paragraph 6 in conjunction with paragraph 1 of the Criminal Code. The injured parties in this case are three male individuals. The procedure in this case is in progress.

In one of the cases, an indictment was brought against three persons for the criminal offense of trafficking in persons referred to in Article 444 paragraph 6 and para. 1 of the Criminal Code. The victim in this case is one person. The said case was completed with an acquittal.

In one of the cases, an indictment was brought against a person for the offense of trafficking in persons in Article 444. The victim in the case was one person and the accused was sentenced to a prison sentence of one year.

In one of the cases, an indictment was brought against one person for the criminal offense referred to in Article 444 of the Criminal Code. In this case, the victim was one person, and the defendant was sentenced to a two-year prison sentence.

In one of the cases, an indictment was brought against three persons for the criminal offences of Article 444 of the Criminal Code. In this case the accused was released of charges.

The biggest problem during the trial in these cases is to ensure the presence of the defendants and injured parties at the main hearing. This is due to the fact that some defendants are not available to the state authorities of Montenegro - they are abroad and it requires time to issue arrest warrants and to find these persons. Another problem is the fact that in a number of cases the injured parties are nationals of other countries and it is necessary to secure their presence at the main hearing.

- Respect for private and family life and communications

76. 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?

The commitment of Montenegro and its citizens to live in a country where the fundamental value is respect for human rights and freedoms, democracy and the rule of law was confirmed by constitutional regulation. Thus, the right to privacy is enshrined in constitutional provisions. Namely, Article 28 of the Constitution of Montenegro guarantees the inviolability of physical and mental integrity of an individual, their privacy and personal rights. Article 40 of the Constitution guarantees that everyone has the right for respect of private and family life, while Article 41 guarantees inviolability of home and impossibility of entering the home or other premises against the will of its possessor, or of conducting a search without a court warrant. Article 42 guarantees inviolability of confidentiality of letters, telephone conversations and other means of communication. The principle of inviolability of confidentiality of letters, telephone calls and other means of communication may be waived only by a court decision if it is necessary for the conduct of criminal proceedings or for the security of Montenegro.

The Constitution guarantees everyone the protection of his/her personal data. Use of personal data for purposes other than those for which they were collected is prohibited. Everybody has the right to be informed about the personal data collected about him/her or her and the right to judicial protection in case of abuse (Article 43 of the Constitution of Montenegro).
Stipulating the protection of the family community, the Family Law also provides protection from unwarranted state interference in family life, on the one hand, and provides for positive obligations that the state has towards families on the other. This is how, in fact, with respect to the autonomy of the family, situations and conditions are specified in which specialized agencies (particularly courts and guardianship authorities) can and should intervene to protect the interests of individual family members, especially children. Therefore the basis for this intervention is the interest of the family, that is, the need to protect the rights and interests of participants in marital and family relationships in certain (often conflict) situations. Personal nature of these relations requires that the Family Law clearly specify preconditions and requirements for intervention so that the competent authorities would not exceed their authority. The starting standpoint thereat is that intervention that is not justified by the interests of the family and its members is not allowed.
The Criminal Code of Montenegro protects the stated constitutional principles by following criminalizations:
Article 170 (illegal search) criminalizes illegal search and stipulates imprisonment sentence of up to three years for a person in an official capacity who during performance of his or her duty conducts unlawfully the search of dwellings, premises or persons.
Article 171 (unauthorized disclosure of secret) stipulates that if an attorney-in-law, a physician or other person discloses without permission a secret that has come to his or her knowledge during performance of his or her professional duties, s/he will be sentenced to imprisonment sentence of up to one year. No person who discloses a secret in a public or in other person’s interest being preponderant to the interest of keeping secret will be punished for the said act.

Article 172 (infringement of privacy of mail and other parcels) stipulates a fine or imprisonment of up to one year for those who open another person's letters, telegrams or any other written item or closed package or otherwise violate their secrecy in an unauthorized way and for those who hold, conceal, destroy or deliver to another person somebody else's letter, telegram or other parcel or who violate the confidentiality of electronic mail. The same penalty is imposed on those who communicate to a third party the content that they learned by violating the confidentiality of someone else's letters or any other document or parcel, telegrams or other sealed document or parcel, or use their contents. If officials in the performance of their duties commit the specified criminal offence, they are punished by imprisonment sentence of up to three years.
Article 173 (unauthorized wiretapping and recording) stipulates that perpetrators that use special unauthorized listening devices or record a conversation, statement or any other information not indented for their use, will be punished by a fine or by imprisonment sentence not exceeding one year. The law also envisages a fine or imprisonment sentence not exceeding one year for those who enable a third party to become familiar with a conversation, a statement or a message subject to unauthorized wiretapping and recording. If officials in the performance of duties commit the specified offence, they will be punished by imprisonment sentence not exceeding three years.
Article 174 (unauthorized photographing) stipulates a fine or imprisonment of up to one year for the perpetrators who make an unauthorized photographic, film, video or other recording of a person and thereby considerably intrude upon their personal life or who deliver or show such a recording to a third person or otherwise make it familiar to a third party. If officials in the performance of their duties commit the offence referred to in paragraph 1, they shall be punished by imprisonment of up to three years.
Article 175 (unauthorized publication and presentation of somebody else's documents, portraits and recordings) stipulates a fine or imprisonment up to one year for the perpetrator who publishes or displays a file, portrait, photograph, film or a phonogram of a personal nature without the consent of the person who put together the file or to whom the file relates, or without the consent of the person shown in the portrait, photograph or film or the person whose voice is recorded on the phonogram or without the consent of another person whose consent is required by law and thus considerably intrudes into the personal life of that individual. If officials in the performance of their duties commit the specified criminal offence, they will be punished by imprisonment of up to three years.
Article 176 (unauthorized collection of personal data) stipulates a fine or imprisonment of up to one year for the perpetrator who without authorization obtains, discloses and uses personal data that are collected, processed and used in compliance with the law for the purpose they are not intended for. The same penalty is imposed on those who unlawfully collect personal data about citizens, or use the data thus collected. If officials in the performance of their duties commit the specified criminal offence, they will be punished by imprisonment of up to three years.

Article 197 (spreading information about private and family life) of the Criminal Code provides that whoever discloses any information from personal or family life of a person which could harm their honour or reputation will be punished by a fine of EUR 3,000 to EUR 10,000. If the offence was committed through the media or similar means or at a public gathering, the perpetrator will be punished by a fine of EUR 5,000 to EUR 14,000. If the information disclosed or spread has led or could have lead to serious consequences for the damaged person, the perpetrator will be punished by a fine of at least EUR 8,000. For the disclosure or spreading information of personal or family circumstances done in the performance of an official or journalistic profession, while defending a right or protecting legitimate interests, the perpetrator will not be punished, if s/he proves the veracity of his/her allegations or if they prove that they had reasonable grounds to believe in the veracity of what they disclosed or spread. The truthfulness or untruthfulness of what is disclosed or spread from personal or family life of a person cannot be proven, except in cases of disclosing or spreading personal or family circumstances that was done in the performance of an official duty, journalistic profession, and the defence of a right or the protection of legitimate interests.

Article 355 (accessing protected computer and computer network without authorization) stipulates a fine or imprisonment of up to one year for the perpetrator who, in violation of the protection measures, makes an unauthorized access to a computer or a computer network. The same penalty is imposed on the offender who makes an unauthorized interception of computer data,

while a fine or imprisonment of up to three years is stipulated for the perpetrator who uses data obtained in the previously mentioned manner. If the acts referred to in paragraph 3 of that Article had severe consequences for another person, the perpetrator is punished by imprisonment from six months to five years. The imprisonment sentence ranging from 6 months to five years is stipulated for the perpetrator who uses data in the manner envisaged in this criminal offence and if the offence had severe consequences for another person.
Article 211 (displaying pornographic material) provides that the one who sells, displays, or publicly exposes, or otherwise makes available texts, images, audio-visual or other objects of pornographic content to a child or shows them pornographic performances, will be punished by a fine or imprisonment from six months to five years. Whoever uses the child for the production of images, audio-visual or other objects of pornographic content, or pornographic performance, shall be punished by imprisonment from six months to five years. Whoever sells, displays, publicly displays, electronically or otherwise makes available images, audio-visual or other objects of pornographic content created by child exploitation for production of images, audio-visual or other objects of pornographic content, or pornographic performance will be punished by imprisonment of up to two years. The objects will be seized and destroyed.

Article 41, paragraph 3 of the Constitution prescribes that a person in official capacity may enter the dwelling place or other premises without the court warrant and search them without witnesses, if this is necessary for the prevention of execution of criminal offence, immediate apprehension of a perpetrator of the criminal offence or to save people and property.

Criminal Procedure Code, Article 75 stipulates that the search of dwelling and other premises of the accused or other persons and their movable things outside the dwelling can be conducted if it is likely that the search will lead to the apprehension of the accused or to finding the traces of a criminal offence or objects important to the criminal procedure. In this regard, the search of the movable things covers the search of computers and similar devices for automatic data processing that are connected to the computer as well. Search of persons may be carried out also when it is likely that in the course of search, traces and objects relevant to the criminal proceedings would be found.
Article 76 of the Criminal Procedure Code provides that the search is ordered by court, by issuing a written, reasoned warrant. Before the commencement of the search, the search warrant is submitted to the person to be searched or whose premises are to be searched. Before the search, the person against whom the search warrant has been issued is asked to voluntarily hand over the wanted person or objects. Those persons will be instructed that they are entitled to retain an attorney-at-law i.e. a defence counsel who may be present during the search. If a person against whom a search warrant has been issued demands the presence of an attorney-at-law or defence counsel, the commencement of the search will be postponed until his/her arrival, but at the longest for two hours. The search may commence without previously presenting a warrant or without a previous invitation to hand over the person or objects and without an instruction on the right to a defence counsel or attorney-at-law, if armed resistance or other violence is expected or if it is necessary to conduct immediate search of premises or the destroying of traces of criminal offence or objects important for the criminal procedure is manifestly being prepared or has started or if the search is to be carried out in public premises.
Article 79 of the Criminal Procedure Code, stipulates the procedure of entering a person’s dwelling without a warrant and conducting a search. The said Article provides that an authorized police officer may enter someone else's dwelling or other premises and implement search if needed without a court order, if the possessor of the dwelling requires it or if someone calls for help or in order to enforce a court decision on detention or bringing in the accused or other persons, or for deprivation of liberty of a fugitive perpetrator of a criminal offence that is prosecuted ex officio, in cases of offences punishable by imprisonment of more than three years, or in order to eliminate a serious danger to life and health or property of greater value. The possessor of the dwelling, if present, has the right to lodge an objection against the procedure conducted by the authority referred to in paragraph 1 of this Article. An authorised police officer is obliged to inform the possessor of the dwelling of this right and to enter his/her objection in the certificate of entry into the dwelling or in the official record on the search of the dwelling.

Criminal Procedure Code prescribes that measures of secret surveillance may be ordered against persons for whom there are grounds for suspicion that they themselves or with other persons performed the following criminal offences:

- punishable by imprisonment of ten years or a more severe sentence;
- having elements of organized crime;
- having elements of corruption, as follows: money laundering, causing false bankruptcy, abuse of assessment, passive bribery, active bribery, disclosure of an official secret, trading in influence, as well as abuse of authority in economy, abuse of an official position and fraud in the conduct of an official duty punishable by imprisonment of eight years or a more serious sentence;
- abduction, extortion, blackmail, meditation in prostitution, displaying pornographic material, usury, tax and contributions evasion, smuggling, unlawful processing, disposal and storing of dangerous substances, attack on a person acting in an official capacity during performance on an official duty, obstruction of the pleading process, criminal association, unlawful keeping of weapons and explosions, illegal crossing of the state border and smuggling in human beings;
- against the security of computer data.

Upon a written proposal of the Public Prosecutor containing a statement of reasons, investigative judge may order the following measures of secret surveillance: secret surveillance and technical recording of telephone conversations i.e. other communication carried out through means for distance technical communication as well as private conversations held in private or public premises or at open, and secret photographing and video recording in private premises. These measures may also be ordered against persons for whom there are grounds for suspicion that they have been conveying to the offender or from the offender of criminal offences for which a measure of secret surveillance may be ordered, messages in connection to the criminal offence, or that the offender has been using their telephone lines or other electronic communication devices. Measures of secret surveillance: simulated purchase of objects or persons and simulated giving and taking of bribe; supervision over the transportation and delivery of objects of criminal offence; recording conversations upon previous informing and obtaining the consent of one of interlocutors; use of undercover investigators and cooperative witnesses, are ordered by the Public Prosecutor, at the police proposal containing a statement of reasons.

77. What is the practical experience with implementing the legislation in this area?

The legal definitions of regulations that are listed in response to the question No. 76 are clear, specific and precise, so there are no difficulties with their implementation in the practice of the courts.

78. Respect of privacy: is privacy safeguarded by law? Is any case of telephone tapping or house search allowed without a judge's warrant?

The commitment of Montenegro and its citizens to live in a country where the fundamental value is respect for human rights and freedoms, democracy and the rule of law was confirmed by constitutional regulation. Thus, the right to privacy is enshrined in constitutional provisions. Namely, Article 28 of the Constitution of Montenegro guarantees inviolability of physical and mental integrity of individuals, their privacy and personal rights. Article 40 of the Constitution guarantees that everyone has the right to respect of private and family life, while Article 41 guarantees inviolability of dwellings and impossibility of entering the home or other premises against the will of their possessor, or of conducting a search without a court warrant. Article 42 para. 3 of the Constitution stipulates that a person in official capacity may enter a dwelling or other premises without a court warrant and conduct a search without the presence of witnesses if it is necessary to prevent the commission of a criminal offence, outright capture of an offender or in order to save

lives and property. Article 42 guarantees inviolability of confidentiality of letters, telephone conversations and other means of communication. The principle of inviolability of confidentiality of letters, telephone calls and other means of communication may be set aside only by a court decision if it is necessary for the conduct of criminal proceedings or for the security of Montenegro.

The Constitution guarantees everyone the protection of his/her personal data. Use of personal data for purposes other than those for which they were collected is prohibited. Everybody has the right to be informed about the personal data collected about him/her and the right to judicial protection in case of abuse (Article 43 of the Constitution of Montenegro). The Law on Protection of Personal Data (Official Gazette of Montenegro 79/08) ensures the protection of personal data in accordance with the principles and standards contained in the ratified international treaties on human rights and fundamental freedoms and generally accepted rules of international law. Article 2 of the Law stipulates that personal data can be processed for purposes stipulated by law or with the previously obtained consent of the person whose data are processed. Personal data cannot be processed to a greater extent than necessary to achieve the purpose of processing or in a manner not in accordance with their purpose. Protection of personal data is provided to every person regardless of their nationality, residence, skin color, sex, language, religion, political or other belief, ethnicity, social origin, financial standing, education, social status or other personal capacity.

The Criminal Code of Montenegro protects the stated Constitutional principles guaranteeing the right to privacy by the following criminalizations:
Article 162 (unlawful deprivation of liberty) stipulates the punishment of imprisonment not exceeding one year for anyone who unlawfully incarcerates, keeps in custody or in any other manner unlawfully deprives others of liberty or limits their freedom of movement. The attempt of the above acts is also punishable. If the offence was committed by persons in official capacity through abuse of their official position or authorisation, they will be punished by imprisonment from six months to five years. If the act of unlawful deprivation of liberty lasted longer than thirty days, or if it was conducted in a cruel manner, or if the health of a person unlawfully deprived of liberty in that manner was seriously impaired or other serious consequences occurred, the offender will be sentenced to one to eight years of imprisonment. If death of a person unlawfully deprived of liberty occurs, the offender will be sentenced to two to twelve years of imprisonment.
Article 169 (infringement of inviolability of dwelling) criminalizes the violation of the inviolability of the home by stipulating, that an unauthorized intrusion in other person’s dwelling or closed premises or not leaving such home or premises upon the request of an authorized person is punishable by a fine or imprisonment of up to one year. If officials in the performance of their duties commit the criminal offence, they will be punished by imprisonment not exceeding three years. The perpetrator will be punished for the attempt of this criminal offence.

Article 170 (illegal search) criminalizes illegal search and stipulates imprisonment sentence of up to three years for a person in an official capacity who during performance of his or her duty conducts unlawfully the search of dwellings, premises or persons.
Article 171 (unauthorized disclosure of secret) stipulates that if an attorney-at-law, a physician or other person discloses without permission a secret that has come to his or her knowledge during performance of his or her professional duties, s/he will be sentenced to imprisonment sentence of up to one year. The person who discloses a secret in a public or in other person’s interest which is preponderant to the interest of keeping secret, will not be punished for the said offence.
Article 172 (infringement of privacy of mail and other parcels) stipulates a fine or imprisonment of up to one year for those who open another person’s letters, telegrams or any other closed document or parcel or otherwise violate their secrecy and for those who in an unauthorized manner hold, conceal, destroy or deliver to another person somebody else's letter, telegram or other parcel or who violate the confidentiality of electronic mail. The same penalty is imposed on those who communicate to a third party the content that they learned by violating the secrecy of someone else's letter or any other document or parcel, telegram or other sealed document or parcel, or use their contents. If officials in the performance of their duties commit the specified criminal offence, they are punished by imprisonment sentence of up to three years.
Article 173 (unauthorized wiretapping and recording) stipulates that perpetrators who use special listening devices to wiretap or record a conversation, statement or any other information not indented for their use, in an authorized manner, will be punished by a fine or by

imprisonment sentence not exceeding one year. The law also envisages a fine or imprisonment sentence not exceeding one year for those who enable a third party to become familiar with a conversation, a statement or an information subject to unauthorized wiretapping and recording. If officials in the performance of official duties commit the specified offence, they will be punished by imprisonment sentence not exceeding three years.
Article 174 (unauthorized photographing) stipulates a fine or imprisonment of up to one year for the perpetrators who make an unauthorized photographic, film, video or other recording of a person and thereby considerably intrude upon their personal life or who deliver or show such a recording to a third person or otherwise make it familiar to a third party. If officials in the performance of their duties commit the offence referred to in paragraph 1, they are punished by imprisonment of up to three years.
Article 175 (unauthorized publication and presentation of somebody else's documents, portraits and recordings) stipulates a fine or imprisonment up to one year for the perpetrator who publishes or displays a file, portrait, photograph, film or a phonogram of a personal nature without the consent of the person who put together the file or to whom the file relates, or without the consent of the person shown in the portrait, photograph or film or the person whose voice is recorded on the phonogram or without the consent of another person whose consent is required by law and thus considerably intrudes into the personal life of that individual. If officials in the performance of their duties commit the specified criminal offence, they will be punished by imprisonment of up to three years.
Article 176 (unauthorized collection of personal data) stipulates a fine or imprisonment of up to one year for the perpetrator who without authorization obtains, discloses or uses personal data that were collected, processed and used in compliance with the law for the purpose they were not intended for. The same penalty is imposed on those who unlawfully collect personal data about citizens, or use the data thus collected. If officials in the performance of their duties commit the specified criminal offence, they will be punished by imprisonment of up to three years.

Article 197 (spreading information about private and family life) of the Criminal Code provides that whoever discloses or spreads any information from personal or family life of a person which could harm their honour or reputation will be punished by a fine of three thousand to ten thousand EUR. If the offence was committed through the media or similar means or at a public gathering, the perpetrator will be punished by a fine of five thousand to fourteen thousand EUR. If the information disclosed or spread led or could have led to serious consequences for the damaged person, the perpetrator will be punished by a fine of at least eight thousand EUR. The perpetrator will not be punished for disclosing or spreading information of personal or family circumstances done in the performance of an official or journalistic profession, while defending a right or protecting legitimate interests, if s/he proves the veracity of his/her allegations or if s/he proves that s/he had reasonable grounds to believe in the veracity of what s/he was disclosing or spreading. The truthfulness or untruthfulness of what is disclosed or spread from personal or family life of a person cannot be proven, except in cases of disclosing or spreading personal or family circumstances that was done in the performance of an official duty, journalistic profession, the defence of a right or the protection of legitimate interests.

Article 355 (accessing protected computer and computer network without authorization) stipulates a fine or imprisonment of up to one year for the perpetrator who, in violation of the protection measures, accesses a computer or a computer network without authorization. The same penalty is imposed on the offender who makes an unauthorized interception of computer data, while a fine or imprisonment of up to three years is stipulated for the perpetrator who uses data obtained in the previously mentioned manner. If the acts referred to in paragraph 3 of that Article had severe consequences for another person, the perpetrator is punished by imprisonment from six months to five years. The imprisonment sentence ranging from 6 months to five years is stipulated for the perpetrator who uses data in the manner envisaged in this criminal offence and if the offence had severe consequences for another person.

Article 41, paragraph 3 of the Constitution prescribes that a person in official capacity may enter the dwelling place or other premises without the court warrant and search them without witnesses, if this is necessary for the prevention of execution of criminal offence , immediate apprehension of a perpetrator of the criminal offence or to save people and property.

Criminal Procedure Code, Article 75 stipulates that the search of dwelling and other premises of the accused or other persons and their movable things outside the dwelling can be conducted if it is likely that the search will lead to the apprehension of the accused or to finding the traces of criminal offences or objects important to the criminal procedure. In this regard, the search of the movable things covers the search of computers and similar devices for automatic data processing that are connected to the computer as well. Search of persons may be carried out if it is likely that in the course of search traces and objects relevant to the criminal proceedings would be found.
Article 76 of the Criminal Procedure Code provides that the search is ordered by court, by issuing a written, reasoned warrant. Before the commencement of the search, the search warrant is submitted to the person to be searched or whose premises are to be searched. Before the search, the person against whom the search warrant has been issued is asked to voluntarily hand over the wanted person or objects. That person will be instructed that s/he is entitled to retain an attorney-at-law i.e. a defence counsel who may be present during the search. If a person against whom a search warrant has been issued demands the presence of an attorney-at-law or defence counsel, the commencement of the search will be postponed until his/her arrival, but at the longest for two hours. The search may commence without previously presenting a warrant or without a previous invitation to hand over the person or objects and without an instruction on the right to a defence counsel or attorney-at-law, if armed resistance or other violence is expected or if it is necessary to conduct immediate search of premises or the destroying of traces of criminal offence or objects important for the criminal procedure is manifestly being prepared or has started or if the search is to be carried out in public premises.
Article 79 of the Criminal Procedure Code, stipulates the procedure of entering a person's dwelling without a warrant. The said Article provides that an authorized police officer may enter someone else's dwelling or other premises and implement search if needed without a court order, if the possessor of the dwelling requires so or if someone calls for help or in order to enforce a court decision on detention or bringing in the accused or other persons, or for deprivation of liberty of a fugitive perpetrator of a criminal offence that is prosecuted ex officio, in cases of offence punishable by imprisonment of more than three years, or in order to eliminate a serious danger to life and health or property of greater value. The possessor of the dwelling, if present, has the right to lodge an objection against the procedure conducted by the authority referred to in paragraph 1 of this Article. An authorised police officer is obliged to inform the possessor of the dwelling of this right and to enter his/her objection in the certificate of entry into the dwelling or in the official record on the search of the dwelling.
Article 158 of the new Criminal Procedure Code which entered into force and started to be applied prescribes that measures of secret surveillance may be ordered against persons for whom there are grounds for suspicion that they themselves or with other persons performed the following criminal offences:

- punishable by imprisonment of ten years or a more severe sentence;
- having elements of organized crime;
- having elements of corruption, as follows: money laundering, causing false bankruptcy, abuse of assessment, passive bribery, active bribery, disclosure of an official secret, trading in influence, as well as abuse of authority in economy, abuse of an official position and fraud in the conduct of an official duty punishable by imprisonment of eight years or a more serious sentence;
- abduction, extortion, blackmail, meditation in prostitution, displaying pornographic material, usury, tax and contributions evasion, smuggling, unlawful processing, disposal and storing of dangerous substances, attack on a person acting in an official capacity during performance on an official duty, obstruction of the pleading process, criminal association, unlawful keeping of weapons and explosions, illegal crossing of the state border and smuggling in human beings;
- against the security of computer data.

In terms of procedure for ordering measures of secret surveillance, the Criminal Procedure Code which will cease to be valid once the implementation of the new Code starts, is currently applied. Upon a written proposal of the Public Prosecutor containing a statement of reasons, investigative judge may order the following measures of secret surveillance: secret surveillance and technical recording of telephone conversations i.e. other communication carried out through means for distance technical communication as well as private conversations held in private or public

premises or at open, and secret photographing and video recording in private premises. These measures may also be ordered against persons for whom there are grounds for suspicion that they have been conveying to the offender or from the offender of criminal offences for which a measure of secret surveillance may be ordered, messages in connection to the criminal offence, or that the offender has been using their telephone lines or other electronic communication devices. Measures of secret surveillance: simulated purchase of objects or persons and simulated giving and taking of bribe; supervision over the transportation and delivery of objects of criminal offence; recording conversations upon previous informing and obtaining the consent of one of interlocutors; use of undercover investigators and cooperative witnesses, are ordered by the Public Prosecutor, at the police proposal containing a statement of reasons.
The new Code, apart from the above, also provides for a new measure of secret surveillance, secret supervision and technical recording of persons and objects, and in accordance with the new concept of criminal procedure and the measure of secret surveillance upon the Public Prosecutor's proposal containing a statement of reasons, shall be ordered through written order by the investigative judge, i.e. by the Public Prosecutor, at the police proposal containing a statement of reasons.

- Right to marry and right to found a family

79. Elaborate how the right to marry and the right to found a family are protected within your legislation.

The Constitution (Official Gazette of Montenegro 1/07) stipulates that a marriage can be concluded only with the free consent of both a woman and a man, while the Family Law (Official Gazette of Montenegro 1/07) defines marriage as cohabitation of a man and a woman, regulated by law.
Free consent to marriage is one of the fundamental constitutional freedoms of a person and a citizen, which is specifically protected in the most important international documents on human rights.

It is necessary to fulfill the following conditions for the conclusion of a valid marriage: future spouses' free will consents to conclude a marriage, diversity of genders, conclusion of marriage for the purpose of cohabitation and the absence of a marriage impediment.

A marriage impediment is a fact or circumstance stipulated by law that impedes the conclusion of a valid marriage. The society protects important social interests by laying down marriage impediments and interests of each individual as well. The facts which impede the conclusion of a valid marriage in Montenegrin law of matrimony are an existing marriage, mental illness and mental incapacity, being under age, kinship and the lack of will.

The Family Law explicitly prohibits a person to simultaneously have two marriages. No one can conclude a new marriage without having terminated the previous one in the manner provided by law. This rule is an expression of the principle of monogamy, which was adopted by our law. The Family Law also stipulates certain prevention measures in order to prevent polygamy (obligations of future spouses to submit birth certificates, which have to be issued within the previous three months, etc.) In addition to prevention, the law provides certain repressive measures against polygamy. The nullity of marriage that is provided as a sanction against polygamy is considered not sufficient in this case, and the Montenegrin Criminal Code stipulates criminal offence of bigamy. It has two forms: one is when a person who is already married concludes a new marriage, whereas the second form is committed by a person who decides to marry a person knowing that person to be already married.
A marriage is not valid if a person who is mentally incapacitated due to a mental illness or other reasons concludes it. The reason for this sanction is the lack of intentional will for marriage. In addition to these legal reasons, such marriages cannot be allowed because they do not provide sufficient guarantees for the development of healthy offspring.

The term minority in law of matrimony implies a certain age, which by law is not considered as sufficient for two persons of different sexes to conclude a marriage. According to the provisions of the Family Law, minors are all those persons who have not reached 18 years of age. In exceptional cases, the court may permit conclusion of a marriage to a minor person older than 16 years.
Also, all three types of kinship: consanguinity, adoptive relationship and in-law relationship, obstruct the conclusion of a valid marriage.
The will of future spouses to conclude a marriage must be free and without any fault. In our law, there is no provision ordering a person to conclude a marriage.
The Family Law regulates the right to parenthood. The right of every person is to decide freely on giving birth to their children and the right of parents is to create opportunities and ensure conditions for their healthy mental and physical development, both in the family and society.
The national policy related to family planning is regulated by the constitutional principle, with the state creating conditions that encourage the birth of children. Furthermore, the Family Law provides that the state, by measures of social, health and legal protection, through the system of education and information, employment policy, housing and tax policy, as well as by developing all other activities in favour of the family and its members ensures conditions for free and responsible parenthood.

80. What are your legal provisions on marriage or legal partnership, if any, including of same-sex couples?

In the legal system of Montenegro, the Constitution of Montenegro (Official Gazette of Montenegro 1/07) and the Family Law (Official Gazette of Montenegro 1/07) govern marriage and marital rights.

The Constitution stipulates that a marriage can be concluded only with the free consent of both a woman and a man, while the Family Law defines marriage as a community of a man and a woman regulated by law.

The free consent to marriage is one of the fundamental constitutional freedoms of a person and a citizen, which is specifically protected in the most important international documents on human rights.

In our law, there is no provision based on which a marriage could be concluded or maintained by force. One of the basic conditions for concluding a valid marriage is the consent of future spouses.

The diversity of sexes is a biological basis for marriage and it was standardized in the Montenegrin legal system as a prerequisite for its valid conclusion. This requirement is highlighted in the definition of marriage, by emphasizing that it is a community of a man and a woman.

The Family Law stipulates that a marriage is concluded in order to obtain a marital community of spouses, and it is the basic right and duty of spouses.

The same law explicitly prohibits a person to simultaneously have two marriages. No one can conclude a new marriage prior to terminating the previous one in the manner provided by law. This rule is an expression of the principle of monogamy, which was adopted by our law. Also, all three types of kinship: consanguinity, adoptive relationship and in-law relationship obstruct the conclusion of a valid marriage. A person who, due to a mental illness or other reasons is incapable of reasoning, a person who is under 18 years of age are not allowed to conclude a marriage, while the court may in extreme cases allow a minor person older than 16 years to conclude marriage.

By concluding a marriage, spouses are entitled to certain rights and they have duties in respect to which both spouses are equal. The principle of equality of spouses is reflected in the application of the Constitutional principle of equality of spouses and is manifested by the full equality of a husband and a wife concerning acquiring, exercising and protecting all rights and obligations in marriage.

The Family Law stipulates that a durable common law marriage of a man and a woman is equal to a marriage in terms of rights to mutual maintenance and other property related relations.

The Constitution made equal the rights and obligations of children born out of wedlock and children born in wedlock.

- Freedom of thought, conscience and religion

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

Article 46 of the Constitution guarantees to every person the right to freedom of thought, conscience and religion, as well as the right to change religion or belief. In addition, the same article guarantees to everyone freedom to practice religion or belief through prayers, preaches, customs and rites, either individually or collectively, in public or in private. No person is obliged to declare his/her religious or other beliefs.

The Constitution provides that religious communities are separated from the state and equal and free in practicing religious rites and religious activities. Also, the Constitution guarantees right to conscientious objection. Thus, no person is obliged to perform military or other duty involving the use of weapons against their religion or belief.

The Law on Legal Position of Religious Communities (Official Gazette of the Socialist Republic of Montenegro 9/77 and 26/77) and the Law on Celebration of Religious Holidays **(**Official Gazette of the Republic of Montenegro 56/93) govern the exercise of religious rights. Under the Law on Legal Position of Religious Communities, the establishment of religious institutions and organizations, i.e. religious communities is free, accompanied with a duty to notify the administration authority responsible for internal affairs at the territory of the local self-government where the newly founded or abolished religious community has its registered office. The Law explicitly prohibits exploitation of religious communities and their institutions as well as of religious activities and religious feelings for political purposes. The Law also prohibits acts preventing or disrupting the practicing of religious rites and religious activities or manifestation of religious feelings. Violations of these and other provisions of the Law carry punitive measures. Given that freedom of religion is guaranteed, forced admission to membership of a religious community, as well as coerced participation in religious rites are prohibited.

Religious rites may be practiced in churches, temples, official premises, cemeteries, private houses and alike, without an authorisation of the competent bodies, and with an authorisation of the competent body outside of these places.

Persons placed in health, social and similar institution are allowed to profess their religion, in line with the house rules of the institution. For the purpose of practicing religious rites, these persons may receive visits from religious leaders if they request so. The right to lead a religious life is also guaranteed to persons who serve prison sentences.

As part of their operations, religious communities have the right to establish religious schools and religious centres for accommodation of attendants of those schools. Such schools are not part of the educational system of Montenegro since they are directly managed by religious communities, which establish the curriculum and provide the staff for its implementation. Every religious community has availed itself of this right by organising religious teaching within its facilities. Also, as part of their activities, religious communities are allowed to publish and distribute religious press. This activity is governed by general regulations on press and publishing activity. Religious communities avail themselves of this right and as result each religious community in Montenegro has its own print media.

Free manifestation of religious beliefs is also facilitated by legal provisions that allow believers to be absent from work during their major holidays. The Law on Celebration of Religious Holidays provides for the right to paid absence in order to celebrate religious holidays. Orthodox believers are entitled to paid absence for the Day before Christmas, Christmas (two days), Easter Friday, Easter (two days) and Patron Saints Day, Roman Catholics for the Day before Christmas,

Christmas (two days), Easter Friday, Easter (two days) and the All Saints, Muslims for Ramadan Bayram (three days) and Kurban Bayram (three days) and Jews for Pasha (two days) and Yom Kippur (two days). The Law provides for misdemeanour responsibility and fining of the responsible person in a company, institution, other legal person and state body and on an entrepreneur who fails to provide paid absence to an employee during celebration of religious holidays.

The state provides assistance to religious communities by covering part of contributions for pension, social and health insurance of priests (50 % of these costs), but also, and this is the major part of the assistance, by investing in sacral buildings, particularly in order to ensure protection of buildings defined as the monuments of culture. The state financially supports religious events and cultural activities of religious communities. Religious communities dispose of their property, and may collect voluntary contributions for religious purposes, which they are free to dispose of.

The Criminal Code establishes the violation of the freedom to profess and practice religion as a criminal offence.

Regarding freedom of expression, please see the reply to question 85: Political Criteria, Democracy and the Rule of Law.

82. Please give details and explain any limitations to this freedom which are permitted.

The freedom to manifest religious beliefs may be subject only to such restrictions as necessary for the protection of life and health of people, public order and peace, as well as of other rights guaranteed by the Constitution (Article 46).

In the time of declared war or public emergency the exercise of specific rights and freedoms may be restricted to the extent necessary. Such temporary restrictions may not be based on gender, national origin, race, religion, language, ethnic or social origin, political or other belief, property status or any other personal characteristic. The right to freedom of thought, conscience and religion is one of the rights which may not be restricted in these situations, save for the legitimate reasons set out in Article 46 of the Constitution.

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

a) Legislative measures

The Constitution of Montenegro, as the supreme legal instrument of national legislation, prohibits all direct or indirect discrimination on any grounds (Article 8). Also, the same Article provides basis for the adoption of regulations and introduction of special measures which are aimed at creating conditions for the achievement of national, gender and overall equality and protection of persons who are in an unequal position on any grounds. By virtue of this Article such regulations and measures are not considered discrimination (positive discrimination, affirmative action). These special measures have limited temporary effect, i.e. they must be discontinued when the objectives for which they were taken have been achieved. Article 17 of the Constitution provides for equality before the law, regardless of any peculiarity or personal characteristic. The Constitution guarantees to everyone the right to equal protection of their rights and freedoms (Article 19). The Constitution prohibits inciting or encouraging of hatred or intolerance on any ground (Article 7). The restrictions of specific human rights and freedoms in the time of declared war or public emergency may not be based on gender, ethnicity, race, religion, language, ethnic or social origin, political or other belief, property status or any other personal characteristic (Article 25). Article 50 of the Constitution provides that the competent court may stop dissemination of information and ideas through the public media only if it is necessary, *inter alia*, in order to prevent promoting of racial, national and religious hatred or discrimination. Also, the Constitution prohibits operation of political

and other organizations whose activities are aimed at incitement of national, racial, religious and other types of hatred and intolerance.

Montenegro has accepted the majority of international treaties for the protection and promotion of human rights and freedoms. Under the Constitution of Montenegro, ratified and published international treaties and generally accepted rules of international law are an integral part of the national legal system and take precedence over national laws. In the field of suppressing discrimination, Montenegro is a party of the following most important international instruments: International Convention on the Elimination of All Forms of Racial Discrimination from 1965, Convention on the Elimination of All Forms of Discrimination against Women from 1979, Convention on the Rights of the Child from 1989, International Convention on the Suppression and Punishment of the Crime of Apartheid from 1973., Convention of the International Labour Organization (no.100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value from 1951, Convention of the International Labour Organization concerning Discrimination in Respect of Employment and Occupation, 1958 (no.111), UNESCO Convention against Discrimination in education, 1960, European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Framework Convention for the Protection of National Minorities, 1995.

Along with the Constitution and international treaties, the national legislation also includes a number of laws whose provisions prohibit discrimination, promote equality and define anti-discriminatory measures. The most important statutory acts in the legal system of Montenegro which prohibit discrimination and promote equality are as follows:

- the Law on Minority Rights and Freedoms guarantees to persons belonging to minorities equality with other citizens and enjoyment of equal protection of the law. This Law also prohibits all direct and indirect discrimination on any grounds, including race, colour, gender, national or social origin, birth or similar status, religion, political or other conviction, property status, culture, language, age and mental and physical disability;
- -the Law on Employment provides that unemployed persons are equal in the exercise of the right to employment regardless of their ethnicity, race, gender, language, religion, political or other belief, education, social origin, property status and other personal characteristic;
- -The Labour Law prohibits direct and indirect discrimination of persons seeking employment and employees on the ground of gender, birth, race, religion, the colour of the skin, age, pregnancy, health condition or disability, ethnicity, marital status, family status, sexual orientation, political or other belief, social origin, property status, membership in political and trade union organizations or any other personal characteristic (Article 5). These types of discrimination are defined in detail by this law. Direct discrimination is understood to mean any treatment based on any of the above noted grounds which puts a person seeking employment or an employee in a less favourable position compared to other persons in the same or similar situation. Under this Law, indirect discrimination occurs when a specific provision, requirement or practice puts or would put a person seeking employment or an employee in a less favourable position compared to other persons on the basis of specific characteristic, status, orientation or conviction (Article 6). These types of discrimination are prohibited in relation to employment requirements and selection of candidates, work conditions and all rights arising from labour relations, education, training and improvement, promotion to higher post and dismissal. Pursuant to Article 10 of the Labour Law, in the case of discrimination a person seeking employment and an employee may bring proceedings before the competent court, in accordance with law;
- - the Law on Social and Child Protection provides that citizens are equal in the exercise of social and child protection rights, regardless of their ethnicity, race, gender, language, religion, social origin or other personal characteristic;
- - the Law on Health Protection provides that citizens are equal in the exercise of the right to health protection regardless of their ethnicity, race, gender, age, language, religion, education, social origin, property and other personal characteristic;

- - the Law on Gender Equality defines and governs gender equality rights and creation of equal opportunities for participation of women and men in all areas of social life;
- -a set of laws from the field of education (General Law on Education, Law on Primary Education, Law on High School, Law on Higher Education), as well as a set of laws from the area of media (Media Law, Broadcasting Law, Law on Public Broadcasting Services of Radio of Montenegro and Television of Montenegro) also take an anti-discriminatory approach in relation to the exercise of the rights from these areas.

The Criminal Code – within the legal system of Montenegro, discrimination is criminalized by the criminal legislation. The relevant protection under criminal law is governed by Title 15 of the Criminal Code of Montenegro - Criminal Offences against the Man and the Citizen.

The criminal offence - violation of the right to use language and alphabet is established by Article 158 of the Criminal Code as a special type of violation of equality which occurs when citizens are denied the possibility to use their own language or alphabet in the exercise of their rights or when addressing authorities or organizations or when their right to do so is restricted, contrary to the regulations on the use of language and alphabet of nations and persons belonging to minorities and ethnic communities who live in Serbia and Montenegro. This criminal offence carries a fine or imprisonment up to one year. Article 159 of the Criminal Code establishes infringement of equality as a criminal offence. Violation of freedom of movement and settlement is criminalised by Article 163 of the Criminal Code of Montenegro.

Title 20 (Articles 224-232) of the Criminal Code criminalizes criminal offences against labour-related rights. Article 225 establishes the violation of equality in employment as a criminal offence, Article 231 of the Criminal Code provides for the criminal offence of violation of rights during temporary unemployment, Article 269 of the Criminal Code criminalises violation of equality in the performance of economic activity.

The above mentioned criminal offences are prosecuted *ex officio* by the competent Public Prosecutor. In criminal proceedings, potential victims of all these types of discrimination have the status of injured persons whose personal or property rights have been put at risk or violated through the commission of a criminal offence. The injured person has the right to report a criminal offence to the competent Public Prosecutor. The right to lodge a report of crime with the competent Public Prosecutor is defined by the Article 229 of the Code of Criminal Procedure. If a report of a crime is submitted to a court, the police or a Public Prosecutor not having jurisdiction, they are under a duty to accept the report and submit it immediately to the competent Public Prosecutor.

Article 62 of the Code of Criminal Procedure provides that an injured person acting as a prosecutor has the same rights as the Public prosecutor, except for those which are vested in the Public Prosecutor as a state body.

b) Strategic documents

The Government adopted a number of strategies and action plans in different fields important for the fight against discrimination. The most important are as follows: the Strategy on Minority Policy (2008-2012), Strategy for the Improvement of Status of RAE Population in Montenegro (2008-2012), National Action Plan of the “Decade of Roma Inclusion 2005-2015” in the Republic of Montenegro, Action Plan for the Achievement of Gender Equality (2008-2012), National Action Plan for Youth (2007-2011), Strategy for Permanent Resolution of the Issue of Refugees and Internally Displaced Persons in Montenegro (2005-2008), Strategy on Poverty Reduction and Social Exclusion (2007-2011).

c) Non-legislative Measures

Non-legislative measures aimed at suppressing discrimination on all grounds include a set of activities, primarily educational activities (a new concept of education and introduction of civil education into the formal system, seminars, lectures, workshops…), but also public awareness raising campaigns, activities of nongovernmental organizations, international cooperation of Montenegrin state authorities with international organizations, states and international nongovernmental organizations.

The activities of nongovernmental organizations aimed at promoting tolerance, suppressing discrimination and providing assistance to victims of discrimination must particularly be highlighted in this context. These activities are mainly carried out by nongovernmental organisations dealing with the protection of human rights and promotion of non-discrimination through the organization of seminars, workshops, trainings and implementation of projects aiming to promote equality.

The media play a very important role in raising public awareness with regards to the promotion of tolerance and the need to suppress discrimination. The program contents of the public broadcasting service Radio and Television of Montenegro present Montenegro as a multinational, multiethnic and multicultural state. Media campaigns conducted by the state authorities (individually or in cooperation with nongovernmental and international organizations) have resulted in a better-informed public and raised awareness with regards to diversity in Montenegrin society. The most important media campaigns for the promotion of equality and anti-discrimination in the previous period were: 'All Together to School', 'Safe and Sound', 'A Decade of Roma Inclusion', 'Enough', '16 Days of Activism Against Gender Violence', 'Gender Equality – The Basic Value of Democratic Montenegro'.

d) Institutional System

1. The Government of Montenegro – all ministries and other state administration authorities, have a duty to guarantee equality and non-discrimination in the implementation of legislation falling within their competence. The suppression of discrimination, as the basis of the overall observance of guaranteed human rights and freedoms is most directly dealt with by the Ministry for Human and Minority Rights, Ministry of Justice, Ministry of Labour and Social Welfare, Ministry of Education and Science, Ministry of Health, the Ministry of Culture, Sports and Media, Ministry of Interior and Public Administration, Police Directorate, the Institution for Enforcement of Criminal Sanctions, Refugee Care and Support Office, Employment Agency, Human Resource Administration etc. Given the sensitivity of issues relating to the position of minority communities (in particular Roma) and gender equality, two independent departments have been set up within the Ministry for Human and Minority Rights: the Department for Gender Equality Affairs and Department for Promotion and Protection of RAE Population Rights.

2. The Parliamentary Committee for Human Rights and Freedoms examines proposals of laws, other regulations and general acts and other issues referring to: freedoms and rights of the man and the citizen, with special attention to minority rights, implementation of ratified international instruments dealing with the exercise, protection and promotion of these rights; monitors implementation of documents, measures and activities for the promotion of national, ethnic and other types of equality, particularly in the field of education, health, communication, social policy, employment, entrepreneurship, decision making and similar; participates in drafting and development of documents and in harmonisation of legislation in this field with the standards contained in the European law; cooperates with related working bodies of other parliaments and nongovernmental organizations in this fields.

3. The Protector of Human Rights and Freedoms – protects human rights and freedoms guaranteed by the Constitution, law, ratified international treaties on human rights and generally accepted rules of international law in the case these are violated by an action or a failure to act of the state authorities, local self-government bodies and public services and other holders of public offices. This body is easily, without additional costs and procedures, accessible to citizens and able to provide a prompt and efficient intervention. The Protector can also act on his/her own initiative. Proceedings before the Protector are confidential and a person who submits an application or participates in any way in a procedure conducted by the Protector may not be called to responsibility or put in a less favourable position based on this ground. The Protector informs the Parliament and public at large with its findings, opinions and views and thereby contributes to the openness and transparency of the public administration and other public services and bodies towards the Parliament, Government, public and citizens. Under the currently applicable provisions the Protector has two deputies, one among which deals with the protection of minority rights.

4. The judiciary – In Montenegro, judicial power is exercised by 15 Basic Courts, two High Courts, two Commercial Courts, the Appellate Court, the Administrative and Supreme Courts, which act within their respective jurisdictions, defined by the law.

The supreme legal act confers upon the Constitutional Court, in addition to its traditional role of control of constitutionality, the power to decide on compliance of laws and other general acts, not only with the Constitution, but also with ratified international treaties. It has also introduced the institute of constitutional complaint with a view to providing a high degree of protection of human rights and freedoms and entrusts the Constitutional Court with deciding on this legal remedy. Everyone is entitled to address the Constitutional Court if their human rights and freedoms have been violated, after the exhaustion of legal remedies before other state authorities.

84. What is the constitutional status of religions in your country? Is there any state religion? Is there a legislative framework for conscientious objection? If so, please provide details.

The Constitution of Montenegro provides that religious communities are separated from the state and guarantees equality and freedom in practicing rites and religious activities (Article 14) to religious communities operating within the territory of Montenegro. Accordingly, religious communities independently regulate their organization and activities.

Conscientious objection is defined in the constitutional provision of Article 48 of the Constitution of Montenegro, which provides that every person has right to conscientious objection and that no person is under a duty to perform a military or other duty involving the use of weapons, which might be contrary to their religion or belief.

Article 177 of the Law on Army of Montenegro provides that a person who is not ready, due to religion and belief, to participate in the performance of a military duty involving the use of weapons, may invoke conscientious objection.

During war or public emergency all Montenegrin citizens are liable to military service.

In peaceful times, conscripts may be invited to take part, on voluntary basis, in military training for the purpose of acquiring necessary knowledge and performing duties in war for a period not exceeding 15 days within one calendar year.

The Ministry publishes a call for training and defines the manner of its delivery.

Therefore, any person who invokes conscientious objection is allowed to refrain from performing military duties involving the use of weapons.

- Freedom of expression including freedom and pluralism of the media

85. Please 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.

The exercise of the right to receive and impart information is guaranteed by the Constitution of Montenegro (Official Gazette of Montenegro 1/07). Everyone has the right to freedom of expression by speech, writing, picture or in some other manner. The right to freedom of expression may be restricted only by the right of others to dignity, reputation and honour and if it threatens public morality or the security of Montenegro (Art. 47).

The freedom of press and other forms of information is guaranteed, as is the right to start newspapers and other media outlets, without an approval, by way of registration with the competent body. The Constitution guarantees the right to response and the right to correction of any untrue, incomplete or incorrectly conveyed information that violates a person’s right or interest and the right to compensation of damage caused by the publication of untruthful data or information (Art. 49).

There is no censorship in Montenegro. The Constitution provides that the competent court may stop dissemination of information and ideas through the media if so required in order to: prevent calling for forcible destruction of the order defined by the Constitution; preserve territorial integrity of Montenegro; prevent war propaganda or incitement to violence or commission of criminal offences; prevent propaganda of racial, national and religious hatred or discrimination (Art. 50).

Under the Constitution, everyone has the right of access to information held by the state authorities and organizations exercising public authority. This right may be restricted in the interest of: protection of life; public health; morality and privacy; conduct of criminal proceedings; security and defence of Montenegro; foreign, monetary and economic policy (Art. 51).

The rights to freedom of expression guaranteed by the Constitution of Montenegro are defined in more detail in the media legislation, which includes the following laws:

The Law on Media (Official Gazette of the Republic of Montenegro 51/02 and 62/02)

The Broadcasting Law (Official Gazette of the Republic of Montenegro 51/02, 62/02, 46/04, 56/04 and 77/06, and Official Gazette of Montenegro 50/08 and 79/08)

The Law on Ratification of the European Convention on Transfrontier Television (Official Gazette of Montenegro 01/08)

The Law on Public Broadcasting Services of Montenegro (Official Gazette of Montenegro 79/08)

The Law on Electronic Communications (Official Gazette of Montenegro 50/08).

The Law on the Media is a systemic media law which governs: the establishment of the media; mandatory publication of data, rights and duties in the information process; right to correction and response and foreign information activity.

This Law governs the state's obligation to provide and guarantee the freedom of information at the level of standards contained in international human rights documents (UN, OSCE, Council of Europe, EU). Article 1 of the Law provides that this Law should be interpreted and applied in accordance with principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and case-law of the European Court of Human Rights. It further provides that the media are free and that censorship is prohibited.

This Law guarantees right to free establishment and undisturbed operation of the media based on: freedom of expression; freedom of investigation, collection, dissemination, and publication of information; free access to all sources of informaiton; protection of human personality an dignity; and free flow of information. The Law laso guarantees equal participation in the information process to domestic and foreign legal and natural persons (Article 2).

The Law provides that the state provides part of the funds required for the exercise of constitutional and statutory rights of citizens to be informed without any discrimination whatsoever, on the basis of programme contents important for: scientific and educational development, cultural development and informing of persons with hearing and sight impairments. For the purpose of exercising these rights, Montenegro allocates funds for programs in the Albanian language and languages of other national and ethnic groups (Article 3).

The Law also guarantees equal participation in the information process to domestic and foreign legal and natural persons (Article 2).

In case of violation of the constitutional and statutory freedom to information, the Law on Media provides for court protection (Article 4).

Chapter VI of the Law on the Media deals with the right to correction and response, and Article 26 stipulates that every natural and legal person is entitled to correction and response when they consider that their right granted by the Constitution or law has been violated by means of publicised programme contents.

The Broadcasting Law regulates the operations of the electronic media as a specific type of the realisation of the right to freedom of expression, based on the following principles: freedom, professionalism and independence of electronic media; prohibition of all forms of censorship or

illegal interference in the work of electronic media and development of competition and pluralism within the context of human rights and freedoms promotion.

By entry into force of the Law on Electronic Communications and the 2008 Law on Public Service Broadcasting of Montenegro, specific provisions in the Broadcasting Law have been partiallly or completely abolished. First of all, the competencies of the Broadcasting Agency in relation to the allocation of rights to use broadcsting frequences have been abolished. By adopting the Law on Ratification of the Convention on Transfrontier Television, Montenegro has adopted a legal framework which expands the field of freedom of expression, in conformity with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Law on Public Service Broadcasting of Montenegro governs the rights and duties of the national public broadcasters in the Montenegrin media system.

Under this Law, a public service broadcaster is the one which implements high standards of professional ethics and quality, without any discrimination; it satisfies and protects the interest of the public at a national and local level by means of informative, cultural, educational, sports and entertainment programs, and by particularly taking into consideration the needs of children and youth, persons belonging to minority peoples and minority communities, persons with disabilities, persons receiving welfare benefits and other specific groups contributes to the promotion and respect for human rights and freedoms, promotion of ideas of social pluralism, improvement of culture of public dialogue, and the respect for language differences. In this way, the public service broadcaster facilitates free formation of opinions. It enjoys editorial independence in relation to definition of program schemes, production, and broadcasting; editing and broadcasting information on current events; and organization of its operations (Article 9).

Given that editorial independence (Article 13) also implies the independence of journalists who prepare programs, the Law on Public Service Broadcasting guarantees the independence of Radio and Television of Montenegro journalists in relation to the work they perform in the public interest; it also guarantees their protection from liability regarding the viewpoints and opinions expressed in accordance with professional standards and program rules (Article 14).

Public service broadcasters work in the interest of the citizens/public and are accountable solely to the public (Article 12).

The Law on Public Service Broadcasting of Montenegro provides that the budget of Montenegro provides part of the funds for the production and broadcasting of specific programs which are important for the development of science, education and culture; informing of persons with hearing and sight impairments, as well as for programs in Albanian and languages of other minorities. The Law provides that these funds may be used solely for the production of the above mentioned programs (Article 17).

This Law provides for the possibility to establish regional radio and TV studios tasked with a specific duty to produce and broadcast regional programs and programs in languages of minority peoples and minority communities who live in the relevant region (Article 8).

In accordance with the media laws, which are in conformity with the relevant international standards, the media scene in Montenegro is featured by free establishment and work of media, which contributes to variety and pluralism in printed and electronic media.

The adoption of the Law on Free Access to Information contributes to the exercise and promotion of the freedom of expression. The Law on Free Access to Information (Official Gazette 68/05) governs the procedure for the exercise of citizens' rights to seek, receive and use information in the possession of the state authorities. The access to information in possession of state authorities is available free of charge. The right of access to information is guaranteed at the level of principles and standards contained in human rights international instruments. Article 3 of the Law provides that dissemination of information in the possession of state authorities is in the public interest.

The Criminal Code of Montenegro, Title XV – Criminal Offences against Freedoms and Rights of the Man and the Citizen – establises a range of criminal offences related to violations of freedom of expression and freedom of information in general. Thus, Article 178 – Infringement of Freedom of Speech and Public Appearance – provides that anyone who denies or restricts freedom of speech

or public appearance of other person in an unlawful manner is to be sentenced to a fine or imprisonment up to one year. If an official has committed this offence in the performance of his/her duties, he/she is liable to imprisonment for a term of up to three years. Article 179 – Prevention of Printing and Distributing Printed Items and Broadcasting – provides that anyone who prevents or disturbs, without permission, the printing, recording, sale, or distribution of books, magazines, newspapers, audio and visual tapes or other similar printed or recorded items will be sentenced to a fine or imprisonment of up to one year. The same sentence will be imposed on anyone who prevents or disturbs, without permission, broadcast of radio and television programs. If an official commits the said offence in the performance of his/her duties he/she will be sentenced to imprisonment of up to three years. Article 180 – Prevention of Publication of Response and Correction – provides for a fine or imprisonment of up to one year for a person who, contrary to the final and enforceable court decision, declines to publish or prevents publication of a response or correction of incorrectly published information which violates someone's right or interest.

86. Please describe the media landscape (written press and audiovisual sector). How are the audiovisual media financed? Is there a supervisory body for the (audiovisual) media and, if so, how does it function? Have recommendations of experts from the Council of Europe and OSCE been taken into consideration when drafting legislation in the field of media? Is the media legislation aligned to European standards?

After several years of implementation of the media legislation which complies with international standards in this field, the media scene in Montenegro is characterized by free establishment and work of the media, which contributes to variety and pluralism of printed and electronic media.

In accordance with Article 8 of the Law on the Media, a media outlet is established freely and is entered, without a previous approval, into the media registry maintained by the competent state body.

The 2002 Law on Broadcasting classifies electronic media into national public service broadcasters, local public service broadcasters and commercial broadcasters.

This classification is a result of the intention to make, in accordance with international standards, a general division of broadcasting into public and commercial, with all their specificities in relation to the method of financing, program structure etc.

Under the Law on Public Broadcasting Services of Montenegro, there are two national public service broadcasters, namely, Radio of Montenegro and Television of Montenegro. Both broadcasters have two nationally broadcast channels. Since its establishment, the Broadcasting Agency has conducted four public tenders for the allocation of licenses for broadcasting radio and TV signals (assigning broadcast frequencies). On the basis of these, the Agency issued 43 licenses for commercial radio broadcasters and 21 licenses for commercial TV broadcasters.

Also, in accordance with the 2002 Law on Broadcasting, 17 local radio broadcasters have been established, of which 14 are radio stations and 3 are TV stations. Their founders are assemblies of local governments on whose territory they broadcast the program.

One of the differences between public and commercial broadcasters, which is also recognized by the Law on Broadcasting, is the method of financing. While public broadcasters are funded and controlled by the public, commercial broadcasters are funded by a private legal person or an entrepreneur, with the aim of generating profit.

National and local public broadcasters are financed from public revenues.

Chapter V of the Law on Public Broadcasting Services of Montenegro, entitled Financing, prescribes that the public enterprise Radio and Television of Montenegro, (hereinafter RTCG, where "CG" stands for Montenegro) generates funds from the following sources:

- part of general revenues of the budget of Montenegro;
- production and broadcasting of commercials;

- production and sale of audiovisual works (shows, movies, series, and other) and audio and video carriers, which are of public interest;
- sponsoring of programs;
- organization of concerts and other events;
- budget of Montenegro.

Funds from the national budget general revenues aimed for basic RTCG operations are allocated on annual level in the amount of 1.20% of the current Montenegro budget, defined by the Law on Budget for the given year. The report on reallocated funds is submitted together with the final balance sheet of the national budget.

The Ministry of Finance is under a duty to allocate funds for RTCG on monthly basis, in accordance with the special Instruction on the Manner of reallocating funds from the general revenues of the budget of Montenegro for financing basic operations of Radio and Television of Montenegro (Official Gazette of Montenegro 03/09).

The Instruction provides that the funds for RTCG basic operations are allocated on an annual level from the general revenues of the Budget of Montenegro, i. e. from excise tax, in the amount of 1.20% of the current state budget, which is defined by the Law on Budget for the given year.

In case that the funds obtained on the basis of excise tax are not sufficient to cover the said amount, the remaining funds are provided from the revenues collected from value added tax.

The payment of the funds is made in the amount of 1/12 of the total funds, between the 15th and 20th day of the current month, on a basis of a decision of the Minister of Finance.

Also, the exercise of citizens' rights to be informed is facilitated through the allocation of such funds from the Budget of Montenegro as a required to cover part of the costs of RTCG programs important for:

- scientific and educational development;
- cultural development;
- informing of persons with sight and hearing impairments.

For the purpose of exercise of the above mentioned rights, the state provides part of the funding for programs in Albanian and languages of other national and ethnic minorities.

These funds may be used solely for the production of the above noted programs.

The Ministry of Culture, Sports and the Media and and RTCG define their mutual rights and duties regarding the use of the said funds by way of a contract. The contract is signed within 30 days from the date of the entry into force of the Law on Budget for the given year. The contract is published in the RTCG Operation Bulletin and is submitted for review to an independent regulatory authority responsible for program contents.

The manner and terms of the provision of funds from the state budget must not influence the editorial independence and autonomy of RTCG. The funds from the state budget are paid in four equal instalments, in accordance with the Law on Budget.

At the local level, one of the sources of financing of local public service broadcasters are budgets of local self-government units, which are their founders.

Under Article 100 of the Law on Broadcasting, budgets of local self-government units provide part of funds for the exercise of the constitutional and statutory citizens' rights to information without any discrimination, on the basis of the programs important for:

- scientific and educational development;
- cultural development;
- informing of persons with sight and hearing impairments.

Similar to the national level, in order to ensure the exercise of the above noted rights, local self-government units provide part of the funding for the programs in languages of national and ethnic groups.

The competent enforcement body of the local self-government unit and the public broadcaster regulate their mutual rights and duties regarding the use of the funds by way of a contract. The manner and terms for the provision of funds must not influence the editorial independence and autonomy of public broadcasters. The contract is published in a manner prescribed by the founding instrument of the broadcaster and is submitted to the Broadcasting Agency.

Budgets of local self-government units provide funds required to cover the costs of distribution and broadcasting of programmes of public broadcasters founded by the local self-government units. The competent enforcement body of the local government unit and the Broadcasting Centre define their mutual rights and duties related to the manner and terms of payment of the said funds by way of a contract.

Where it is not possible to reach an agreement in relation to the contract between the Broadcasting Centre and the administration authority responsible for public information activities, a provisional decision on this matter is made by the Broadcasting Agency.

The Broadcasting Agency is a supervisory authority for the field of broadcasting, founded under the Broadcasting Law. It is an independent broadcasting regulator which exercises public powers in line with this Law. The bodies of the Agency: the Council of Agency and Director of the Agency. The competencies of the Agency and its bodies are defined by Article 7 (Agency) and 21 (Agency Council) of the Law on Broadcasting. Upon the adoption of the Law on Electronic Communications, the list of competencies of the Agency and of its Council was reduced.

Article 6 of the Law on Broadcasting provides that the Broadcasting Agency and the independent telecommunications regulator are under a duty to cooperate with each other and coordinate their work for the purpose of ensuring a rational and efficient use of the radio and frequency range, in accordance with this Law and a special law governing telecommunications.

Article 9 of the Law on Broadcasting provides that the Broadcasting Agency supervises the work of radio broadcasters, independently or by way of engaging a legal person qualified for such activity. In so doing, the Agency particularly supervises the fulfilment of the broadcasters' obligation to observe all the terms under which they have been granted licenses. For the purpose of exercising their statutory competencies, broadcasters have a duty to supply the Agency with all the required data, information, and documents to the extent necessary for the performance of its duties.

Natural and legal persons are entitled to submit complaints to the Broadcasting Agency regarding broadcasters' operations which are not in conformity with the issued licenses for distribution and broadcasting of radio and TV signals (Article 10 of the Broadcasting Law).

The Law on Broadcasting (Article 16, paragraph 2) provides as follows: "With the aim of exchanging experiences, advancing its activities and conforming to international practices and standards, the Agency shall co-operate with relevant organizations of other states and with relevant international organizations". In accordance with the aforementioned, the Broadcasting Agency was admitted to membership of the General Secretariat of EPRA - European Platform of Regulatory Authorities.

The Broadcasting Agency is entitled to issue a warning to or impose a fine on a broadcaster; it may also suspend or revoke the license for distribution and broadcasting of radio and TV signals, in a manner defined by the Law on Broadcasting (Art. 47-52).

The Agency makes all decisions on imposing penalties on broadcasters following a procedure in which the broadcaster is given an opportunity to declare its views on the matter. All decisions on imposition of penalties are published in the Agency's Operation Bulletin.

A broadcaster may initiate administrative dispute against every decision of the Agency imposing to sanctions.

The Council of the Broadcasting Agency has adopted a Rulebook on the procedure in relation to submitted complaints in cases of violations of conditions set out in the license and decisions and

regulations of the Broadcasting Agency (Official Gazette of the Republic of Montenegro 47/05). This instrument regulates in more detail the procedure for making decisions to suspend or revoke licenses, which is based on the principles of objectivity and impartiality and provides a broadcaster with an opportunity to declare its views as to the facts which gave rise to the procedure.

The Broadcasting Agency is competent to take ex ante (before licensing) and ex post (after licensing) measures for the prevention of illegal media concentration (Art. 105-110 of the Law on Broadcasting).

On 20 May 2009, the Government has drafted the Law on electronic media which will, in accordance with international standards, define the position, rights and duties of a electronic media (or audiovisual services) regulator, i.e., a new Agency for Electronic Media (working title), which will overtake the competencies of the existing Broadcasting Agency. The public dispute and harmonization of drafts with suggestions given by experts from the Council of Europe and European Commission are in progress.

Through the reallocation of competencies in the sectors of broadcasting and telecommunications, provided for by the Law on Electronic Communications, the competencies which affect (indirectly or directly) the field of audiovisual policy have been conferred upon:

- the Government of Montenegro (Article 4),
- the Ministry of Transport, Maritime Affairs and Telecommunications (Article 5),
- the Telecommunications and Postal Operations Agency (Article 8).

The Law on Electronic Communications provides for cooperation between the telecommunications regulator and program contents regulator.

The media legislation in Montenegro was developed with the technical assistance and expertise of international media experts and organizations (Council of Europe, OSCE, European Agency for Reconstruction).

Therefore, the principles and standards contained in the following international human rights instruments have been incorporated in the media legislation:

- International Convention on Civil and Political Rights;
- European Convention on Human Rights and Fundamental Freedoms;
- Council of Europe Declaration on Freedom of Expression and Information;
- European Union Television without Frontiers Directive;
- Council of Europe Convention on Transfrontier Television;

The following Council of Europe recommendations:

- R (2000) 23 on independence and functions of regulatory authorities for the broadcasting sector
- R (2000) 7 on the right of journalists not to disclose their sources of information;
- R (97) 21 on the media and the promotion of a culture of tolerance;
- R (99) 15 on measures concerning media coverage of election campaigns;
- R (99) 1 on measures to promote media pluralism;
- R (97) 20 on "hate speech";
- R (96) 10 on the guarantee of the independence of public service broadcasting.

87. 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)?

The Constitution of Montenegro provides for a wide body of human rights and freedoms, among which the following have bearing on freedom of expression: equality of all persons before the law regardless of any specificity or personal characteristic; dignity and safety of the man are guaranteed, as well as inviolability of his/her physical and mental integrity, privacy and individual rights; everyone is entitled to freedom of expression, by speech, writing, picture or in some other manner, which may be limited only by the right of others to dignity, reputation and honour and if it threatens the public morality or safety of Montenegro; freedom of press and other forms of public information is guaranteed, as well as the right to establish, without approval, newspapers and other public information media, by way of registration with the competent body; right to response and correction of any untrue, incomplete or incorrectly conveyed information which violates a person's right or interest, and the right to compensation of damage caused by publication of untruthful data or information. There is no censorship in Montenegro. A competent court may stop dissemination of information and ideas via the public media only if this is necessary in order to prevent calling for forcible destruction of the order defined by the Constitution; preserve territorial integrity of Montenegro; prevent war propaganda or incitement to violence or commission of criminal offences; prevent propaganda of racial, national and religious hatred or discrimination.

Our legal system provides for criminal and civil responsibility for violations of honour and reputation. Just satisfaction in relation to such acts is awarded by the courts as result of criminal or civil proceedings.

With respect to the criminal aspect of liability for violations of honour and reputation, it should be noted that the 2003 Criminal Code has codified criminal matters and introduced significant changes, which are *inter alia* related to defamation and insult, that is, to the body of criminal offences against honour and reputation.

These criminal offences now carry only a fine, as the principal and only penalty, instead of a prison sentence, which these offences had previously carried. The Council of Europe expertise, which is an integral part of the law drafting procedure within the Ministry of Justice, contains a comparative law aspect which highlights the fact that criminal offences of defamation and insult are common criminalizations in the European criminal codes and that they are contrary neither to the case-law of the European Court of Human Rights nor to Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. A research conducted in 2003 by the Media Division of the Directorate General of Human Rights, shows that only two out of forty surveyed countries in Europe (the United Kingdom of Great Britain and Northern Ireland and Bosnia and Herzegovina) do not have in their criminal legislation the criminal offences against honour and reputation. Therefore, by not providing the prison sentence for criminal offences against honour and reputation, Montenegro has made a significant step forward. Criminal offences against honour and reputation are prosecuted by private action in difference to previous laws under which these offences were prosecuted *ex officio*.

Criminal Code defines as a basic form of the criminal offence of defamation an act of speaking or transmitting untrue information about someone that may harm his/her honour and reputation, while a serious form of this offence is defamation through the media or other similar means or at a public gathering – this is the so called 'public defamation', where the aggravating circumstance is the manner of its commission – a large number of people is informed, thus increasing the danger of harmful consequences. An increased fine is provided for the situations where the spoken or transmitted untrue information results in serious consequences for the injured. However, if the defendant had a reason to believe in the truthfulness of what he/she spoke or transmitted, he/she will not be punished for defamation, but may be punished for insult.

Within the Chapter on criminal offences against honour and reputation, the Criminal Code also prescribes the criminal offences of: insult; disseminating information about private and family life;

tarnishing the reputation of Montenegro; tarnishing the reputation of peoples and minority groups; tarnishing the reputation of a foreign country or an international organization.

The general part of the Criminal Code provides that, when imposing a sentence for criminal offences committed through the media, the court may decide to publish the judgment either fully or in brief through the media and at the offender's expense if the publication of the judgment would contribute to eliminate or reduce the danger. The mandatory publication of a judgment may be prescribed by law. In such a case, the court decide through which media outlet the judgment in question is to be publicized and whether it should be publicized either fully or in brief. A judgment may be publicized not later than 30 days as of the day the judgement has become final and enforceable. Prevention of publicizing a response or correction is defined as a criminal offence, within a separate section of the Criminal Code.

In accordance with the Law on Courts, criminal offences against honour and reputation fall within the jurisdiction of basic courts on the basis of the penalty they carry - fine.

With respect to civil-law protection, that is, compensation of non-material damage, the Law on Contracts and Torts provides that the court will, in the case of physical and mental pain due to injury to reputation, honour, freedom and personal rights, award a just monetary satisfaction irrespective of the compensation for material damage and in the absence thereof, where it assesses that this is justified by circumstances of the case and particularly by the intensity of pain and fear and their duration.

Number of criminal procedures, on the basis of the criminal offence of defamation

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

From the above table we can see that before Courts in Montenegro, due to the criminal offence of defamation, there were 32 proceedings instituted against journalists. In these proceedings there were 13 judgements of acquittal, 4 judgements of convictions to fines in the amounts of EUR 800, EUR 1 200, EUR 2 000 and EUR 5 000, while 15 proceedings are pending.

In the civil procedure based on the action for compensation of non-material damages, the court may order the judgement or correction to be published, or it may order the defamator to revoke the statement causing the injury, or something else which may accomplish the purpose which would be achieved through compensation.

Actions for compensation of damages for suffered mental pain and for injuries to reputation and honour are filed against perpetrators who committed such injury, i.e. authors and founders of the media – the Law on Media.

Actions for compensation of damages, on the basis of committed defamation through media.

Year	Number of Actions	Awarded damages
2004	1	-
2005	7	2x EUR 5 000; EUR 8 000 EUR 10 000 and 2xEUR 5 000

2006	9	EUR 1,000; EUR 3,000; 3 x EUR 5,450
2007	9	EUR 1,000, EUR 5,000; 3 x EUR 4 300
2008	5	EUR 500; EUR 525; EUR 4,000; EUR 5,000 and EUR 8,000

Data from the Judges of the Supreme Court, participants in providing answers

88. Please indicate how laws on telecommunications have been, or will be, amended to take account of international recommendations in view of the freedom of expression. (See also Chapter 10 on information society and media).

With a view to improving and regulating the field of electronic communications and creation of conditions for a regular conduct of procedure for allocating of broadcasting frequencies, activities were undertaken towards amending the Law on Electronic Communications (Official Gazette of Montenegro 50/08). In that sense, the Law amending the Law on Electronic Communications (Official Gazette of Montenegro 70/09) which prescribes that: "The Broadcasting Agency shall perform the activities of a regulatory authority competent for program contents, until the entry into force of the law which governs the field of electronic media."

This will ensure the creation of conditions for a regular conduct of procedure for the allocation of broadcasting frequencies in accordance with the rights and duties defined by the Law on Electronic Communications.
We intensively work on adoption of secondary legislation arising from the Law on Electronic Communications, which in terms of its contents, directly relate to adoption of European Directives, decisions and recommendations from the area of electronic communications in a wider sense, i.e. landline, mobile, cable, and wireless systems of telecommunications.
In terms of freedom of expression, we identified the following international documents that Montenegrin legislation is harmonized with:

- International Covenant on Civil and Political Rights;
- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- European Convention on Transfrontier Television;
- Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Audiovisual Media Services Directive);
- Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities;
- Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities;
- Recommendation (2000) 23 on independence and functioning of regulatory authorities in the broadcasting sector;
- Recommendation (2000) 7 on the right of journalists not to disclose their sources of information;

- Recommendation (97) 21 on the media and the promotion of a culture of tolerance;
- Recommendation (99) 15 on measures concerning media coverage of election campaigns;
- Recommendation (99) 1 on measures to promote media pluralism;
- Recommendation (97) 20 on 'hate speech';
- Recommendation (96) 10 on the guarantee of the independence in the public service broadcasting.

- Freedom of assembly and association, including freedom to form political parties, the right to establish trade unions

89. Please provide information on any legislative measures designed to protect freedom of assembly and association, including freedom to form political parties and the right to establish trade unions.

The freedoms of assembly and association, which belong to the corpus of political rights and freedoms, are guaranteed by the Constitution of Montenegro (Official Gazette of Montenegro 1/07). The Constitution guarantees the freedom of political, trade union and other associations and activities without an approval but only with the registration with the competent body.

The legislative preconditions for the exercise of these freedoms have been created through the adoption of the Law on Political Parties (Official Gazette of the Republic of Montenegro 21/04), Law on Non-Governmental Organizations (Official Gazette of the Republic of Montenegro 27/99, 30/02, 11/07), Labour Law (Official Gazette of the Republic of Montenegro 49/08, 26/09), as well as through the enactment of secondary legislations in furtherance thereof.

90. Are the freedoms of assembly and association assured?

The freedoms of assembly and association, which belong to the corpus of political rights and freedoms, are guaranteed by the Constitution of Montenegro (Official Gazette of Montenegro 1/07). The Constitution of Montenegro guarantees the freedom of political, trade union and other associations and activities without an approval but only with the registration with the competent body.

The legislative preconditions for the exercise of these freedoms have been created through the adoption of the Law on Political Parties (Official Gazette of the Republic of Montenegro 21/04), Law on Non-Governmental Organizations (Official Gazette of the Republic of Montenegro 27/99, 30/02, 11/07), Labour Law (Official Gazette of the Republic of Montenegro 49/08, 26/09), as well as through the enactment of secondary legislations in furtherance thereof.

The form of citizens' association within political parties (i.e. conditions for and method of: founding, organizing, registration, association and termination of work of political parties) is laid down in the Law on Political Parties. Under the provisions of this Law, a political party is an organization of freely and voluntarily associated citizens which aims to achieve political goals by democratic and peaceful means. The political party is a legal person which acts publicly and under a territorial principle. A party can be established by at least 200 citizens eligible to vote in Montenegro, who sign a statement on establishment of a party of their own will. Register of political parties is a public book, which is kept by the Ministry of Interior and Public Administration. Registration of political parties is carried out under the system of application, which needs to be submitted together with: a decision on the establishment of the party, the party statute and program.

With regards to non-governmental organizations, the Law on Non-Governmental Organizations promotes the liberal concept of establishment and registration of non-governmental associations and non-governmental foundations. It provides that an association may be established by at least five persons who have permanent or temporary residence or registered office in Montenegro, while a foundation may be established by at least one person regardless of the place of permanent residence, temporary residence or registered office. Entry in the Registry kept by the state body responsible for the affairs of record keeping and keeping of registry of non-governmental organizations (for national non-governmental organizations it is kept by the Ministry of Interior and Public Administration) is effectuated on the basis of an application for registration accompanied with general instruments of the organization, namely, its statute and the founding act.

Foreign non-governmental organizations, within the meaning of this Law, are non-governmental organizations with the registered office abroad. Such organisations also may operate on the territory of Montenegro provided they have their branch offices entered into the Registry kept by the Ministry of Justice.

In line with the valid regulations governing various aspects of relations between the Government and NGOs, and with a view to ensuring further democratization, promotion and protection of human rights and fundamental freedoms through the recognition of principles of pluralism and freedom of association, the Government of Montenegro, adopted the document ''Bases for Cooperation between Government of the Republic of Montenegro and Non-governmental Organizations'', on 18 May 2006, which sets the following goals: building of a democratic and open society and cooperation in the development of European integration processes; development of cooperation, preservation of independence and improvement of transparency and importance of NGO role; establishment of partnership relations between NGOs and state institutions; realisation and further improvement of complementarity and interaction for the purpose of a more efficient social development; creation of various institutional mechanisms for the improvement and further development of cooperation and mutual communication; improvement of working conditions of non-governmental organizations and principles of cooperation: partnership, transparency, accountability, two-way information sharing and independence of non-governmental organizations. Before the document was adopted, representatives of a number of NGOs and international organizations operating in Montenegro had been provided with an opportunity to take part in the discussion on its draft.

On the basis of this document, in the first quarter of 2007 the Government of Montenegro set up the Office for Cooperation with NGOs; established a multi-sectoral working group in May the same year to develop a draft Strategy for Cooperation between the Government of Montenegro and NGOs. Focal points for cooperation with NGOs have been appointed in ministries and state administration bodies (there are 43 of them in ministries, administrations, directorates, agencies, offices etc.). All these activities resulted in the adoption of the Strategy for Cooperation between Government of Montenegro and NGOs in 2009, as well as in the adoption of the 2009-2011 Action Plan for the Implementation of the Strategy, which was adopted at the Government's sitting held on 22 January 2009.

In furtherance of the constitutional guarantee of the freedom of trade union association, the Law on Labour (Official Gazette of Montenegro 49/08, 26/09), as a separate law, includes more detailed provisions governing this area. This law guarantees the freedom of employees to join and form trade unions and act within their framework, without a previous approval. The trade union is obliged to be entered in the register kept by the competent state administration body. In order to additionally ensure the right to this type of association and ensure full freedom of trade union operations, the Law provides for the protection of trade union representatives by stipulating that a trade union representative and a representative of employees, during trade union activities and six months upon their termination may not be called to account regarding performance of trade union duties or declared redundant, assigned to another position within the same or other employer nor put in less favourable position in any other way. Also, the employer may not put trade union representative or representative of employees in more or less favourable position due to their membership in a trade union or the performance of trade union duties.

91. Provide statistics regarding the number of non-governmental organisations and associations or foundations active in your country?

Entry into the registry of non-governmental associations was within the competence of the Ministry of Justice from 1999 to 2006. It was kept in an electronic form as well and was available on the website of this Ministry, where it can be found even today with the data last updated in May 2006 (website of the Ministry of Justice).

Since 2006, the keeping of the registry of non-governmental organizations falls within the competence of the Ministry of Interior and Public Administration. In this context, the Ministry of Interior and Public Administration is making efforts to develop an innovated electronic version of the NGOs' registry. This activity is envisaged by the Strategy for Cooperation between the Government of Montenegro and NGOs, as well as by the Action Plan for the Implementation of the Strategy. However, since the implementation of the Strategy and the Action Plan, in so much as they concern the activities scheduled for 2009 (especially first half of the year), was deferred due to extraordinary parliamentary elections and forming of the new Government, the implementation of this activity is underway.

As on 11 August 2009, there were:

- 4 822 non-governmental associations;
- 152 non-governmental foundations and
- 106 foreign non-governmental organizations

registered in Montenegro.

The registers of non-governmental associations, non-governmental foundations and foreign non-governmental organizations are public registries, the content of which is available to interested persons.

92. 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?

The Law on Non-Governmental Organizations (Official Gazette of the Republic of Montenegro 27/99, 30/02 and 11/07), as a *lex specialis* in this field, governs *inter alia* the issues related to the status of non-governmental organizations. Non-governmental organizations, regardless of whether they are established as non-governmental associations or non-governmental foundations, are legal persons which acquire such status on the day of registration in the Registry.

Non-governmental associations are not-for-profit organizations with membership, established by national and foreign natural and legal persons with a view of realizing individual, common or public interest.

Non-governmental foundations are not-for-profit organizations without membership, established by local and foreign natural and legal persons with a view to pooling resources and assets and carrying out charitable and other activities, which are of public importance.

Non-governmental organizations acquire property through the collection of membership fees, voluntary contributions, gifts, subsidies, inheritance, interests on deposits, dividends, rental fee and in other manners permitted by law. The law allows non-governmental organizations to engage in economic activities, provided that they use the entire income for the achievement of the goals for which they have been established and to perform such activity within the territory of Montenegro. In the case that income from economic activity exceeds the amount of EUR 4,000 in the previous calendar year or if such profit exceeds the amount of 20% of the total annual income in the previous calendar year, non-governmental organization may not engage in economic activities.

Non-governmental organizations have a duty to register with the Central Registry of the Commercial Court in Podgorica if they plan to engage in economic activities.

The state provides financial support to non-governmental organizations. The funds required for the provision of that support are provided in the Budget of Montenegro. The Law on Non-Governmental Organizations and the Law on Games of Chance (Official Gazette of the Republic of Montenegro 52/04 and Official Gazette of Montenegro 13/07) and secondary legislation enacted in their furtherance govern the issue of allocation of budgetary funds from the Budget of Montenegro for financing of NGOs projects. During the previous period, NGOs were highlighting that one of the main problems in the process of the allocation of funds was the impossibility of NGO representatives to participate in the work of the commissions for allocation of the funds. Following the initiative launched by the Coalition of NGOs Through Cooperation Towards the Goal, the Government of Montenegro adopted the new Decree on criteria for selection of beneficiaries and method of allocation of part of the income from games of chance (Official Gazette of Montenegro 45/08), which abolished the Decree on more detailed criteria for selection of beneficiaries and method of allocation of part of the income from games of chance (Official Gazette of the Republic of Montenegro 46/05). The most important novelty is that now two members of the commission for the funds allocation are NGO representatives. At any rate, the allocation of funds from the games on chance is carried out by a commission appointed by the Government of Montenegro while the public tender for allocation, as well as decision on grants are published in the daily newspapers and on the website of the Ministry of Finance. The Decree defines the percentages and areas for which the funds are to be granted as follows: area of social protection and humanitarian activity - 5%; area of exercise of rights of persons with disabilities – 40%; area of sport development – 20%; area of culture and technical culture – 10%; area of non-institutional education of children and the youth – 5% and area of fight against drugs and all forms of addiction – 20%.

The Decision on more detailed criteria, method and process of allocation of funds, passed by the Commission of the Parliament of Montenegro for the allocation of funds to NGOs, governs issues related to the allocation of funds from the national budget for financing NGOs projects. The allocation is conducted by the Commission for Allocation of Funds to NGOs, appointed by the Parliament of Montenegro upon a proposal of its competent working body. The Commission brings a decision on the basis of a public call for applications published in the daily newspapers founded by the Parliament of Montenegro. The Commission takes a decision on the basis of project which is submitted by NGOs together with their applications, evaluating the following criteria thereat:

- contribution of the project to the achievement of public interest in a specific area;
- transparency and possibility of controlling the project's implementation;
- compatibility and project cooperation with international entities;
- recommendations of experts from relevant areas on the submitted project.

The Law on Games of Chance provides that at least 75% of the funds generated through the games on chance which are earmarked for non-governmental and other organizations must be used for financing of the plans and programs of NGOs.

In addition, NGO projects are also funded by some ministries and local self-governments, on the basis of public calls for applications published in the daily newspapers.

The state of Montenegro secured a set of tax relieves in relation to the financial aspect of NGO operations. The Law on Tax on Profit of Legal Persons (Official Gazette of the Republic of Montenegro 65/01, 12/02, 80/04 and Official Gazette of Montenegro 40/08) provides tax exempted profit of NGOs up to the amount of EUR 4 000; the Law on Real Estate Tax (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 17/07) which stipulates that this tax is not paid by the NGOs for real state they use to perform the programme activities for the purpose of which they were established; Law on Administrative Fees (Official Gazette of the Republic of Montenegro 55/03, 128/03, 46/04, 81/05, 2/06 and Official Gazette of Montenegro 77/08, 3/09), which provides that the NGOs do not pay fees for the achievement of goals for which they were established; Law on Added Value 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 Montenegro 16/07), which provides that, under specific circumstances, the tax is not paid for the services of the NGOs.

As regards membership of non-governmental organizations, there are no legal or de facto limitations. In relation to the activities of non-governmental organizations, the Constitution of Montenegro (Official Gazette of Montenegro 1/07) provides for the prohibition of operations of political and other organizations (non-governmental, as well) which are directed at forcible overthrow of the constitutional order, infringement of the territorial integrity of Montenegro, violation of guaranteed freedoms and rights or incitement of national, racial, religious and other hatred and intolerance.

The Law on Non-Governmental Organizations also provides that its provisions do not apply to political organizations, religious organizations, trade union organizations, sport organizations, business associations, as well as other organizations and foundations set up by the state.

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

The Constitution of Montenegro (Official Gazette of Montenegro 1/07) places restrictions on the freedom of political organizing in the state bodies, as well as in relation to specific categories of persons by providing that judges of the Constitutional Court, judges, public prosecutors and their deputies, the Ombudsman, members of the Council of the Central Bank, members of the Senate of the State Audit Institution, professional members of the Army, Police and other security services may not be members of political parties. Political organizing and activity of foreign nationals and political organizations having their seat outside Montenegro is also prohibited.

The operations of political and other organizations which are directed at forceful destruction of the constitutional order, infringement of the territorial integrity of Montenegro, violation of guaranteed freedoms and rights or incitement of national, racial, religious and other hatred and intolerance are prohibited.

Restrictions of the freedom of association are implemented on the basis of a decision banning the work of a political party or of a non-governmental organization, which is taken by the Constitutional Court of Montenegro.

The decision-making procedure relating to the banning of the work of a political party or of a non-governmental organization is defined by Articles 72-75 of the Law on Constitutional Court (Official Gazette of Montenegro 64/08). Such procedure is initiated by a proposal which may be submitted by the Protector of Human Rights and Freedoms (Ombudsman) and Defence and Security Council within their competences, state administration body competent for the protection of human and minority rights, as well as by the authority in charge of entering political parties or non-governmental organizations in the registry.

The petition seeking a ban on the work of a political party or of a non-governmental organization must contain a description of the prohibited activity and/or the facts and circumstances of the unconstitutional activity, which may give rise to banning the work of a political party or of a non-governmental organization.

The Constitutional Court may ban the work of a political party or of a non-governmental organization if their activities are directed or aimed at forcible overthrow of the constitutional order, infringement of the territorial integrity of Montenegro, violations of guaranteed human rights and freedoms or incitement of racial, religious and other hatred and intolerance.

Where the Constitutional Court bans the work of a political party or of a non-governmental organization, that political party or non-governmental organization is expunged from the registry.

A decision banning the work of a political party or of a non-governmental organization is forwarded to the political party or non-governmental organization concerned and has legal effect as of the date when the decision of the Constitutional Court is received by the body competent for entering political parties or non-governmental organizations in the registry.

94. Is the right to join or not to join trade unions legislated for?

The rights of employees and employers to organizing of their own choice are set forth in the Labour Law (Articles 154-160), which provides that employees and employers have the right to establish their organizations and become their members, of their own choice and without previous approval, under the conditions defined by articles of incorporation and rulebooks of such organizations.

Employees are guaranteed the freedom of trade union organization and activity, without prior approval.

Trade union organizations are entered in the register of trade unions which is kept by the Ministry.

The procedure of entry into the register, change of registration and expungement from the registry referred to in paragraph of this Article is stipulated by the Ministry.

Representative organization of the trade union, in terms of this law, is the trade union organization which has the largest number of members and which has, as such, been registered in the ministry.

The conditions for work of the trade union are set out in Article 157 as follows:

- The trade union decides independently on the method of its representation before the employer.
- The trade union may appoint or elect one trade union representative to represent it.
- The employer is obliged to allow the trade union representative to exercise the rights timely, within the meaning of paragraph 2 of this Article, as well as to provide him/her with access to data required for the exercise of these rights.
- The trade union representative is obliged to perform trade union activities in a manner which does not affect the efficiency of the employer's operations.
- The trade union is obliged to inform the employer about the appointment of the trade union representative.

The Law also provides for the employer's duty to inform the trade union, at least once a year, about:

- business results;
- development plans and their effects on the status of the employees, trends and changes in salary policies;
- measures for the improvement of working conditions, workplace safety and protection and other issues of importance for financial and social status of employees.

The employer must also inform the trade union about:

- safety and protection measures at work;
- introduction of new technologies and organizational changes;
- work schedule, overnight and overtime work;
- adoption of programs on the introduction of technological, economic and restructuring changes and programs for the exercise of rights of employees declared redundant;
- the time and method of payment of salaries.

The employer is obliged to inform the trade union in a timely manner of meetings of employer's bodies and to provide it with acts for the purpose of attending such meetings used to discuss the employer's initiatives and proposals.

The trade union representative has the right to participate in the discussion before the competent bodies of the employer.

The freedom of exercise of trade union rights is laid down in Article 159 as follows:

- The employer is obliged to provide free exercise of trade union rights to the employees.
- The employer is obliged to provide the trade union organization with such conditions as may be necessary for an efficient performance of trade union activities relating to the protection of the employees' rights and interests, in line with the collective agreement.
- The trade union organization representative is entitled to paid leave of absence when s/he is carrying out activities organized by the trade union, in line with the collective agreement.
- The employer is not obliged to pay compensation of salary to trade union representative whose absence from work is not in line with the collective agreement referred to in para. 3 of this Article.
    - The employer must to be informed in writing about the absence of a trade union member in cases referred to in paragraph 3 of this Article, at least three days before his/her absence.
    - The collective agreement defines conditions, method and procedure of the professionalisation of the trade union representative's work, in the interest of protection of trade union rights.

Protection of the trade union representatives:

- The trade union representative and staff representative, while carrying out trade union activities and six months upon their termination, cannot be called to account regarding the performance of trade union activities, declared redundant, reassigned to another position with same or other employer in relation to the performance of trade union activities, nor put in less favourable position in any other manner, provided that they act in accordance with law and collective agreement.
- The employer may not put the trade union representative or staff representative in a more or less favourable position due to their participation in trade union or performance of their trade union activities.

95. 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?

The Constitution of Montenegro contains a special part which guarantees human rights and freedoms such as: personal rights and freedoms, political rights and freedoms, economic, social and cultural rights and freedoms, as well as special – minority rights. The set of political rights and freedoms which are guaranteed by the Constitution, *inter alia*, provisions of Articles 53 to 55 guarantee freedom of association and lay down the conditions of prohibition of organization or prohibition of activity and establishment. Thus, the Constitution establishes freedom of political, trade union and other association and activities, without approval and subject to a registration with the competent authority. In so doing, it determines that no one can be forced to be a member of an association and that the state assists political and other associations, when public interest exists therefor. Furthermore, the Constitution proclaims the prohibition of political organizing in the state bodies and political organization and activity of foreigners and political organizations having their seat outside of Montenegro. In addition, the Constitution contains a definition according to which judges of the Constitutional Court of Montenegro, judges, public prosecutors and their deputies, defender of human rights and freedoms, Council members of the Central Bank of Montenegro, members of the Senate of the State Audit Institution of Montenegro, professional members of the Army of Montenegro, professional members of the police and other security services can not be members of a political organization. The general prohibition of activities and establishment is: first of all, prohibition of activities of political and other organizations, aimed at the forcible overthrow of constitutional order, violation of territorial integrity of Montenegro, violation of guaranteed freedoms and rights, or inciting national, racial, religious and other hatred and intolerance; and secondly, the establishment of secret subversive organizations and irregular armed forces. This means that everyone else is guaranteed the right to exercise freedom of political, trade union and other association, with the exception of the said prohibitions provided by the Constitution.

Matters of political organization are regulated by the Law on Political Parties, and matters of procedure of establishment, registration, operations, connections and termination of operations non-governmental organizations (non-governmental associations and foundations) are governed by the Law on Non-governmental Organizations. This law does not apply to: political organizations, religious communities, trade union organizations, sports organizations, business associations and organizations and foundations established by the state and nongovernmental organizations that were established by a special law, because they are subject to special regulations. Please see more on political parties and NGOs in specific thematic answers (question number 84 – I Political Criteria and questions No. 90-93 - Chapter 23: Judiciary and Fundamental Rights).

When it comes to trade unions and professional associations in state administration bodies, employees enjoy freedom of association in them in the manner and under conditions as determined by regulations. In fact, civil servants and state employees, feel free to decide on the manner of their association in trade unions and professional associations. The Law on Civil Servants and State Employees stipulates the right of all civil servants and state employees to trade union organizing in the manner regulated by general regulations on work for all employees in Montenegro - Article 15, and there are many provisions on the protection of rights which provide for representation of interests and exercising rights of civil servants and state employees arising from work and in relation to work by trade unions, as well as protection of trade union involvement within state administration bodies, and in other forms of work. At the level of the Trade Union of Montenegro, civil servants and state employees in the field of state administration are suitably organized.

Montenegro has accepted and it is applying international agreements, treaties and conventions in this area, as the internal law of Montenegro (e.g. Universal Declaration of Human Rights and the United Nations and the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe member states, as well as practice and standpoints of the European Court of Human Rights in Strasbourg) and many other ratified or binding international documents in the area of labour and trade union and professional organization.

- Treatment of socially vulnerable and disabled persons and principle of non-discrimination

96. Provide information on legislation covering treatment of socially vulnerable and disabled persons and principle of non-discrimination.

The Constitution of Montenegro provides that social insurance of employees is mandatory and that the state provides material security to persons who are unable to work and have no financial means. A special protection of the persons with disability is guaranteed. Under Article 69 everyone is entitled to health care. Children, pregnant women, elderly persons and persons with disability are entitled to health care from public revenues, if they do not exercise this right on some other grounds. Under Article 74, the child enjoys such rights and freedoms as are appropriate to his/her age and maturity. The child is guaranteed special protection against psychological, physical, economic and any other exploitation or abuse.

There are a number of laws and secondary legislation which deal with the treatment of socially vulnerable and disabled persons and the principle of non-discrimination. In line with the provisions of the Constitution, this principle has been built into all legal regulations.

The laws governing this area are as follows:

- 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 of Mentally Ill Persons (Official Gazette of the Republic of Montenegro 32/05);
- Rulebook on manner and procedure for exercise of the right to medical aids (Official Gazette of the Republic of Montenegro 74/06 and Official Gazette of Montenegro 28/08);

- Law on Social and Child Protection (Official Gazette of the Republic of Montenegro 78/05);
- Law on Travel Benefits for Persons with Disabilities (Official Gazette of Montenegro 80/08);
- Law on the Movements of Blind Persons with the Assistance of Guide Dogs (Official Gazette of Montenegro 18/08);
- Law on Ratification of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol (Official Gazette of Montenegro - International Treaties, 2/09);
- Law on Protection of War Veterans and Disabled Persons (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);
- General Law on Education (Official Gazette of the Republic of Montenegro 64/02, 31/05 and 49/07);
- Law on Preschool 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 Gymnasium (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 concerning the criteria for determining the type and level of handicap, disability or disorder in children and youth with special needs and the manner of their inclusion into education programmes (Official Gazette of the Republic of Montenegro 23/06);
- Law on Labour (Official Gazette 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 Montenegro 49/08);
- Law on Vocational Training and Employment of Persons with Disabilities (Official Gazette of Montenegro 49/08);
- Law on Construction of Buildings (Official Gazette of Montenegro 51/08);
- Rulebook concerning access to facilities of people of reduced mobility (Official Gazette of Montenegro 10/09);
- Family Law (Official Gazette of Montenegro 1/ 07).

97. 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? (See also Chapter 19 on social policy and employment)

Article 8 of the Constitution of Montenegro provides as follows: “Direct or indirect discrimination on any grounds shall be prohibited. 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 18 of the Constitution of Montenegro deals with gender equality by providing that ”The state guarantees equality of women and men and develops the policy of equal opportunities.”

Article 46 of the Constitution of Montenegro guarantees the freedom of thought, conscience and religion as follows: “Everyone is 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 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 58 of the Constitution guarantees the rights of ownership and stipulates that no one may be deprived of or restricted in the enjoyment of property rights, unless when so required by the public interest, subject to fair compensation. The natural wealth and property in general use are owned by the state.

Article 69 of the Constitution guarantees health care. Namely, everyone has the right to health care. Children, pregnant women, elderly persons and persons with disabilities have the right to health care from public revenues, if they do not exercise this right on some other grounds.

Article 68 of the Constitution guarantees special protection to persons with disabilities, while Article 80 prohibits forceful assimilation of the persons belonging to minority nations and other minority national communities.

The Constitutional Court is conferred upon, in addition to its traditional role of control of constitutionality, the power to decide on compliance of laws and other general acts, not only with the Constitution, but also with ratified international treaties. The Constitution also introduces the institution of constitutional complaint with a view of providing a high degree of protection of human rights and freedoms and entrusts the Constitutional Court with deciding on this legal remedy. By virtue of Article 149 everyone is entitled to address the Constitutional Court if their human rights and freedoms have been violated, after the exhaustion of legal remedies before other state authorities.

The Law on Gender Equality (Official Gazette of the Republic of Montenegro 46/07), in its Articles 2, 3 and 4, provides for gender equality and measures to be undertaken in relation thereto. Article 2 of the said Law provides that: “Gender equality means that women and men equally participate in all spheres of public and private life, and that they have equal status, equal opportunities to exercise all their rights and freedoms, make use of their individual skills and capabilities for the development of society, as well as that they enjoy equal benefits from the results of work.”

Article 3 stipulates that state bodies, state administration bodies and local administration bodies, public institutions, public enterprises and other legal persons exercising public authorities (hereinafter: bodies), in all phases of planning, adopting and implementing decisions, and carrying out activities from their competences, are obliged to assess and evaluate the impact of those decisions and activities on the position of women and men, with the aim of achieving gender equality. Article 4 stipulates that discrimination based on sex is every legal and de facto, direct or indirect differentiation, privilege, exclusion or restriction based on sex which has the effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and freedoms in the political, educational, economic, social, cultural, sports, civil and in other fields of public life. Within the said meaning, discrimination also includes sexual harassment, incitement of other person to discrimination and use of words in masculine gender as generic neutral form for masculine and feminine gender. Also, it should be noted that, under the said Law, the right of women to protection of maternity and stipulated special protection at the workplace due to biological characteristics are not considered discrimination.

The Law on Minority Rights and Freedoms guarantees to members of minorities equality with other nationals and enjoyment of equal statutory protection. Also, this Law prohibits any direct or indirect discrimination on any basis, including race, colour, gender, national affiliation, social origin, birth or similar status, religion, political or other opinion, financial standing, culture, language, age or mental or physical disability. Persons over 65 years of age are not entitled to use of health care.

Article 178 of the Family Law of Montenegro (Official Gazette of the Republic of Montenegro 1/2007) provides that an adult who has no capacity to take care for him/herself, his/her rights, interests and obligations is to be granted guardianship. The guardianship authority appoints a guardian for specific duties or a specific type of duties to an absent person whose temporary or permanent residence is not known and who does not have a representative, to an unknown owner of property when the property needs to be managed, as well as in other cases where it is necessary for the protection of rights and interests of a person. If international treaties do not

provide otherwise, the guardianship authority will, in cases provided for by this law, take necessary measures for the protection of personality, rights and interests of a foreign national, until such time as the authority of the country of which s/he is a national takes the necessary decision and takes certain measures in relation to the person concerned. Article 257 of the Family Law stipulates that children are be obliged to support their parents who do not have the capacity to work, and who do not have sufficient financial means or who cannot generate such means from the existing property. Exceptionally, the court may reject the request for support when support is requested by a parent who was deprived of parental rights and who did not provide support for the child, although s/he had the possibility to do so, or if the court, considering all the circumstances of the case, finds that it would be a manifest injustice towards the child. Under Article 259, stepchildren have a duty to provide support to their stepfather and stepmother if the stepfather i.e. stepmother were providing support for them and cared for them for a longer period of time. If the stepfather i.e. stepmother have children, the obligation is shared with those children. Article 261 of the Family Law stipulates that the duty to provide support exists also among other direct line cognates. Cognates exercise the right to support in the order in which they would be called to inheritance under law. If several persons share the obligation to provide support, the obligation of providing support is shared among them depending on their circumstances. Article 272 stipulates that obligation of family members who are obliged to provide support is determined in line with their circumstances, and within the bounds of the needs of the person seeking support. The total amount of the funds necessary for support may not be lower than the amount of the permanent allowance in money, which is under the regulations on social protection given to persons with no income in the municipality which is the place of permanent residence of the dependant. When assessing the needs of the dependant, the court takes into account his/her financial standing, level of his/her capacity for work, possibility to find employment, health and other circumstances influencing the decision on support.

Special attention deserves a provision of Article 278, whereby the guardianship authority may on behalf of an old and self-supporting person, at his/her proposal or of its own motion, initiate and conduct the procedure for the exercise of his/her right to maintenance by his/her relatives, who are under this law obliged to provide support for such a person. If such a person opposes that, the guardianship authority is not authorized to initiate the procedure on his/her behalf.

The Law on Social and Child Protection (Official Gazette of the Republic of Montenegro 78/05) envisages that citizens are equal in the exercise of the rights to social protection and child protection, regardless of their ethnic origin, race, sex, language, religion, social origin or other personal characteristics.

The Law on Health Care stipulates that all citizens are equal in the exercise of the right to health care, regardless of their ethnic origin, race, gender, age, language, religion, education, social background, financial standing, and any other personal characteristic.

The Law on Employment provides that unemployed persons are equal in the exercise of their right to employment, regardless of their ethnic origin, race, gender, language, religion, political or other belief, as well as education, social background, financial standing or other personal characteristic.

The Law on Labour (Official Gazette of Montenegro 49/08 of 15 August 2008, 26/09 of 10 April 2009) prohibits all discriminations. Article 5 stipulates that direct and indirect discrimination of persons seeking employment, as well as of the employed persons based on sex, birth, language, race, religion, skin colour, age, pregnancy, state of health, that is, disability, ethnic origin, marital status, family duties, sexual orientation, political or other affiliation, social background, financial standing, membership in political and trade union organizations or some other personal characteristic are prohibited. Article 6 of the said Law defines direct and indirect discrimination. Direct discrimination, within the meaning of this law, is understood to mean any action based on any of the grounds referred to in Article 5 of this law by which a person seeking employment or an employee is put in a less favourable position compared to other persons in the same or similar situation. Indirect discrimination, within the meaning of this law, occurs when a certain provision, criterion or practice puts or would put into a less favourable position a person seeking employment

or an employee, compared to other persons, due to a specific characteristic, status, orientation or belief.

Article 7 of the Labour Law also defines discrimination on several grounds. Therefore, discrimination as referred to in Article 5 and 6 of this Law is prohibited with regard to:

- conditions of employment and selection of candidates for a particular job;
- conditions of work and all rights by virtue of employment;
- education, training and development;
- advancement in service;
- termination of employment contract.

Provisions of the employment contract which establish discrimination on any of the grounds referred to in Articles 5 and 6 of this Law are null and void.

Article 10 of this Law provides for the right of persons wronged by discrimination to seek protection before the competent court.

Starting from these constitutional and legal provisions, it can be concluded that in the case of discrimination, a person who believes that s/he is a victim of discrimination, can protect his/her rights first in the administrative, criminal and civil proceedings i.e. in proceedings before the state administration bodies and courts, and then in proceedings before the Constitutional Court.

Specifically, in the case of discrimination, legal protection is provided through administrative and judicial proceedings.

The Law on Labour stipulates that the employer decides on the rights and responsibilities of the employees arising from work and in relation to work, in accordance with law, collective agreement and the employment contract. An employee who believes that his/her right arising from work and in relation to work has been violated by the employer may submit a request to the employer to enable him to exercise that right. An employer is obliged to decide on the request of the employee, within 15 days as of the day of submitting the request. The decision is final, unless otherwise provided by law. The decision referred to in paragraph 3 of this Article is submitted to the employee in writing, with a statement of reasons and an instruction on legal remedy.

An employee who is not satisfied with the decision or who has not received the decision within the envisaged time limit is entitled to initiate a labour dispute before the basic court in order to protect his/her rights, within 15 days from the date of submission of the decision. Employers are obliged to enforce a valid court decision within 15 days from the date of submission of the decision, unless a different time limit has been set by the court decision.

The victim of discrimination in the field of labour and social insurance can first address the Ministry of Labour, whose scope of work includes the tasks of Labour Inspectorate. The Law on Inspection Control, in Article 39 provides that upon a completed inspection control, the inspector issues a decision on measures, actions and time limits for the elimination of irregularities. An appeal against the inspector’s decision can be lodged within 8 days from the day of delivery of the written decision. The Minister is competent to decide on the appeal. The dissatisfied party may initiate an administrative dispute before the Administrative court against the decision of the Ministry.

The Law on Civil Servants and State Employees regulates issues of the position of civil servants and/or state employees relating to: entering employment, titles, rights and obligations, liability, reassignment, appraisal, advancement in service and establishment of capabilities, professional development, termination of employment, rights protection, human resources management, and supervision of the enforcement of the law.

The said Law provides that general labour regulations on rights, obligations and responsibilities of employees apply to civil servants and state employees, unless otherwise provided for by this law or other regulation. During recruitment of civil servants and state employees, the candidates are entitled to have equal access to all jobs under equal conditions.

Civil servants and state employees enter employment on the basis of a public announcement of the vacancy. Favouring of disfavouring a civil servant or state employee, in his/her rights is prohibited, especially on the basis of political affiliation, ethnic origin, race or religious affiliation,

gender, or due to some other reason which is contrary to the rights and freedoms guaranteed by the Constitution and law.

The Law on Civil Servants and State Employees stipulates that the state of Montenegro is liable for damage caused to a civil servant or state employee, at work or in connection with work, pursuant to general provisions of civil law. The liability for damage also relates to damage that Montenegro causes to a civil servant or state employee, by violating his/her rights arising from employment or in relation to employment. The amount and manner of damage compensation may be settled by a written agreement between the head of a state body and a civil servant or state employee who has sustained damage. A written agreement constitutes an enforceable title.

An appeal may be filed against a decision on selection of a civil servant and/or state employee, on the grounds of violation of the selection procedure. The appeal against a decision on labour rights and obligations and rights and obligations by virtue of labour of a civil servant, and/or state employee is decided upon by the Appeals Commission. In deciding on appeals, the Appeals Commission applies the Law on General Administrative Procedure, if not otherwise stipulated by law. The Appeals Commission must decide on an appeal submitted by the civil servant and/or state employee as soon as possible, and no later than within 30 days from the day of submission of the appeal.

A civil servant, i.e. state employee does not have the right to judicial protection against the decision of the Appeals Commission taken on the basis of the appeal against the conclusion on temporary removal from work.

An administrative dispute may be initiated against a decision of the Appeals Commission within 30 days from the date of delivery of the decision. A lodged appeal does not postpone the enforcement of the decision of the Appeals Commission, except in the case of dispute related to entry into employment. The appeals procedure is urgent.

A civil servant, and/or state employee may initiate a dispute before the competent basic court against the Appeals Commission's decision upon appeal against the decision on damages.

Article 3 of the Law on Administrative Dispute (Official Gazette of the Republic of Montenegro 60/03) defines that the right to institute an administrative dispute belongs to any natural or legal person, who believes that some of his/her rights or interests guaranteed by law have been violated by an administrative or other act. A state body, organization, a settlement, group of persons or others who do not have the status of legal person, may institute an administrative dispute, if they are entitled to be holders of rights and obligations decided on in an administrative procedure. If the law has been violated by an administrative or other act to the advantage of a natural person, legal person or other party, an administrative dispute may be instituted by the Public Prosecutor or other competent body.

Should discrimination in the field of health care occur, a person who is prevented from exercising his/her rights in health care can address the Ministry of Health, i.e. the Health Inspectorate, established within the Ministry of Health. Persons have the right to appeal against this decision, to the Minister of Health, which then issues the second instance decision. An administrative dispute may be initiated before the Administrative Court of Montenegro.

Should discrimination in the field of education occur, a pupil, student, parent, guardian, who believes that some of his/her education-related rights have been violated has the right to contact the Education Inspectorate, which performs inspection control via education inspectors. Education inspectors issue a decision on the measures, actions and time limits for the elimination of irregularities. An appeal against the inspector's decision can be lodged within 8 days from the day of delivery of the written decision. The Minister is competent to decide on the appeal. Dissatisfied parties may initiate an administrative dispute before the Administrative Court of Montenegro against the second instance decision.

In addition to the protection of these persons in administrative proceedings before state bodies, in civil procedures and administrative disputes before the Administrative Court of Montenegro, everyone who considers that s/he has been discriminated against on any grounds is entitled to protection under criminal legislation as well as protection before courts in civil proceedings.

Protection under criminal legislation which is of relevance to these issues has been provided for in the Criminal Code of Montenegro in the Title Fifteen – criminal offences against freedoms and rights of individuals and citizens.

The criminal offence of *infringement of the right to use of language and alphabet* is laid down in Article 158 of the Criminal Code as a special type of violation of equality which occurs when citizens are denied or restricted the opportunity to use their own language or alphabet in the exercise of their rights or when addressing authorities or organizations, contrary to the regulations on the use of language and alphabet of nations and persons belonging to national and ethnic communities who live in Serbia and Montenegro. This criminal offence is punishable by a fine or imprisonment for a term of up to one year.

Article 159 of the Criminal Code provides for the criminal offence – *infringement of equality* – punishable by imprisonment of up to three years, which is to be imposed on an offender 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, sex, language, education, social status, social origin, financial standing or other personal characteristic denies or restricts the rights of individuals and citizens stipulated by the Constitution, laws or other regulations or general acts or ratified international treaties or, on the grounds of such differences, grants privileges or exemptions. Should the act be committed by an official in the performance of his/her duty, such person is liable to imprisonment for a term of three months to five years.

Infringement of the right to expression of national or ethnic affiliation is laid down in Article 160 of the Criminal Code, which stipulates a fine or imprisonment of up to one year for anyone who prevents other persons to express their national or ethnic affiliation or culture. The same sentence is also to be imposed on every person who prevents or obstructs performance of religious rites. Anyone who coerces others to declare their religious beliefs will be sentenced to a fine or imprisonment not exceeding one year. A person in official capacity who committed the offence referred to this Article will be sentenced to imprisonment not exceeding three years.

Article 161 criminalizes *infringement of freedom of worship and performance of religious rites*. The said Article provides that anyone who prevents or restricts freedom of confession or performance of religion is liable to a fine or imprisonment for a term of up to two years. The stipulated sentence is also to be imposed on anyone who prevents or disturbs performance of religious rites. Anyone who coerces others to declare their religious beliefs is liable to a fine or imprisonment for a term of up to one year. If the act referred to in this Article is committed by an official in the performance of his/her office, such person is liable to imprisonment for a term of up to three years.

Title Twenty (Articles 224-232) of the Criminal Code provides criminal offences against labour rights. Thus, Article 225 establishes *infringement of equality in employment* as a criminal offence.

Incitement of national, racial and religious hatred, divisions and intolerance is laid down in Article 370 of the Criminal Code which provides that anyone who provokes and spreads national, religious or racial hatred, divisions or intolerance among nations or ethnic groups living in Montenegro, is liable to imprisonment for a term of six months to five years. If the said offence from this Article was committed by coercion, maltreatment, endangering of safety, exposure to mockery of national, ethic or religious symbols, by damaging other person's goods, by desecration of monuments, memorial-tablets or tombs, the offender is liable to imprisonment for a term of one to eight years. Anyone who commits these offences by abusing his/her position or authorities or if these offences resulted in riots, violence or other severe consequences for the joint life of people, national minorities or ethnic groups living in Montenegro, is liable to imprisonment for a term of one to eight years. If that offence was committed by coercion, ill-treatment, endangering of safety, exposure to mockery of national, ethic or religious symbols, by damaging other person's goods, by desecration of monuments, memorials or tombs, the offender will be punished by imprisonment of two to ten years.

Racial and other discrimination is criminalized in Article 443 of the Criminal Code, which provides that anyone who, on grounds of difference in race, colour of skin, national or ethnic origin, or some other individual peculiarity violates fundamental human rights and freedoms guaranteed by generally recognized principles of international law and international treaties ratified by Serbia and Montenegro MN, is liable to imprisonment for a term of six months to five years. The same

punishment is to be imposed on persons who persecute organizations or individuals for their efforts to ensure equality of people. The same criminal offence provides that anyone who spreads ideas about the superiority of one race over another, or promotes racial hatred, or incites racial discrimination, is liable to imprisonment for a term of three months to three years.

Infringement of freedom of movement and residence is criminalized in Article 163 of the Criminal Code of Montenegro. This criminal offence refers to unlawful denial or restriction to a national of Montenegro of the exercise of freedom of movement or residence within the territory of Serbia and Montenegro. It is punishable by a fine or imprisonment for a term of up to one year. Should the said offence be committed by an official in the performance of his/her duty, that person is liable to imprisonment for a term up to three years.

Title Twenty (Articles 224-232) of the Criminal Code provides criminal offences against labour rights.

Thus, Article 224 - *infringement of labour rights* – stipulates that anyone who deliberately violates law or any other regulation, collective agreements and other general acts on labour rights and on special workplace protection of youth, women and persons with disabilities and thereby deprives another person or restricts him/her of the rights vested in him/her is liable to a fine or imprisonment for a term of up to two years.

Article 225 stipulates the criminal offence of *infringement of equality in employment* by providing that an offender who deliberately violates regulations or in any other unlawful manner deprives a person of the right to be freely employed under equal conditions within the territory of Montenegro, or restricts this right, is liable to a fine or imprisonment for a term of up to one year.

Article 229 of the Criminal Code lays down the criminal offence of *infringement of the rights stemming from social insurance* and lays down a fine or imprisonment for a term of up to two years for offenders who knowingly fail to adhere to laws or other regulations or general acts pertinent to social insurance and thereby deprive a person of the right s/he vested in, or restricts this right.

Article 231 of the Criminal Code provides for the criminal offence of *infringement of the rights pertinent to temporary unemployment* which carries a fine or an imprisonment sentence of up to two years for anyone who knowingly fails to observe laws or other regulations or general acts on the rights of citizens pertinent to temporary unemployment and thereby deprives other persons of a right they are entitled to or restricts this right to them.

Article 269 of the Criminal Code - *violation of equality in the conduct of business activities* – stipulates that anyone who, through abuse of his/her official position or authority, limits free or independent connecting of a business organization or other business entity in conducting business activities in the economic territory of Montenegro, deprives it of the right or limits its right to conduct business activities in a particular territory, puts it into an unequal position in relation to other entities conducting business activities in view of conditions of doing business or limits free performance of business activities, is liable to imprisonment for a term of three months to five years. The same sentence is to be imposed on anyone who abuses his/her social position or influence in order to commit the said criminal offence.

The specified criminal offences are prosecuted ex officio by the Public Prosecutor having jurisdiction. In all these cases, during the criminal proceedings an alleged victim of discrimination has the status of an injured party whose personal or property right was put at risk or impaired by the commission of a criminal offence. The injured party has the right to report a criminal offence to the Public Prosecutor having jurisdiction. The right to file criminal charges to the Public Prosecutor having jurisdiction is provided for in Article 229 of the Criminal Procedure Code. If the charges were filed to the court, the police authority or a Public Prosecutor lacking jurisdiction, they have a duty to accept it and must forward it immediately to the Public Prosecutor having jurisdiction.

Moreover, pursuant to Article 59 of the Criminal Procedure Code, the injured party is entitled to assume or resume prosecution in clearly designated cases (where the Public Prosecutor finds that there are no grounds to initiate prosecution of a criminal offence which is prosecuted ex officio or when s/he finds that there are no grounds to prosecute any of the accomplices reported to the authorities, and in the case that the court issues a decision to discontinue proceedings because the Public Prosecutor has withdrawn from prosecution). When the Public Prosecutor or the court

notifies the injured party that s/he may assume prosecution, the injured party must also be provided with instructions as to which actions s/he may take in order to exercise that right. Article 62 of the Criminal Procedure Code provides that the subsidiary prosecutor (injured party in the capacity of a prosecutor) has the same rights as the Public Prosecutor, except for those that are vested in the Public Prosecutor as a state body.

A person who believes s/he is discriminated against on the basis of the above mentioned grounds may institute civil proceedings by means of an action, in which the court examines and decides on disputes arising from for personal and family relations, from labour relations and from property and other civil-law relationships between natural and legal persons, unless some of the said disputes fall within the competence of another state body. In this procedure, also, the person has the right to lodge ordinary and extraordinary legal remedies, i.e. the right to lodge an appeal and to submit a request for reopening of the proceedings for reasons set out in the Law. When all ordinary and extraordinary legal remedies have been exhausted, proceedings before the Constitutional Court of Montenegro may be initiated.

Therefore, after legal remedies before other state bodies have been exhausted, each citizen is allowed to address the Constitutional Court in case that his/her human rights and freedoms have been violated. Namely, protection of human rights and freedoms before the Constitutional Court is governed by Article 149 of the Constitution of Montenegro which provides that the Constitutional Court decides on constitutional complaints in relation to violations of human rights and freedoms guaranteed by the Constitution of Montenegro after the exhaustion of all other effective legal remedies.

A decision of the Constitutional Court is final and its adoption means that all national legal remedies have been exhausted.

Upon completion of proceedings before national judicial authorities, i.e. upon the exhaustion of all legal remedies, both in administrative and judicial proceedings, a dissatisfied party has the right to institute proceedings before the European Court of Human Rights of the Council of Europe. The right of a citizen of Montenegro to submit an application to the European Court of Human Rights arises from the fact that Montenegro ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms.

98. Has the Montenegro established specialised services to combat discrimination? If so, which legislative framework, institutional context, composition, functions and powers pertain to these services?

Montenegro has not established specialized services to suppress discrimination. The Law on Amendments to the Law on the Protector of Human Rights and Freedoms provides that the national mechanism for the fight against discrimination is to be the Protector of Human Rights and Freedoms. The Draft Law on Prohibition of Discrimination also provides that a service for the fight against discrimination is to be set up at the Office of the Protector of Human Rights and Freedoms. According to the Agenda of the Government, this mechanism for the fight against discrimination will become operative at the beginning of 2010.

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?

The issue of disability is governed by the provision of Article 68 of the Constitution of Montenegro, which provides that the state guarantees special protection to persons with disabilities.

In addition, the rights of persons with disabilities are governed by parts of general laws and secondary legislation and by a number of specific laws which deal exclusively with this subject-

matter. It is also important to highlight that in 2007 the Government of Montenegro adopted the Strategy for Integration of Persons with Disabilities, which covers the period 2008 - 2016. This document was developed as result of partnership between the governmental institutions, non-governmental sector dealing with the protection of persons with disabilities and international organizations which specialise in this area. The Strategy covers the areas of health care, social protection, pension and disability insurance, education, professional training and employment, accessibility, culture, sport and recreation, as well as the area which relates to the position of organizations of persons with disabilities within the civil society. The Strategy envisages measures and activities to be carried out during the envisaged period with a view of bringing the status of persons with disabilities in Montenegro into line with the European standards and the standards laid down in the United Nations Convention on the Rights of Persons with Disabilities.

Strategy envisaged that action plans are to be adopted every two years. In accordance therewith, the Government adopted the first Action Plan for 2008 and 2009, which defines specific priority activities to be carried out in all the stated fields, by integrating disability issues into all sectors through coherent policies and coordination of activities.

The Ministry of Labour and Social Welfare established a working group to monitor the implementation of action plans of the Strategy for Integration of Persons with Disabilities in Montenegro. The Working Group comprises representatives from all relevant ministries, state institutions and representatives of several national NGOs which deal with the rights of persons with disabilities. The task of the Working Group is to monitor the implementation of the Action Plan and the Strategy and to prepare an annual report on the implementation of the envisaged measures and to report to the Government of Montenegro and the wider public thereon.

An overview of the fundamental aspects of the statutory protection of the rights of persons with disabilities is given below:

The field of health care, in relation to persons with disabilities, is dealt with by following pieces of legislation:

- 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 the Protection of Mentally Ill Persons (Official Gazette of the Republic of Montenegro 32/05),
- Rulebook on the manner and procedure for exercise of the right to medical aids (Official Gazette of the Republic of Montenegro 74/06 and Official Gazette of Montenegro 28/08). Under the Law on Health Care, the priority health care measures are: health care of war veterans, military invalids, civil war invalids, their family members and beneficiaries of veterans' allowance and beneficiaries of social protection rights, in line with specific regulations; as well as health care of persons with physical and mental impairments.

The Law on Health Care provides as priority measure health protection of war veterans, military invalids, civil war invalids, their family members and beneficiaries of veterans' allowance, as well the beneficiaries of social protected rights (according to specific provisions), as well as the health protection of physically and mentally disabled persons.

Under 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 not insured on another grounds.

The Law on the Protection of Mentally Ill Persons governs the manner of ensuring protection and exercise of the rights of mentally ill persons, organizing and implementing protection, as well as creation of conditions for the application of measures aimed at the protection of such persons against discrimination.

The Rulebook on the manner and procedure of exercise of the right to medical aids governs the following: indications for medical aids, standards for materials used for their production, expiration dates for medical aids, as well as the conditions for the production of new aids before their expiration date and other issues of importance for the exercise of the right to aid.

The field of social protection and pension and disability insurance of persons with disabilities is governed by the following laws:

- Law on Social and Child Protection (Official Gazette of the Republic of Montenegro 78/05);
- Law on Travel Benefits for Persons with Disabilities (Official Gazette of Montenegro 80/08);
- Law on Movement of Blind Persons Accompanied by Guide Dogs (Official Gazette of Montenegro 18/08);
- Law on War Veteran and Disability Protection (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);
- The Law on Ratification of the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol (Official Gazette of Montenegro, International treaties, 2/09).

Under the Law on Social and Child Protection, persons with disabilities are entitled to:

- family maintenance support;
- personal disability benefit;
- allowance for nursing and attendance;
- placement in an institution;
- placement in another family;
- allowance for professional rehabilitation and vocational training;
- health care;
- coverage of funeral expenses;
- one-off financial assistance;
- newborn allowance;
- child allowance;
- maternity leave pay;
- half-day work pay;
- rest and recreation of children.

Pursuant to the Law on Travel Benefits for Persons with Disabilities, a person with disabilities is entitled to a travel rebate in road and railway traffic within the territory of Montenegro. The same privilege belongs to the travelling companions of persons with disabilities.

Under the Law on Movement of Blind Persons Accompanied by Guide Dogs, blind persons have the right to use public transportation means and to have free access to public places with guide dogs.

Under the Law on War Veteran and Disability Protection, war veterans, families of fallen soldiers, military invalids, civilian war invalids and their family members are ensured rights in the case of:

- disability or bodily impairment sustained in the performance of military duties and other duties for the purposes of defence and security of the country;

- the death of persons in the exercise of military duties and other war duties for purposes of defence and security of the country;
- the death of persons in the exercise of military duties and other duties during peace aimed at the preservation of sovereignty, territory, independence and constitutional order of Montenegro;
- disability or bodily impairment of civilian population sustained in war and post-war period from remaining war materials;
- the death of the right beneficiary.

Under the Law on Pension and Disability Insurance, employees acquire the right to disability pension on the grounds of a complete or partial loss of working capacity of 75% due to changes in

health caused by occupational injuries, occupational illness, and injury sustained outside of work or illness which can not be cured through treatment or medical rehabilitation (Article 30).

The Law on Ratification of United Nations Convention on the Rights of Persons with Disabilities with the Optional Protocol implies an obligation to implement measures aimed at improving the situation of persons with disabilities in accordance with the said Convention.

The area of education, in addition to being covered by the Strategy for Integration of Persons with Disabilities in Montenegro, is also thoroughly dealt with by the Strategy of Inclusive Education in Montenegro.

The laws and secondary legislation which govern this area are as follows:

- General Law on Education (Official Gazette of the Republic of Montenegro 64/02, 31/05 and 49/07),
- Law on Preschool 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 Gymnasium (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 type and level of handicap, disability or disorder in children and youth with special needs and the manner of inclusion in education programs (Official Gazette of the Republic of Montenegro 23/06).

Articles 2 (paragraphs 6 and 7), 8 and 9 of the General Law on Education refer to children with special needs, while the Law on Preschool Education deals with children with special needs in Articles 9, 11, 14, 15 and 18. The Law on Primary Education covers children with special needs through its Articles 2 (paragraph 7), 9, 11, 34 and the Law on Gymnasium through Articles 10 and 35. Articles 2, 9 and 10 of the Law on Vocational Education deal with students with special needs.

All these laws, in the broadest sense, provide room for and promote inclusion. The Law on Education of Children with Special Needs is particularly in line with reform efforts and recommendations and standards of European laws in this area. It recognizes the need for inclusive education and creates a sound basis for regulations arising on its basis aimed at the development of inclusive education.

The Rulebook on the criteria for determining the type and level of handicap, disability or disorder in children and youth with special needs and the manner of inclusion in education programs, which was passed on the basis of Article 24 of the Law on Education of Children with Special Needs, sets out the basic criteria to be applied for orientation of children with special needs in the mainstream education system.

The area of professional training and employment of persons with disabilities is governed by the following laws:

- Law on Professional Rehabilitation and Employment of Persons with Disabilities (Official Gazette of Montenegro 49/08),
- 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),
- Labour Law.

Under the Law on Professional Rehabilitation and Employment of Persons with Disabilities, these persons are entitled to professional rehabilitation, training and employment in the manner and under conditions provided by law in accordance with international conventions. Professional rehabilitation, training and employment of persons with disabilities are exercised at the open labour market and under special conditions.

The Law on Employment provided for a financial compensation for the duration of temporary incapacity to work, set out under regulations on health care and health insurance, while the incapacity lasts, but at the latest until the period determined by these regulations, when the unemployed person is sent to the assessment of disability.

The Labour Law (Official Gazette of Montenegro 49/08 and 26/09) also deals with the protection of persons with disabilities. Thus, Article 103 of the said Law provides that an employed woman, employee below 18 years of age and employees with disability are entitled to special protection, in accordance with this Law. Article 107 provides that the employer is obliged to assign an employee with disability to posts that are suitable to his/her remaining capacity to work and degree of his/her qualifications, in accordance with the act on job descriptions. If an employee with disability cannot be assigned as required under the said provision, the employer is under a duty to provide him/her with other rights, in accordance with the law governing professional training of persons with disabilities and collective agreement.
If an employed person with disability cannot be assigned or provided with other rights in accordance with this Article, the employer may declare such person redundant. An employed person with disability, who has been declared redundant in accordance with Article 93 of the Labour Law is entitled to a severance pay in the amount of 24 average wages, if the disability resulted from injury outside work or from illness, and if the disability resulted from an injury at work or occupational illness in the amount of at least 36 average wages. The wage is understood to mean the average wage in Montenegro, reduced by the amount of taxes and contributions paid on those wages, earned in the month proceeding the month in which the employment of the employee is terminated. The amount of severance pay which is to be paid to an employee with disability is determined based on the average wage paid by that employer, if that is more favourable for the employee.
The area on accessibility in relation to persons with disability is governed by the following law and secondary legislation:

- Law on Construction of Buildings (Official Gazette of Montenegro 51/08),

- Rulebook on ensuring accessibility of buildings to persons of reduced mobility (Official Gazette of Montenegro 10/09).

The Law on Construction of Buildings provides that persons with disabilities must have adequate access to new facilities which are publicly used, which are built on the basis of the provisions of this Law.

The Rulebook on ensuring accessibility of buildings to persons of reduced mobility, which is based on European standards, governs the right of persons with disabilities to barrier-free access, movement, stay and work in public business and residential facilities.

With regards to regulations relating to culture, sports and recreation, it is important to highlight that, in 2008, the Ministry of Culture, Sport and Media adopted the Law on Culture, Law on Cinematography and the Law on Sport which have inter alia, created legislative prerequisites for accessibility of cultural and sports facilities to persons with disabilities.

With a view to ensuring the exercise of the right to receive and impart information, the Ministry of Culture, Sports and Media, within its competences regularly realizes the obligation of the state under the Broadcasting Law, which provides ensuring funds for co-financing of such programme contents of the national public broadcasting service of Montenegro (RTCG), which are of importance for informing persons with hearing and sight impairments.

With regards to the position of organizations of persons with disabilities within the civil society regarding legal regulations, it is important to emphasize that a new Decree on the criteria for determining beneficiaries and method for allocation of a part of revenues generated through games of chance was adopted. Under this Decree, EUR 1 179 965 were allocated for projects dealing with the needs of persons with disabilities in 2008.

All of these laws in the broadest sense open up space for inclusion and its recognition. Especially the Law on Education of Children with Special Needs includes reform regulations and recommendations and standards of European laws in this area. It recognizes the need for inclusive education and it is a good basis for regulations that stem from it, and which are focused on the development of inclusive education.

100. Has Montenegro ratified relevant international conventions and agreements regarding the rights of persons with disabilities?

The Law on Ratification of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, which was adopted by the Government of Montenegro on 18 December 2008, was adopted at the 15 July 2009 sitting of the Parliament of Montenegro and published in the Official Gazette of Montenegro - International Treaties, 2/09.

101. Is there specific legislative protection for the rights of the elderly?

The Constitution (Official Gazette of Montenegro 1/07), as the supreme legal act in Montenegro, in its part on economic, social and cultural rights and freedoms, defines that the state provides material security to the person who is unable to work and has no financial means (Article 67) and that children, pregnant women, elderly persons and persons with disability have the right to health care from public revenues if they do not exercise this right on some other grounds (Article 69).

Article 10 of the Law on Health Care (Official Gazette of Montenegro 39/04) provides that priority health care measures include health care (preventive and curative) of citizens over 65 years of age. Article 17 of the Law on Health Insurance (Official Gazette of the Republic of Montenegro 39/04), provides that the Government of the Republic of Montenegro determines the scope of the right and standards of health care while particularly having regard to the needs of specific categories, including persons over 65 years of age. The same Law (Article 61) provides that persons over 65 years of age are not liable to the duty of personal contribution towards the costs of health care.

Under Article 178 of the Family Law of Montenegro (Official Gazette of the Republic of Montenegro 1/07), an adult who has no capacity to take care of him/herself, his/her rights, interests and obligations may be appointed a guardian. The guardianship authority appoints a guardian for the performance of specific duties or a specific type of duties to an absent person whose permanent or temporary residence is not known and who does not have a representative, to an unknown owner of the property where it is necessary to manage the property, as well as in other cases where this is required for the purpose of protecting the rights and interests of a person. Unless otherwise provided in an international treaty, the guardianship authority, in the cases provided for by this law, takes such measures as may be necessary to protect the personality, rights and interests of a foreign citizen, until such time as the authority of the country of which s/he is a national takes the necessary decision and takes specific measures in relation to such persons. Pursuant to Article 257 of the Family Law, children are obliged to support their parents who do not have the capacity to work and who do not have sufficient financial means or who are not able to generate such means from the existing property. Exceptionally, the court may reject the request for support when support is sought by a parent who has been deprived of parental rights and who did not provide support to the child, although s/he was able to do so, or if the court, in view of all circumstances of the case, finds that granting of the request would manifestly inflict injustice on the child. Under Article 259, stepchildren are obliged to provide support to their stepfather and stepmother if the stepfather or stepmother were providing support to them and cared for them for a longer period of time. If the stepfather or stepmother has children, they share this duty with their children. Under Article 261 of the Family Law the duty to provide support exists also between other direct line cognates. Cognates exercise the right to support in the order of which they would be entitled to inheritance under law. If several persons share the duty to provide support, the duty is shared in

accordance with their capabilities. Article 272 provides that the duty of family members who are obliged to provide support is determined proportionately to their capabilities and within the needs of the person seeking support, while the total amount of the funds necessary for support may not be lower than the amount of the permanent monetary allowance granted, under the social protection regulations, to persons with no income in the municipality in which the dependant is permanently resident. When assessing the needs of a dependant, the court takes into account his/her financial standing, the level of his/her capacity to work, possibility to find employment, health and other circumstances influencing the decision on maintenance.

The provision of Article 278 deserves special attention since it stipulates that guardianship authority may, on behalf of an old or a self-supporting person or of its own motion, bring and conduct, on behalf of an old or self-supporting person, upon his/her proposal, or under his/her initiative, institute and conduct proceedings for the exercise of that person's right to support from his/her relatives who are under a statutory duty to provide support. If the person concerned opposes such course of action, the guardianship authority may not institute proceedings on his/her behalf.

The Law on Social and Child Protection (Official Gazette of the Republic of Montenegro 78/05), defines fundamental social protection rights which refer to the elderly as well.

The social protection rights belonging to the elderly are as follows:

- family maintenance support;
- personal disability allowance;
- allowance for nursing and attendance;
- placement in an institution;
- placement in another family;
- health care;
- funeral expenses.
- one-off financial contribution.

Family maintenance support

The right to family maintenance support, as a fundamental social protection right, is a form of financial support, provided to the family or family member who is either unable to work or able to work under the conditions defined by the Law, depending on income and property. A person over the age of 65 is considered incapacitated for work. However, the law provides that everyone has a duty to create conditions for meeting the basic living needs for himself/herself through work, income and property and to contribute to the prevention, elimination or alleviation of his/her own social vulnerability, as well as of the social vulnerability of his/her family members, particularly children and other members who are unable to care for themselves. The law also provides that a person who is incapacitated for work can be supported by a relative who does not live with him/her, but who has a duty to maintain him/her, in accordance with the Law, subject to previous verification of the ability of the relative to provide maintenance if such obligation has not been prebiousy established by a court decision. The right to family maintenance support may be exercised by the family owning property, if such family concludes a lifetime care agreement with the Center for Social Welfare.

Personal Disability Allowance

The right to personal disability allowance belongs 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 assistance.

Allowance for nursing and attendance

The right to allowance for nursing and attendance is also a type of financial assistance and it can be exercised by:

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

One can be awarded allowance for nursing and attendance if s/he has not exercised this right on other grounds previously.

Placement in an institution and placement in another family

Retirees and other elderly persons who are not able to live independently in their households or their families and who cannot be provided protection in some other way due to housing, health, social or family circumstances, are offered placement in an institution or in another family.

The costs of placement in an institution or in another family are borne by the beneficiary or his/her relative who has the duty to support the beneficiary or by other legal or natural person who has assumed the responsibility to pay accommodation costs.

Health care

The right to health care is ensured to the elderly if they are beneficiaries of family maintenance support, personal disability allowance or if they are placed in an institution or in another family, provided they do not exercise this right on other grounds.

Funeral costs

The right to coverage of funeral costs is granted in the event of death of an elderly person if s/he has been a beneficiary of family maintenance support, personal disability allowance, or a beneficiary placed in an institution or in another family.

One-off financial contribution

The right to one-off financial assistance may be exercised by a family or an individual in need of social care due to specific circumstances affecting their housing or financial situation or health.

There are numerous rural households in Montenegro whose members were engaged in agriculture as their main occupation and were not able to exercise the right to pension. The Ministry of Agriculture, Forestry and Water Management supports the persons running agriculture households by providing elderly allowance. The elderly allowance is provided to one of the spouses, provided that s/he lives in the village and is engaged in agriculture and has no other income. The right to elderly allowance may be granted to men over 65 years of age and women over 60 years of age.

The state may also provide other social protection rights depending on financial capabilities. A series of secondary legislation enacted on the basis of this law, regulate in more detail the conditions and manner of exercising rights.

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

- Right to education

102. 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 launched a comprehensive reform of its education system, based on several principles, the most important of which relate to access and right to education and involve provision of equal opportunities and the right to choose education in line with individual needs, with a view to

achieve the goal of providing every citizen equal chances within the education system. Such concept of the right to education is provided for by the Constitution of Montenegro. The Constitution of Montenegro guarantees the right to education on an equal footing, whereas primary education is compulsory and available free of charge.

The General Law on Education (Official Gazette of the Republic of Montenegro 64/02 and 49/07) which deals with preschool, primary and secondary education (comprehensive and vocational) guarantees the citizens of Montenegro equality in exercising the right to education, regardless of their national origin, race, sex, language, religion, social origin or other personal characteristic.

The Law on Higher Education (Official Gazette of the Republic of Montenegro 60/03) also provides for the availability of university education to all persons, and stipulates that in the exercise of the right to university education no discrimination is allowed on the basis of: sex, race, marital status, colour, language, religion, political or other belief, national, ethnic or other origin, membership of a national community, financial standing, disability (handicap) or other similar basis, position or circumstance.

Classes in educational institutions are taught in the Montenegrin language while in areas where Albanian population is the majority, classes are taught in Albanian or bilingually (in Montenegrin and Albanian). In one private primary school for education of children of foreign nationals classes are taught in the English language.

Educational institutions are located throughout Montenegro in such a way as to allow all citizens to have equal access to education. The network of primary education institutions, with primary education defined as compulsory by the Constitution of Montenegro, is the most complex of all networks. In 2008/09 school year, the primary school network consisted of 162 public primary schools and 300 branch schools, and one private primary school for education of children of foreign nationals.

There are 21 preschool institutions in all Montenegrin municipalities; however, due to the lack of space, only 30% of preschool children are covered by this system.

Secondary comprehensive and vocational education programs are implemented in each Montenegrin municipality through the network of 47 public and 2 private secondary schools. When defining its enrolment policy in relation to secondary vocational schools, particular attention is paid to the fields considered priorities and necessary for further development of each of the three Montenegrin regions (northern, central and southern).

University education institutions are accessible to students in all three regions in Montenegro, with university units and study programs organized within the territory of 9 municipalities in the country. During 2008/09 academic year, it was possible to exercise the right to university education at one state university (University of Montenegro), made up of 19 university units, one private university (Mediterranean University), made up of 6 university units, and through 9 private independent study programs.

Special care is paid to the most vulnerable categories of student population, such as children with special needs; their inclusion in the mainstream education system is insisted upon whenever objective conditions allow so. In line with this intention, the Law on Education of Children with Special Needs was adopted (Official Gazette of the Republic of Montenegro 80/04), as well as the Strategy of Inclusive Education in Montenegro. At the same time, a number of activities have been directed towards the inclusion of Roma children into the education system, as well as towards supporting children from socially vulnerable families. Accordingly, since 2004/05 school year, free textbooks have been provided to all children whose parents are beneficiaries of family maintenance support, thus creating one of the fundamental conditions for equal access to education.

Budgetary allocations for the education system in Montenegro account for 9% of the total 2009 Montenegro budget while the distribution of resources allocated for individual levels of education has been conducted as follows:

Budget user		Amount in EUR
Ministry of Education and Science	Preschool education	12 016 773.9
	Primary education	69 029 903.4
	Secondary education	33 002 567.1
	Vocational Education Centre	614 738.5
	Pupil and Student's Standard	8 334 388.9
	Science	2 243 195.0
	Project for Improvement of Education System	55 800.0
	Textbooks and Teaching Aids Office	710 123.0
University of Montenegro		17 033 500.0
Office for International, Scientific, Educational, Cultural and Technical Cooperation		667 420.8
Education Office		1 490 138.5
Examination Centre		989 704.2
TOTAL:		146 188 253.3

- Right to property

103. Please provide information on how, and to what extent, the right of ownership is guaranteed in legislative and practical terms. Is there any limitation for certain categories of persons (e.g. foreigners, EU citizens) or for certain types of property (e.g. agricultural land)? 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? (See also Chapter 4 on free movement of capital.)

The right of ownership is guaranteed by the Constitution of Montenegro.

This subject-matter is governed in detail by the Law on Ownership Relations, adopted at the end of February 2009 and published in the Official Gazette of Montenegro 19/09.

Ownership is the most comprehensive power over property, which gives the owner or holder of this right the broadest authorities over property. The property owner is allowed everything s/he is not prohibited from.

The property owner has the right to hold, use and dispose of property within the limits set by the law. Everyone has a duty to refrain from violating the right of ownership of another.

The Law on Ownership Relations governs the right of ownership and other rights *in rem*, possession of moveable and immoveable property, as well as the manner of acquisition, transfer, protection and cessation of these rights.

The Law on Ownership Relations, published in the Official Gazette of Montenegro 19/09, also governs the acquisition of the right of ownership of foreign nationals (natural and legal persons).

The Law provides that a foreign national may acquire the right of ownership over moveable property in the same way as a national.

A foreign natural person may acquire the right of ownership at the territory of Montenegro through inheritance in the same way as a national.

A foreign national may have the right of long term lease, concession, BOT and other private and public partnership arrangements, over immoveable property, in the same way as a national.

Foreign nationals may transfer the right of ownership by way of a legal transaction to a national, as well as to a foreign national who may acquire the right of ownership.

In terms of limitations, the Law provides that a foreign national is not entitled to the right to own natural wealth, goods in general use, agricultural land, forests and forest land, cultural monument of extraordinary and particular significance, immovable property within one kilometre of the terrestrial border area and on islands, immovable property which is situated in the area which is, for the purpose of protection of the interests and security of the country, declared by the law an area where no foreign national may enjoy the right of ownership.

As an exception to the above noted rule, a foreign natural person may acquire ownership right over agricultural land, forests and forest land, the area of which does not exceed 5 000 m^2, provided that the object of the property alienation contract (purchase, gift, exchange, etc.) is the residential property built on such land.

Buildings and apartments may be sold with a prior consent of the Ministry of Foreign Affairs to foreign countries for the needs of their diplomatic and consular missions and to organizations and specialized agencies of the Organisation of the United Nations, including construction land for the purpose of constructing such buildings.

Pursuant to the Law on Ownership Relations, the owner may protect his/her violated right by bringing an action. The Law provides for the action for repossession, action for repossession on the basis of stronger possession and the action for trespass to property.

1) The action for repossession, whereby the property owner may request from the possessor to return individually identifiable thing. The owner must prove his/her right of ownership over the property sought and that the property is in actual possession of the respondent (property possessor). A bad faith possessor is obliged to pay compensation for the use of property, while good faith possessor is not obliged to pay compensation for the use of property. Additionally, a good faith possessor of fruits is under a duty to deliver the fruits together with the property when returning individually identifiable thing. Bad faith possessor is obliged to deliver all fruits to the owner and to compensate for the value of collected fruits which have been spent, alienated or destroyed, as well as the value of the fruits s/he has failed to collect.

The right to bring an action for repossession can not be barred by the statute of limitations, whereas the owner's right to request a bad faith possessor to deliver collected fruits and compensate for the value of the fruits s/he has spent, alienated, failed to collect or destroyed, is barred by the statute of limitations three years from the day of the delivery of the property.

2) The action for repossession on the basis of stronger possession, whereby a person who has acquired an individually identifiable thing on lawful grounds and in a lawful manner, and did not know or could not have known that s/he had not become the owner, has the right to seek its return also from a good faith possessor that holds this property with no legal grounds or on the basis of weaker legal grounds. A person whose possession is capable of ripening into the right of ownership through extraordinary usucaption is entitled to seek the return of the property from a person who does not have the same type of possession of that property. When two persons have equal possession for acquiring the ownership right through usucaption, the person who acquired the property in return for payment has stronger legal ground over the person who acquired the property with no payment in return. If legal grounds of these persons are of equal effect, priority is given to the person holding the property.

In regards to the conditions under which a good faith property possessor may require its return and the return of its fruits, as well as the conditions under which possessor may require compensation of the costs incurred for maintenance of the property, provisions governing the owner's action for repossession of property apply accordingly.

3) Action for trespass to property may be lodged with a court by the owner or property possessor, if a third person disturbs the owner or property possessor without proper grounds in a way other than by seizing the property. The good faith of the possessor and legality of possession are presumed.

The respondent is obliged to prove that s/he has a specific right, the exercise of which disturbs the owner of property. The registration in a public book (land registry) is the proof of the respondent's certain right over immovable property. When disturbance of the exercise of ownership right has caused damage, the owner has the right to request damages under general rules on damages. The right to bring an action for trespass to property can not be barred by the statute of limitations.

The Law on Ownership Relations also provides for protection of co-ownership and joint ownership.

In practice, trials concerning the right of ownership and other rights *in rem* fall under the jurisdiction of ordinary courts, while disputes in relation to the right of ownership and other rights *in rem* in immovable property, in disputes which have as their object trespass to immovable property and disputes in relation to lease of immovable property fall under the exclusive jurisdiction of the court at the territory of which the immovable property is situated. If the property is situated within the territory of more than one court, each of these courts has jurisdiction.

The protection of property is also provided for by the criminal legislation of Montenegro. More specifically, Title 22 of the Criminal Code of Montenegro (Official Gazette of Montenegro 40/08) defines a set of criminal offences with property as the protected subject.

The general framework of restrictions and deprivations of the right of ownership is defined in the Article 10 of the Law on Ownership Relations, which provides for restriction of the right of ownership in compliance with law.

No person may be deprived of the right to ownership, except when so required by the public interest established by law or on the basis of law, subject to payment of compensation which may not be lower than the fair one.

The owner may restrict or encumber his/her right for the purpose that is not prohibited.

Pursuant to the Law on Expropriation (Official Gazette of the Republic of Montenegro 55/00 and Official Gazette of Montenegro 21/08), right of ownership over immovable property may be restricted or forfeited when required by the public interest, subject to fair compensation.

The public interest in expropriation of immovable property is established by law or on the basis of law.

Expropriation may be full, where the owner of the expropriated immovable property is changed and partial, where an easement over immovable property or lease of land are established for a definite period of time.

Expropriation may be conducted to meet the needs of the country, municipality, state-run trust funds and public enterprises, unless otherwise provided by law.
In expropriation procedure easement may be created for the benefit of citizens if provided so by law, for the purpose of placement of water pipes, electric and telephone cables, etc.

Expropriation procedure of immovable property for which the public interest is established is conducted by a competent administration authority. The right of ownership may be restricted and forfeited in public interest solely on the basis of a decision of a competent body to the effect that there is a public interest in forfeiture or restriction of right of ownership for the benefit of a specific person and if prescribed that this type of property may not be owned. An expropriation proposal may be submitted by an expropriation beneficiary after the public interest in expropriation of immovable property has been established in compliance with law. The expropriation proposal must contain the name and the place of permanent residence of the expropriation beneficiary, the designation of the immovable property for which expropriation is proposed and the location of the immovable property, the information on the owner of the immovable property for which expropriation is proposed, as well as the purpose for which expropriation is proposed.

Following expropriation procedure, the competent administration authority makes a first instance decision on expropriation, which the dissatisfied party may appeal with the second instance body, i.e. the Ministry of Finance. Costs of the expropriation procedure are borne by the expropriation beneficiary.

Acting upon expropriation proposal, the competent administration authority ex officio makes an entry of expropriation in the cadastre of immovable property. Expropriation beneficiary acquires the

right to become owner of the expropriated immovable property on the day when the decision on expropriation enters into force. Before the decision on expropriation becomes final and enforceable, expropriation beneficiary may withdraw the expropriation proposal.

Ownership and proprietary relations between expropriation beneficiaries and owners of immovable property in the case of dispute are resolved by ordinary courts.

Likewise, the right of ownership may be restricted for the purpose of environmental protection, defence or security of the country, protection of health of people or animals; if historical, cultural or other goods are concerned for the protection of which a special manner of exercise of ownership authorizations is prescribed. One of the restrictions is also the right of easement as a specific restriction in which the owner of a servient estate is under a duty to allow easement existing for the benefit of a dominant estate for as long as there are reasons for easement.

104. What are the administrative procedures which are necessary for the transfer of property? How long does it take to complete the procedure for a transfer of property? Which body is responsible for maintaining an urban and land cadastre and property register? Please provide information on the existing cadastre and land registry, and your plans for its modernisation.

The Law on State Survey and Cadastre of Immovable Property (Official Gazette of the Republic of Montenegro 29/07), governs the procedure of registration in cadastre of immovable property and contains procedures for registration in cadastre of immovable property.

Registration in cadastre of immovable property is performed by regional units of the Real Estate Administration.

The registration procedure begins with the receipt of a request for registration or document on the basis of which a decision on registration is made *ex officio*. The registration of rights is performed at a request of the parties, who must accompany application with documents capable of being registered. An application for registration in cadastre of immovable property must contain: name of the administration body – competent branch office, first name, name of a parent, and last name of the applicant, address and unique citizen number, name, registered office and tax identification number (for legal persons), name of the cadastral municipality and all cadastral data on the immovable property for which registration is sought and designation of the right which is requested.

Incomplete requests and requests not corroborated by evidence suitable for decision making are rejected. The rejection of a request does not preclude the submission of a new request. However, a decision on the new request is based on the circumstances at the moment of the receipt of the proper request submitted to the competent regional unit. The new request has the order of priority that belongs to it based on the moment of the submission of the request for new registration. The registration request is submitted in written form.

The regional unit before which the registration procedure is conducted will allow registration if all conditions laid down in law have been met.

Cadastral registrations may also be decided in summary procedure (without verbal discussion and hearing of parties). The competent regional unit is obliged to decide on requests without delay, and not later than 30 days from the day of the receipt of request.

A request for registration in cadastre of immovable property is granted by way of a ruling.

An appeal may be made against a ruling of the administration authority within eight days from the date of the receipt of the ruling.

The appeal against the ruling is filed to the second instance body, i.e. the Ministry of Finance, through the competent regional unit which issued the first instance ruling. If a party is dissatisfied with the second instance ruling, s/he may seek protection of his/her right in administrative dispute, which is initiated by bringing of an action to the Administrative Court.

Pursuant to the Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03), where procedure is initiated at a request of a party, or *ex officio*, the first

instance body is obliged to issue a ruling and deliver it to the party not later than one month from the date of the submission of a proper request, unless otherwise provided by law.

In other cases, when the procedure is initiated at a request of a party, or *ex officio*, if in that is in the interest of the party, the body is obliged to issue a ruling and deliver it to the party within two months at the latest, unless law provides for a shorter time-limit.

When the body which has issued the first instance ruling finds that the appeal submitted is admissible, timely and submitted by an authorized person, but does not replace the ruling challenged by the appeal by a new one, it is under a duty to forward the appeal to the body competent for deciding on the appeal without delay and in any case not later than 15 days from the date of the receipt of the appeal.

Along with the appeal, the first instance body is obliged to submit all the documents relevant to the case.

The second instance body is under a duty to inform by its ruling the first instance body about the aspect in which the procedure needs to be amended, and the first instance body is obliged to act in compliance with the second instance ruling and to make a new ruling without delay and not later than 30 days from the date of the receipt of the case file. The party has the right to lodge an appeal against the new ruling.

A ruling on appeal must be made and delivered to the party not later than two months from the date on which the appeal was lodged, unless a separate law stipulates a shorter time-limit.

The body which has issued a second instance ruling is obliged to deliver its ruling along with case files, to the first instance body, which is obliged to deliver it to the parties not later than eight days from the receipt of case files.

Due to the complexity of these procedures, the time frame for taking decisions defined by law is extended depending on the efficiency of the second instance body, the Administrative Court, ordinary courts and up to the taking of the final and enforceable ruling, which is the exclusive basis for registration.

The Real Estate Administration is the only competent body for keeping records of immovable property and property rights, including those which relate to all types of lands.

The Real Estate Administration consists of 21 regional units in all municipalities.

The Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03), provides that the Real Estate Administration and its regional units have the competence to conduct the procedure and take independent decisions, within the limits of the powers vested in them by law or other regulation.

The competences of the Real Estate Agency include: keeping records on ownership structure, conducting administrative procedure in the field of ownership and proprietary relations and cadastre, ensuring implementation and enforcement of regulations relating to *ius in rem* and property, as well as organizing and keeping records on the state-owned immovable property.

Until as late as 1984 when the Law on State Survey and Cadastre and Registration of Rights in Immovable Property was adopted, there had been different records on immovable property in Montenegro: title register, court (land register), cadastral register, kept by municipal bodies competent for geodetic affairs and records of former common property kept by municipal bodies competent for ownership and property affairs.

This Law has introduced, for the first time in Montenegro, a single register of immovable property and rights in such property, i.e. keeping of records on immovable property at one place by one state body.

The Law on State Survey and Cadastre of Immovable Property (Official Gazette of the Republic of Montenegro, 29/07) governs the state survey, cadastre of immovable property and registration of rights in immovable property, utility lines cadastre, main state map and topographic maps, survey of state border lines and other issues important to the state survey and cadastre.

This Law stipulates that the affairs related to the state survey and creation and maintenance of the cadastre of immovable property are performed on the basis of mid-term programs and annual work plans.

The Government of Montenegro has adopted the Mid-term Works Plan for the period of 1 January 2008 to 1 January 2013 with a view to providing reliable data on the space necessary for construction of all infastructural facilities, development of market economy and organization of the state, which will contribute to a better and faster integration of space and overall social development of the area.

The activities related to the maintenance of cadastral data are performed in regional units, but there is a change related to the implementation of the Law on State Survey and Cadastre of Immovable Property which provides that geodetic works related to the creation and maintenance of the survey, basic geodetic works and creation of the utility line cadastre are performed by business organizations, other legal persons and entrepreneurs registered for the performance of these works and with the work licence (geodetic organization).

There are three types of registers in use at the territory of Montenegro:

- Inventory Cadastre – territory for which no survey has been conducted, there are data resulting from the inventory making which include data on the land - plot, its parts and property rights in it. There are no data on the position and shape. This territory includes an area of 44.5 % of the entire territory (roughly an area of 611 052 ha) and requires surveying.
- Land Registry – survey was performed in the previous period, contains data on the land - plot and its parts in terms of position, shape, area, manner of using, cadastre income and property rights in it. This territory accounts for approximately 2.5 % of the entire territory (area of 33.533 ha) and registering in the cadastre of immovable property is required.
- Cadastre of Immovable Property – accounts for approximately 53 % of the entire territory (area of 731.096 ha) (mostly urban areas) for which survey has been conducted.

The Cadastre of Immovable Property of Montenegro is based on the state survey and represents the basic register of immovable property and related rights.

The Cadastre of Immovable Property is a single public register in which immovable property is registered together rights in reality over such property and rights under Law on Contracts and Torts, in compliance with law.

The following is considered immovable property : land (agricultural, construction, forest and other), buildings (commercial, residential, residential and commercial, economic and other), special parts of builings (flats, business premises, garages, parking places and basements), other ground facilities (road facilities, electrical energy facilities, railway facilities, air transportation facilities, industrial facilities, telecommunications facilities, sports and physical culture facilities, etc.) and undeground facilities (garages, reservoirs, pedestrian passages, tunnels, shelters, subways, etc).

The Cadastre of Immovable Property contains data on land, buildings, special parts of buildings, rights in immovable property and holders of such rights, charges and restrictions.

The Cadastre of Immovable Property consists of the survey map, working original of the title plan, specimen register and collection of documents.

The property deed is the principal basic document on immovable property and rights in such property. It contains data about the land-plot (A register), holders of the right in land - plot (B register), buildings and special parts of buildings and holders of the rights in them (V register), utility lines and holders of rights in them (V register – 1st part), charges and restrictions (G register).

The property deed covers all cadastral parcels belonging to the same holder of the right and buildings on those parcels within the same cadastral municipality.

In order to gather complete data for the unsurveyed part of the territory, there is a plan to establish cadastre of immovable property in those areas where inventory cadastre is in use, as well as to establish a cadastre of immovable property where land registry is in use.

Plans for improvement of both quantity and quality of data refer to the continuation of activities falling within the framework of two projects implemented by the Real Estate Administration in relation to the construction of the highway Bar - Boljari and Adriatic-Ionian highway, whereby data are collected in order to serve as the basis for development of technical documentation, execution of expropriation for the construction of these highways and simultaneous development of digital terrain elevation plans and digital orthophoto plans.

These projects cover the area of roughly 140 000 ha, and currently data and decoding of the terrain are made available to the public.

Additionally, three projects for the establishment of cadastre of immovable property covering the area of app 205 000 ha have been developed; these project will yield data on immovable property and rights in them and in parallel provide digital terrain elevation plans and digital orthophoto plans required as a basic geometrical foundation for the development of technical documentation in the process of spatial planning.

Since 2007, the Real Estate Administration has its web site, where all interested users have the possibility to access data relating to ownership information free of charge. Since April 2009, the website also offers access to an interactive digital map with data on the border of Montenegro with border crossings, names, road network, water flows, facilities, lakes, inhabited places, municipal borders, digital terrain model, satellite records, relief, etc.

The available data include the following: digital topographic 1:25 000 maps for 70% of the territory of Montenegro (92 sheets) as well as a digital 2007 orthophoto of 0.5m resolution, which is extremely important for the unsurveyed part of the territory.

The continuation of the activities related to preparing of the 1:25 000 map is currently taking place for the remaining 30 % of the territory and the development of digital orthophoto plans of 0.25m resolution for the part of the territory covered by projects for the establishment of cadastre of immovable property.

With regards to the modernization of databases, maintained by the Real Estate Administration, it should be noted that during 2008, the following activities were launched and continued: preparation of data model, implementation of new software for the needs of preparation, processing and ensuring public availability of data in order to establish cadastre of immovable property; modernization of software for maintenance of cadastre of immovable property, preparation of records of spatial units; creating register of house numbers, streets and squares, forming of an electronic archive, continuation of establishment and modernization of the state referential geodetic system.

One of the goals of the Mid-term Program is faster and easier provision of services to users, which is based on e-services and availability everywhere and at all times. In the same vein, preparations are currently underway for the implementation of the project of establishment of Geo Portal, which will enable the use of data in possession of the Real Estate Administration.

The Government of Montenegro has provided financial support for the implementation of these activities.

It is important to note that the Land Administration and Management Project – LAMP - project financed by the World Bank Loan Program - envisages that Administration will use 71% of loan resources in order to improve the quality of the provision of services falling within the activity of the Administration, modernize information system and survey and establish the cadastre of immovable property.

105. Denationalisation: What is the percentage of properties returned to persons dispossessed by the Communist regime? (Please provide precise statistics of nationalised property: houses, agricultural land, forests, etc., total claims received by the authorities, claims processed and completed, claims accepted and rejected, indication of competent authorities in this process, etc.) When is the denationalisation process estimated to be completed by the Government?

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

The issue of restitution of agricultural land in Montenegro to the former owners was realized through the implementation of the April 1992 Law on the Restitution of Public Property Agricultural Land from to its Former Owners. Montenegro has implemented this obligation in the period from 1992 to 1996. Under this law, the total number of submitted claims of former owners was 6 200, by which they required restitution of agricultural land having the total area of 110 000 000m2. The number of accepted claims is 4 153 (66.98%) out of the claims on the basis of which the former owners were restituted a total of 42 000 000m2 of agricultural land i.e. 38.18% of land whose restitution was requested pursuant to this law. This procedure was carried out by the Republican Institute for Geodetic and Property Affairs of Montenegro, the current Real-Estate Administration of Montenegro.

Following the adoption of the Law on Restitution of Forfeited Property Rights and Indemnification in 2004 in Montenegro, a total of 10 721 claims for the restitution of confiscated property rights and/or indemnification were filed.

Commissions for restitution and indemnification, municipal and regional ones, have taken a total of 1 965 decisions, i.e. 18.328% of the total number of claims submitted in Montenegro. The number of accepted claims is 1 088 or 55.368% of the number of resolved cases, of which 119 decisions or 6.055% decisions was related to the restitution of seized items in kind or 824,538m2, while 969 or 49.313% of decisions was related to indemnification in cash, which totals EUR 173 518 363.22.

The number of decisions rejecting the claim as unfounded is 414 or 21.068% of resolved cases, while the number of decisions rejecting the request is rejected (as untimely or illegal) is 463 or 23.562% of resolved cases.

By implementing both of the above-mentioned laws in Montenegro, the former owners were returned a total of 42 824 538m2 of land and buildings.

Tabular overview:

<table>
<tr><th colspan="5">Statistics on nationalised property since 1945</th></tr>
<tr><td>Nationalised houses</td><td>No data</td><td>No data</td><td>No data</td><td>No data</td></tr>
<tr><td rowspan="2">Nationalised agricultural land is not the subject of restitution under the 2004 and 2007 Law on Restitution of Forfeited Property Rights and Indemnification, but of the earlier April 1992 Law on Restitution of State-owned Agricultural Land to Previous Owners</td><td colspan="3">Total of 6,200 claims of former owners were filed in relation to the total land area of 110 000 000 m^2 of nationalised agricultural land</td><td>110 000 000 m^2</td></tr>
<tr><td colspan="3">4 153 (66.98%) claims have been accepted on the bases of which former owners have been returned the total of 42 000 000m^2 of nationalized agricultural land.</td><td>42 000 000 m^2</td></tr>
<tr><td>Nationalized forests and forest land</td><td>No data</td><td>No data</td><td>No data</td><td>No data</td></tr>
<tr><td colspan="5">Available data concerning the area of forfeited property show that former owners have been returned 38,18% of the expropriated property for which restitution claims were filed in compliance with the 1992 Law</td></tr>
</table>

Regional Commissions for Restitution and Indemnification	Podgorica Commission	Bar Commission	Bijelo Polje Commission	Total
Lodged claims	3596	2522	4603	10 721
Processed claims	920 (25.583%)	374 (14.829%)	671 (14.577%)	1 965 (18.328%)
Resolved claims	920 (25.583%)	374 (14.829%)	671 (14.577%)	1 965 (18.328%)
Accepted claims	494 (53.596%)	112 (29.946%)	482 (71.833%)	1 088 (55.368%)
Decisions on restitution of property	31 (3.369%)	64 (17.112%)	24 (3.576%)	119 (6.055%)
Decisions on indemnification	463 (50.326%)	48 (12.834%)	458 (68.256%)	969 (49.313%)
Decisions on rejection of claims	174 (18.913%)	142 (5.63%)	98 (14.605%)	414 (21.068%)
Conclusions on dismissal of claims	252 (27.391%)	120 (37.967%)	91 (13.561%)	463 (23.562%)
Area of returned property in m2	314 318m2	500 000m2	10 220m2	824 538m2

The percentage of the total number of resolved cases has been calculated in relation to the total number of 10 721 claims in Montenegro.

The percentages of different types of decisions have been calculated in relation to the number of claims on which the Commissions have decided.

Pursuant to the Law on Restitution of Forfeited Property Rights and Indemnification, which is in force since 2004, municipal commissions for restitution and indemnification were set up, while the 2007 amendments to the Law provided for the establishment of three regional first instance Commissions for Restitution and Indemnification, one of which is responsible for the northern region of Montenegro and located in Bijelo Polje, one is responsible for the southern region and located in Bar and while the one in Podgorica is responsible for the central part. These Commissions have been set up within the Ministry of Finance. The second instance body in this procedure is the Appeals Commission for Restitution and Indemnification, set up by the Government of Montenegro. Against a decision of the Appeals Commission for Restitution and Indemnification a dissatisfied party may initiate an administrative dispute by lodging an action with the Administrative Court of Montenegro.

Based on the experiences from the previous period, the denationalization process is expected to last for another 8 to 10 years.

The competent commissions are most often faced with a lack of required valid documents, which are necessary to make a correct and lawful decision. Property was expropriated from 1945 to 1968, thus parties are often unable to deliver required documents as they are not in their possession (lost, destroyed, etc.). Similarly, impossibility of identification of expropriated immovable property is also a significant problem because of lack of relevant cadastral records at the moment of expropriation, and due to the fact that a great number of persons deprived of property rights are no longer alive, which brings an additional obstacle to the decision making process with reference to restitution and /or indemnification claims.

- Gender equality and women's rights

106. Is there a general national framework for the promotion of gender equality?

The constitutional prohibition of discrimination on any ground is governed in more detail in several newly-adopted regulations.

The Law on Gender Equality, which was adopted in July 2007, provides a strong basis for the improvement of the position of women and achievement of gender equality, as well as for the promotion of the prohibition of sex discrimination.

Two institutional gender equality mechanisms have been established in Montenegro to date. The Gender Equality Committee of the Parliament of Montenegro was established on 11 July 2001, as a standing working body of the Parliament, tasked with examining and monitoring the exercise of the freedoms and rights of individuals and citizens related to gender equality. The Office for Gender Equality was established at the sitting of the Government of Montenegro held on 27 March 2003, and had operated within the Government's General Secretariat until April 2009. The Law on Gender Equality defines the Ministry for Protection of Human and Minority Rights as the body responsible for affairs aimed at exercising gender equality. In this respect, the Division for Gender Equality Affairs has been set up (April 2009) as one of the Ministry's organisational units, and tasked with ensuring gender mainstreaming in Montenegro, monitoring the implementation of international conventions in this area, cooperation with regional gender equality mechanisms and cooperation with non-governmental organisations. Pursuant to the Law on Gender Equality, state administration bodies have designated civil servants to coordinate gender equality related activities within their competences, and take part in the implementation of the Activity Plan aimed at achieving gender equality.

In July 2008, the Government of Montenegro adopted the Activity Plan aimed at achieving gender equality in Montenegro (2008-2012), which constitutes the development document for the implementation of gender equality policy in Montenegro. This Activity Plan defines the following priority areas: European integration, education, health, violence against women, economy and sustainable development, politics and decision-making, media and culture, and institutional mechanisms for development and implementation of gender equality policy. The Government established the Office for Gender Equality with a view to implement the gender equality policy formulated in the planning document for 2008-2012, which was developed in cooperation with women's non-governmental organisations. The Office is making efforts on a continuous basis to raise public awareness with respect to gender equality.

107. 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 provides that the state guarantees equality between men and women and develops equal opportunities policy (Article 18). In this respect, the Constitution also contains the principle of prohibition of direct or indirect discrimination on any grounds. Furthermore, it provides that regulations and introduction of special measures, aimed at creating conditions for achieving national, gender and overall equality, and protection of persons who are in disadvantaged position for any reason, are not deemed to constitute discrimination. In addition, special attention in this context should be given to the constitutional definition under which ratified and published international treaties and generally recognised rules of international law became an integral part of the national law and order, have supremacy over national legislation, and can be directly applied when providing different solutions from the ones stipulated in the national legislation (Article 9).

The Law on Gender Equality (Official Gazette of the Republic of Montenegro 46/07) is the first antidiscrimination law in Montenegro and the most significant mechanism for elimination of sex-based discrimination and establishment of gender equality. The Law designates the Ministry for Protection of Human and Minority Rights as the state administration body responsible for affairs related to achieving gender equality, and the most important institutional mechanism for achieving gender equality in Montenegro. The Law on Gender Equality provides for efficient mechanisms for achieving gender equality, while taking into account not only its own provisions, but also the provisions of those laws which introduced antidiscrimination standards into the state administration system. With the purpose of eliminating sex-based discrimination and achieving gender equality, the Law imposes duties - for state bodies, state administration and local self-government bodies,

public institutions, public enterprises, and other legal entities, which exercise public authority - which are aimed at achieving the goal set forth in the Law. The Law emphasises the role of civil society and provides for significant deal of action of non-governmental organisations in the overall efforts for achieving gender equality.

Equality in areas such as employment, work and pay is regulated by the Labour Law (Official Gazette of Montenegro 49/2008), the Law on Civil Servants and State Employees and the Law on Employment (Official Gazette of the Republic of Montenegro 5/2002, 21/2008).

The Labour Law prohibits direct and indirect discrimination of persons seeking employment, as well as of employees, on the basis of sex, birth, language, race, religion, and colour of skin, age, pregnancy, state of health, i.e. disability, ethnic origin, marital status, family responsibilities, sexual orientation, political or other beliefs, social background, financial standing, membership in political and trade union organisations, or other personal characteristic. Direct discrimination, within the meaning of this Law, is understood to mean any action based on the above mentioned grounds, by which a person seeking employment or an employee is put into a less favourable position in relation to other persons in the same or similar situation. Indirect discrimination, within the meaning of this Law, occurs when a specific provision, criterion or practice puts or might put a person seeking employment or an employee in a less favourable position in relation to other persons, due to certain personal characteristic, status, orientation or belief.

Under this Law, discrimination is prohibited with respect to: a) the conditions of employment and selection of candidates for performance of a specific job; b) the working conditions and all the rights arising from employment; c) education, training and professional development; d) advancement in service; e) termination of the employment contract. The provisions of the employment contract amounting to discrimination on any of the above mentioned grounds are considered null and void. Article 8 of the Labour Law prohibits harassment and sexual harassment at work and in relation to work. Harassment, within the meaning of this Law, is understood to mean any unwanted behaviour based on any of the above mentioned grounds, including harassment by audio or video supervision, which is aimed at or represents assault on dignity of a person seeking employment or an employee, and causes fear or creates unfriendly, humiliating or offending environment. Sexual harassment, within the meaning of this Law, is understood to mean any unwanted verbal, non-verbal or physical behaviour, which is aimed at or represents violation of dignity of a person seeking employment or an employee, with respect to their sexual life, and causes fear or creates unfriendly, humiliating, uncomfortable, aggressive or offending environment. In the event of reporting and testifying of harassment and sexual harassment at work and in relation to work, an employee must not suffer negative consequences.

The provisions of the law, collective agreement and employment contract, which govern the special protection of and assistance to certain categories of employees, and, in particular, those which govern the protection of persons with disabilities, women during pregnancy, maternal leave and childcare leave, i.e. special childcare, as well as the provisions governing special rights of parents, adoptive, guardian and foster parents, are not deemed to constitute discrimination.

In the event of discrimination, within the meaning of this Law, a person seeking employment or an employee may institute proceedings before the competent court, in accordance with law.

The rights of employees, including, among others, the right to salary, are also provided for by the Labour Law. Thus, Article 11 provides that the employee has the right to adequate salary, safety and protection of life and health at work, professional development and other rights, in accordance with law and collective agreement. Employed women have the right to special protection during pregnancy and childbirth. In accordance with this Law, the employee has the right to special protection for childcare. An employee under the age of eighteen and an employee who has a disability have the right to special protection, in accordance with this Law.

Article 77 provides that the employee has the right to an adequate salary, defined in accordance with law, collective agreement and employment contract. The salary is increased, in accordance with the collective agreement and employment contract, for: the work longer than regular working hours (overtime work and duty work); night-time work; work during public or religious holidays, which are stipulated by law as non-working days; past service and in other events, as defined by the collective agreement and employment contract.

The Law on Employment governs employment, unemployment insurance, rights of unemployed persons, as well as the conditions and procedures for their exercise, the manner in which funds are provided, and other matters of importance for organised and productive employment. Employment, within the meaning of this Law, is understood to mean assistance in the employment process and taking of measures and activities for the implementation of active employment policy. Employment is an activity of public interest. Article 3 of the mentioned Law stipulates that unemployed persons are equal in the exercise of their rights to employment, regardless of their ethnic origin, race, sex, language, religion, political or other beliefs, education, social background, financial standing and other personal characteristics.

The Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/2008) governs matters of the status of civil servants and state employees with respect to: entering into employment, functions, rights and duties, accountability, re-assignment, performance appraisal, advancement in service and work ability assessment, professional development, termination of employment, protection of rights, human resources management, and supervision of their implementation. The general labour-related regulations apply to the rights, obligations and duties of civil servants or state employees, unless otherwise provided by this Law or other regulation. Article 8 provides for equal access to employment. Thus, in the employment of civil servants and state employees, all positions are equally accessible to candidates, subject to the same conditions. Civil servants, or state employees, enter into employment on the basis of an open job advertisement. Civil servants or state employees are entitled to advancement in service. The advancement in service depends on his/her professional competences and work abilities, quality of work and work achievements. Article 11 of the Law on Civil Servants and State Employees explicitly prohibits favouring or disfavouring of a civil servant or state employee in the exercise of his/her rights and particularly on the basis of his/her political, ethnic, racial or religious affiliation, sex or any other ground contrary to the rights and freedoms laid down by the Constitution and law.

The Law on Salaries of Civil Servants and State Employees provides that civil servants or state employees enjoy the right to salary, compensation of salary and other income, in the manner and under conditions set forth in this Law.

Civil servants and state employees are entitled to the protection of their right to salary, compensation of salary and other income, in accordance with the regulation on civil servants and state employees.

Article 5 of the mentioned Law stipulates the information on salaries of civil servants and state employees are available to the public, while Article 6 provides that general labour-related regulations apply in relation to salary, compensation of salary and other income of civil servants and state employees, unless otherwise provided by this Law or other regulation.

Protection under criminal law relevant to these matters is provided through the Criminal Code of Montenegro, under Title Fifteen – Criminal Offences against Freedoms and Rights of Individuals and Citizens. Thus, Article 159 of the Criminal Code provides for the criminal offence of *infringement of equality*, punishable by imprisonment of up to three years, which is to be imposed on an offender who, on the ground of national or ethnic origin or affiliation, race or religion or lack thereof, or on the basis of differences in political or other beliefs, sex, language, education, social status, social background, financial standing or any other personal characteristic, deprives other persons of or restricts to other person the rights of individuals and of citizens, laid down by the Constitution, laws or other regulations or general acts or ratified international treaties, or, on grounds of these differences, grants privileges or benefits to other person. Imprisonment ranging from three months to five years is to be imposed on an official who commits the above mentioned criminal offence in the exercise of his/her office.

Article 443 – *racial and other discrimination* – provides that anyone who, on the ground of different race, colour of skin, national or ethnic origin, or some other personal characteristic, violates fundamental human rights and freedoms, guaranteed by generally recognised principles of international law and international treaties ratified by Serbia and Montenegro is to be punished by imprisonment ranging from six months to five years. The same sanction is to be imposed on anyone who persecutes organisations or individuals for advocating equality among people. Anyone

who argues superiority of one race over another, or promotes racial hatred, or instigates racial discrimination is to be punished by imprisonment ranging from three months to three years.

Title Twenty of the Criminal Code, in Articles 224 – 232, lays down criminal offences against labour rights.

Thus, Article 224 – *infringement of labour rights* - provides that anyone who knowingly fails to adhere to laws or other regulations, collective agreements and other general acts on labour rights and on special protection of youth, women and disabled persons at work, and thereby deprives another person of, or restricts to other person, a right vested in him/her, is to be punished by a fine or imprisonment for up to two years.

Article 225 provides for the criminal offence of *infringement of equality in employment*. A fine or imprisonment for up to one year is stipulated for anyone who knowingly violates regulations or in another unlawful manner deprives other person of, or restricts to other person, the right of the citizen to free employment in the territory of Montenegro, under equal conditions.

Article 229 of the Criminal Code provides for the criminal offence of *infringement of the rights stemming from social insurance* punishable by a fine or imprisonment for up to two years for offenders who knowingly fails to adhere to laws or other regulations or general acts pertinent to social insurance, and thereby deprives other person of, or restricts to other person, the right vested in him or her.

108. Has Montenegro ratified the relevant international conventions? Please clarify when for each convention.

On 23 October 2006, by way of succession procedure, Montenegro acceded to a set of United Nations conventions, including those related to equality between men and women: the International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Optional Protocol to CEDAW and the Convention against Discrimination in Education. Montenegro has also ratified the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms with Protocols Nos. 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, and 14.

109. Are there any other practical measures and mechanisms supporting gender equality?

In addition to the two national gender equality mechanisms (described under reply to question 106), efforts are being made to establish local gender equality mechanisms in ten municipalities with which the Government gender equality mechanism has signed Memoranda of Cooperation (Niksic, Bijelo Polje, Pljevlja, Berane, Cetinje, Kotor, Budva, Bar, Herceg Novi and Ulcinj). These municipalities have appointed persons responsible for gender equality affairs and work on implementation of this principle in their respective municipalities. Local action plans for achieving gender equality in the above mentioned municipalities are currently being developed.

Other practical measures include a number of activities, such as: organisation of workshops and seminars, public awareness raising campaigns, NGO activities, education, surveys, trainings, cooperation with gender equality mechanisms in the region, academic institutions and international organisations.

The role of the media in public awareness raising with regards to various aspects of gender equality should also be highlighted. By way of example, the media report very readily on the 16 Days of Activism against Gender Violence Campaign, marked in Montenegro every year from 25 November to 10 December.

110. Give an overview of possible incentives which exist for both the public and private sectors to refrain from discriminatory employment practices.

The Constitution of Montenegro (Official Gazette of Montenegro 01/07), in Article 62, guarantees the right to work, to free choice of profession and employment, to fair and humane working conditions and to protection during unemployment.

The Labour Law (Official Gazette of Montenegro 49/08), in Article 5, provides for the prohibition of direct and indirect discrimination of persons seeking employment, as well as of employees, on the basis of sex, birth, language, race, religion, colour of skin, age, pregnancy, health, i.e. disability, ethnic origin, marital status, family responsibilities, sexual orientation, political or other belief, social background, financial standing, membership in political or trade union organisations or any other personal characteristic.

The Law on Gender Equality (Official Gazette of Montenegro 46/07) provides for equal participation of women and men in all areas of public and private life.

In that respect, and with the aim of achieving gender equality, state bodies, state administration bodies and other legal entities must, when taking and enforcing decisions, as well as when performing activities falling within their competences, assess and evaluate the effects of such decisions and activities on the position of women and men.

Under the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08), state bodies must perform their duties in a politically neutral manner and impartially, in accordance with the public interest. During recruitment, all positions must be equally accessible to all candidates under the same conditions.

In accordance with Article 117 of the mentioned law, the Human Resources Administration is competent for monitoring the implementation of measures aimed at achieving proportional representation of national minorities and other minority ethnic communities in state bodies. Thus, when applying to an internal announcement or an open advertisement or open competition, interested candidates are given an opportunity to state their ethnic origin.

The fundamental principles contained in the Law on Civil Servants and State Employees, which guarantee equal accessibility of positions under equal conditions, and political neutrality and impartiality in the performance of duties, in accordance with the public interest, apply to the employment of civil servants and state employees in state bodies.

The employment procedure is transparent and public, as all internal announcements and open advertisements and open competitions are published on the website of the Human Resources Administration; while all open advertisements and open competitions are also published on the website of the Employment Office of Montenegro and in the daily newspapers published in Montenegro.

Vacancies in state bodies may be filled from internal resources. This entails application of internal announcement procedure, in accordance with the Decree on conditions and procedure for application of internal announcement for filling vacancies in state bodies (Official Gazette of the Republic of Montenegro 73/04). If vacancies are not filled from internal resources, then open advertisement procedure is applied for positions that are classified, vacant and for which funds are secured.

All open advertisements have mandatory contents (name of the state body, location of the position, title of the position, conditions for entering into employment, documentation each candidate must enclose in a job application, deadline for submission, address and name of the contact person for further information).

A person meeting general requirements, which are stipulated by the Law on Civil Servants and State Employees and the special ones, which are stipulated by the Act on Internal Organisation and Job Classification, may be employed in a state body.

An open advertisement is published pursuant to general regulations on work, while the time limit for the submission of job applications may not be less than eight nor more than fifteen days from the open advertisement date. The Human Resources Administration prepares the list of candidates who meet the requirements of an open advertisement on the basis of applications. It includes the candidates who meet the requirements indicated in the open advertisement and who submitted complete and timely documentation evidencing the fulfilment of general and special conditions for entering into employment.

The candidates who meet the requirements of an open advertisement are subject to compulsory work ability testing. The procedure of mandatory testing is implemented in accordance with the Rules on types and manner of work ability testing for performing tasks pertaining to the position, adopted by the Human Resources Administration.

The compulsory work ability testing may be performed in several phases, during which the number of candidates gradually decreases. The procedure may be performed by means of a written test, oral interview or in other suitable manner, and is administered by a Committee established for that purpose and comprised of three members: a representative of the Human Resources Administration, a representative of the state body for which the testing is performed and a representative of another state body.

After having conducted the testing procedure, the Human Resources Administration prepares a list for selection of candidates who achieved satisfactory results in the testing procedure, as well as a report with complete information (the total number of points received in all administered tests).

The list for selection of candidates is then submitted to the head of the state body, upon whose request the aforementioned procedure of open advertisement was conducted.

The head of the state body decides on the selection of the civil servants or state employees by means of a decision on selection, which s/he must take and submit to the Human Resources Administration within 30 days from the date the list for selection of candidates was submitted.

If the head of the state body does not make the selection of candidates from the list, s/he must inform the Human Resources Administration on the reasons for such decision. In that event, the open advertisement procedure may be repeated.

An appeal may be lodged against a decision on selection, on the ground of violation of procedure, in accordance with the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08). The Appeals Commission decides on appeals against decisions on rights and obligations arsing from work and in connection with work.

Civil servants and state employees are admitted to employment by way of a decision, either for an open-ended or fixed term.

The fixed term employment is entered into for the following purposes: replacement of an employee who is temporarily absent from work; execution of project tasks; to ease the burden of temporarily increased workload and training of trainees during trainee period.

The Human Resources Administration conducts open competition procedure for employment of managerial personnel. The managerial personnel include: in a ministry, secretary of the ministry and assistant minister; in an administration body, deputy head of administration body; and in a service established by the Government, deputy head of service.

Provisions of the Law governing the open advertisement also apply in the open competition procedure.

The work ability testing is conducted by means of an oral interview, during which the head of a state body at which the employment is to be entered into must be present.

Based on the list for selection of candidates, supplied by the Human Resources Administration to the state body, the head of the body establishes a proposal for appointment.

A decision of appointment is submitted to the Government of Montenegro.

A decision on appointment of managerial personnel is adopted by the Government of Montenegro.

Managerial personnel are appointed for a five-year term and may be re-appointed upon the expiry of that term.

111. How is gender based violence treated in your legislation and in judicial practice?

The Constitution of Montenegro (Official Gazette of Montenegro 1/07) provides that the state guarantees equality between men and women and develops equal opportunities policy. In this respect, the Constitution also contains a principle prohibiting direct or indirect discrimination on any ground. Thereat, it provides that regulations and introduction of special measures, aimed at creating conditions for exercising ethnic, gender and overall equality, and protection of persons who are in disadvantaged position on any ground, are not deemed to constitute discrimination.

The Law on Gender Equality, adopted on 27 July 2007 (Official Gazette of the Republic of Montenegro 46/07) is the first antidiscrimination law in Montenegro and the most significant mechanism for elimination of sex-based discrimination and establishment of gender equality. The Law governs the manner of provision and exercise of the rights by virtue of gender equality and creation of equal opportunities for participation of women and men in all areas of social life.

Equality in areas such as employment and labour is regulated by the Law on Employment (Official Gazette of the Republic of Montenegro 5/2002, 79/2004, 21/2008) and the Labour Law (Official Gazette of Montenegro 49/2008). Pursuant to the provisions of the Law on Employment, unemployed persons are equal in exercising their right to employment, regardless of their sex. The Labour Law prohibits direct and indirect discrimination of persons seeking employment, as well as of employees, on the basis of sex. Discrimination, within the meaning of this Law, is prohibited with respect to the conditions of employment and selection of candidates for the performance of a specific job; the working conditions and all the rights arising from employment; education, training and professional development; advancement in service and termination of employment contract. The same law prohibits harassment and sexual harassment at work and in relation to work.

The Law on Health Care (Official Gazette of the Republic of Montenegro 39/2004) provides for equality of citizens with respect to the exercise of the rights to health care, regardless of their ethnic origin, race, sex, age, language, religion, education, social background, financial standing, and any other characteristics.

In addition to discrimination being prohibited in the law and order of Montenegro in laws regulating various areas of human and minority rights protection, discrimination is also criminalized by the criminal legislation in furtherance of the constitutional principle of legal equality of citizens.

The Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08) provides for imprisonment sentence of up to three years for acts depriving other person of, or restricting to other person, the rights of individuals and citizens laid down by the Constitution, laws or other regulations or general acts or by ratified international treaties, or for granting privileges or benefits to other person on grounds of national or ethnic origin, race or religion, or due to absence of such affiliations, or due to differences with respect to political or other beliefs, sex, language, education, social status, social background, financial standing or any other personal characteristic. A more serious form of this criminal offence occurs where the offender is committed by an official performing his/her official duties.

The same Code provides the criminal offence of *infringement of equality in employment*, which occurs when someone knowingly violates regulations or in another unlawful manner deprives other person of, or restricts to other person, the right of the citizen to free employment within the territory of Montenegro, under equal conditions.

Furthermore, the same Code provides for the criminal offence of *racial and other discrimination*, which provides a more comprehensive and broader protection under criminal law in relation to the above mentioned criminal offences. Criminalization of this criminal offence includes the general prohibition of violation of internationally recognized human rights on the ground of different race,

colour of skin, national or ethnic origin, or some other personal characteristic. The Code also criminalizes persecution of organisations or individuals advocating equality among people.

The constitutional definition under which ratified and published international treaties and generally recognised rules of international law make an integral part of the national law and order is also of importance for the achievement of gender equality.

On 23 October 2006, by way of succession procedure, Montenegro acceded to a set of United Nations conventions, including those dealing with equality between men and women, as follows: International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Optional Protocol to CEDAW and the Convention against Discrimination in Education.

Montenegro also ratified the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols to the Convention Nos. 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, and 14.

There were no recorded criminal offences in the case-law as stipulated by the Criminal Code of Montenegro, which were committed exclusively because of the victim's sex.

- Rights of the child

112. Please elaborate on the legislative and administrative structures in place to ensure effective protection of the rights of the child.

Protection of the rights of the child holds a special place within the group of human rights and freedoms guaranteed by the Constitution of Montenegro to the effect that parents have a duty to care for their children, to educate them and ensure their schooling, that children born out of wedlock enjoy the same rights and obligations as children born in wedlock, that children enjoy rights and freedoms in accordance with their age and maturity, as well as that the child is guaranteed special protection against mental, physical, economic and any other exploitation or abuse, the right to health care and right to education under equal conditions.

The 1989 United Nations Convention on the Rights of the Child (A/RES/44/25) is the first binding international instrument which includes a number of provisions relevant for the rights of children in conflict with the law. By ratifying the Convention in December 1990, Montenegro undertook to abide by and incorporate the provisions of the Convention in all laws, proceedings and procedures relating to children.

Montenegro has ratified the following conventions and optional protocols which provide for an effective protection of the rights of the child:

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict - 31 January 2003;
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography – 10 October 2002;
- Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- Convention on the Elimination of All Forms of Discrimination against Women and Protocol thereto;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with two Protocols;
- the 2000 United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Air and Sea;

- the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980, Official Gazette of the Socialist Federative Republic of Yugoslavia -International Treaties 7/91-19.

In addition, Montenegro has started preparations for ratification of the following conventions of which it a signatory:

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Council of Europe Convention on Access to Official Documents;
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;
- European Convention on the Adoption of Children (Revised);
- European Convention on the Exercise of Children's Rights.

National law also protects the rights and interests of the child though numerous pieces of legislation enacted in the area of criminal law, area of family relations, social and child protection, area of education, health and labour, which are as follows:

- Family Law of Montenegro (Official Gazette of the Republic of Montenegro 01/07);
- Criminal Code (Official Gazette of the Republic of Montenegro 70/03 and 47/06);
- Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03 and 47/06);
- Law on Misdemeanours (Official Gazette of the Republic of Montenegro 25/94, 29/94 and 48/99);
- Law on Enforcement of Criminal Sanctions (Official Gazette of the Republic of Montenegro 25/94, 29/94, 69/03 and 65/04);
- Law on Health Insurance (Official Gazette of the Republic of Montenegro 39/04 and 13/07);
- Law on Health Care (Official Gazette of the Republic of Montenegro 39/04);
- Law on Social and Child Protection (Official Gazette of the Republic of Montenegro 78/05);
- Law on Civil Registers (Official Gazette of Montenegro 47/08);
- Law on Personal Name (Official Gazette of Montenegro 47/08 of 7 August 2008);
- Law on Labour (Official Gazette of Montenegro 49/08);
- Law on Primary Education (Official Gazette of the Republic of Montenegro 64/02 and 49/07);
- Law on Elementary School (Official Gazette of the Republic of Montenegro 34/91, 48/91, 17/92, 56/92, 32/93, 27/94, 2/95, 20/95 and 64/02);
- Law on the Police (Official Gazette of the Republic of Montenegro 28/05);
- Law on Minority Rights and Freedoms (Official Gazette of the Republic of Montenegro 31/06, 51/06 and 38/07);
- Law on Public Peace and Order (Official Gazette of the Republic of Montenegro 41/94);
- Law on the Armed Forces of Montenegro (Official Gazette of the Republic of Montenegro 47/07).

Overview of key provisions pertaining to the protection of the rights of the child

Family relations

The Family Law of Montenegro provides that relations between parents and children are based on mutual rights and duties, particularly those of parents to ensure the protection of interests and wellbeing of children and their responsibility for the upbringing, education and preparation of their children to live an independent life. At the same time, children have a duty to care of their parents and to treat them with respect.

Everyone is under a duty to have the best interests of the child as his/her primary consideration in all actions concerning children, whereas the state has the responsibility to observe and promote the rights of the child and take all measures as may be necessary to protect the child against neglect, abuse and exploitation.

From the aspect of children rights protection, in relation to institution of marriage and establishment of paternity and maternity, the law provides the community between a man and woman lasting a longer period of time - common-law marriage, to be equalised with marriage from the aspect of the right to mutual support and other property relations.

Persons below 18 years of age may not enter into marriage. However, the court may, in exceptional cases, allow a minor older than 16 years of age to enter into marriage, upon his/her request. In doing so, the court must properly examine all circumstances which might help to establish whether the minor wishes to enter into marriage of his/her own free will and wish, as well as whether the minor has attained the physical and mental maturity required for the exercise and performance of marital rights and duties respectively. A child who enters into marriage with court permission at the same time acquires full capacity to exercise rights.

A man older than 16 years of age who is capable of reasoning may acknowledge paternity. The consent of a child older than 16 years of age must be provided if a person wants to acknowledge him/her as his/her child. A child older than 10 years of age must give his/her consent to adoption.

A child who has reached 15 years of age and who is capable of reasoning has the right to know who his/her parents are and may examine the civil register and other documentation that relates to his/her origin.

The child has the right to live with his/her parents. Parents have the right and responsibility to take care of their child. Taking care of the child includes care for children, upbringing, and provision of guidance, education, representation, maintenance, as well as management and disposing of child’s property.

The child who has reached 15 years of age and who is capable of reasoning can decide with which parent s/he will live with. The right of the child to live with parents may be restricted by a court decision only if it is considered to be in the best interests of the child. The court can decide to separate a child from its parents if there are reasons for restriction or deprivation of the parental right or in the case of domestic violence.

The right of the child to maintain personal contacts with the parent whom s/he does not live with may be restricted only by a court decision if it is considered to be in the best interest of the child, where there are reasons for restriction and deprivation of parental right or in the case of domestic violence.

The child has the right to maintain personal contacts with relatives and other persons s/he is especially close with, where it is in the best interest of a child.

The child has the right be provided with to best possible living and health conditions required for his/her proper and full development. A child who has reached 15 years of age and who is capable of reasoning may give his/her consent to a medical intervention.

The age of majority in Montenegro is 18.

The child has the right to education in accordance with his/her capabilities, wishes and inclinations. A child who has reached 15 years of age and who is capable of reasoning may decide which high school to attend.

A child who has reached 14 years of age may take legal transactions with a previous or later consent of the parents, or consent of the guardianship authority, where immovable property or valuable movable property and rights from the child's property are to be alienated or

encumbered. As of 15 years of age, the child may take legal transactions in order to manage and dispose of his/her own income or property acquired through his/her own work.

The right to inheritance is acquired at birth, but a conceived child is also considered an heir, subject to being born alive. At a specific age, the child may dispose of his/her property *mortis causa*. Under the Inheritance Law, a will may be drawn up by everyone who has reached 15 years of age and who is capable of reasoning.

The Law also includes provisions to the effect that parents who exercise parental right together and in agreement when they live together, but if they cannot live together, parents also exercise their parental right together and in agreement if they conclude an agreement on joint exercise of the parental right and if the court assesses that the agreement is in the best interest of the child. The parental right may be exercised by one parent only on the basis of a court decision or on the basis of an agreement among parents which is considered by the court as being in the interest of the child.

Parents have an unconditional duty to support their minor children. Subject to their abilities, they also have a duty to support their adult children until the completion of education in an adequate school or faculty and if the education is prolonged for justifiable reasons, at the latest until the child is 26 years of age.

Special measures for protection of the rights of the child

In disputes concerning the protection of the rights of the child and disputes which have as their object the exercise, restriction or deprivation of parental rights, the court must have the best interest of a child as its primary consideration.

The guardianship authority is under a duty to provide parents with adequate types of assistance and support in relation to taking of such measures as may be necessary for the protection of the rights and best interest of the child, on the basis of directly learned facts or a notification. If justifiable interests of a child require so, the guardianship authority warns parents about their mistakes and failures in the upbringing and education of their child and helps them raise their child in a proper way, and may also refer parents to an adequate counselling, or health, social, educational or other institution.

In justifiable cases, the guardianship authority may require that parents provide a full account of the management of their child's property. In addition, the guardianship authority may, for the purpose of protecting property rights of the child, request that the court, through non-contentious proceedings, allows encumbering of parents' property or decides appointing the parents as guardians of the child' property.

When parents need long-term assistance and guidance in the exercise of parental rights and duties or if so necessary for the purpose of direct monitoring of the situation and circumstances in which a child lives, the guardianship authority may order supervision over the exercise of parental rights in relation to children or a child.

The court may, *ex officio* or on a proposal of parents or guardians, other persons entrusted with the care and education of a child or guardianship authority, in non-contentious proceedings decide that a child should be placed in an appropriate institution for education or in other family if the child exhibits behavioural disorders which require organized educational effort and separation of the child from the environment in which s/he lives. The court defines the period of application of this measure, which may not last longer than a year. The court may, even before the set period ends, *ex officio* or upon a request of parents or guardianship authority, decide to extend the period of application of this measure or impose another measure for the protection of the rights of the child. The court must forward the decision on placing the child in an institution or in other family to the guardianship authority without delay. The decision of the court serves as a basis for the ruling of the guardianship authority on the placement of the child concerned in an appropriate institution or other family.

The court may, through non-contentious proceedings, restrict the parental rights of a parent who is negligent in the exercise of the rights or duties towards the child.

It is considered that a parent seriously neglects upbringing and education of a child particularly if s/he is not taking sufficient care of the child's nutrition, hygiene, clothing, medical aid, regular school attendance and fails to prevent the child from engaging in harmful social relations, vagrancy, begging and thievery.

The procedure for the restriction of the parental right is initiated by the court *ex officio*, upon a request of the guardianship authority, other parent or the child. The restriction of the parental right is imposed for the period of one year.

Before the above-mentioned period expires, the court examines all circumstances of the case and, depending on the best interest of the child, decides either to restore the parental rights to parents or to extend the period of restriction or impose a different protective measure.

A parent who abuses the exercise of the parental right or gravely neglects the performance of parental duties is deprived of the parental right.

Abuse of the parental right occurs when the parent abuses the child physically, sexually or emotionally, exploits a child by forcing him/her to perform heavy work or work which puts at risk the morale, health or education of a child or work which is forbidden by law, or entices a child to commit criminal acts, develop bad habits and inclinations and similar.

Gross neglect of duties occurs particularly when the parent abandons the child or fails completely to take care of the basic living needs of the child s/he lives with, or avoids supporting the child or maintaining personal relations with the child s/he lives with, or hampers maintenance of personal relations between the child and the parent whom the child does not live with, or is s/he fails intentionally and unjustifiably to provide conditions for joint life with the child who is placed in an institution of social and child protection.

A decision on deprivation of the parental right is passed by the court having jurisdiction in non-contentious proceedings. If the guardianship authority learns that there is a danger of abuse of parental rights or danger of gross neglect of parental duties, it is under a duty to take urgent measures for the protection of personality, rights and interests of the child.

Procedure in disputes for the protection of the rights of the child

An action for the protection of the rights of the child may be brought by: the child, parents, Public Prosecutor or guardianship authority. If there are opposing interests between the child and its legal representative, a collision guardian represents the child. A child who has reached 10 years of age and is capable of reasoning may, either on his/her own, or through another person or institution, request from the guardianship authority to be appointed a collision guardian. In addition, a child who has reached 10 years of age and is capable of reasoning may, either on his/her own or through another person or institution, request from the court to be appointed a provisional representative because of the existence of opposing interests between the child and his/her legal representative.

If the court is satisfied that the child who is a party to dispute for the protection of the rights of the child or a dispute concerning the exercise of the parental right is capable of forming his/her own views, it has a duty: 1) to ensure that the child receives all required information on timely basis; 2) to allow the child to express his/her own opinion directly and give due weight to the child's opinion in accordance with the age and maturity of the child; 3) to ascertain the opinion of the child in such a way and in such a place which is in accordance with his/her age and maturity, except if doing so would be contrary to the best interests of the child.

The proceedings for the protection of the rights of the child are urgent; the first hearing must be scheduled so as to take place within 8 days from the day when the court receives the action; the court of second instance is under a duty to take a decision within 15 days from the day of the submission of an appeal.

Before taking a decision on the protection of the rights of the child or on the exercise of the parental right, the court must request an expert opinion and finding from the guardianship authority, family counselling office or other specialized institution.

In disputes for the protection of the rights of the child and in disputes concerning the exercising of the parental right, the court may not pass a judgement based solely on a confession or a denial or a default judgement. In addition, the parties may not conclude a court settlement.

The basic types of protection of children without parental care under family law are adoption and placement in another family.

Adoption is a special type of protection under family law of the child without parents or adequate parental care where parental, or kinship relation is established. The provisions governing adoption and foster care provide that the child may be adopted or placed under foster care only if it is in the best interest of the child.

In Montenegro, adoption may be established as full or open. A child has the right to know that s/he is adopted; adoption may be established only if it is in the best interest of the adoptee; a relative by blood in the direct line may not be adopted, nor may a brother or a sister; a guardian may not adopt his/her own ward until the guardianship authority relieves him/her of the duty of guardian.

The adoptant parents have a duty to inform the child that s/he is adopted by the time the child is 7 years at the latest or immediately after the adoption in the case the child is older. They also have a duty to inform the guardianship authority thereof.

The child may not be adopted before s/he is three months old, nor may a child of minor parents may be adopted. Exceptionally, such child may be adopted after one year from his/her birth, if there are no prospects that s/he will be raised in the family of the parents or other close relatives.

A child whose parents are unknown may be adopted three months after being left. Eligible to adopt are persons who are between 30 and 50 years of age and at least 18 years older than the adoptee.

The adoptant parents who are adopting jointly may adopt a child, even where only one of them fulfils the above mentioned requirements. If there are special justifiable reasons, a person older than 50 years of age may become an adoptant parent, provided that the age difference between the adoptant parent and the adoptee is not more than 50 years. If the adoptant parents are adopting children who are brothers and sisters, or maternal or paternal brothers and sisters, they may adopt them even where only one of them fulfils the requirements in relation to only one of the child.

The child who has reached 10 years of age may be fully adopted; spouses, as well as stepmother or stepfather of the child, may fully adopt the child. Common-law partners who live together for a longer period of time may fully adopt a child. Through full adoption an unbreakable relation equivalent to consanguinity is established between the adoptant parents and their relatives on the one side, and the adoptee and his/her offspring on the other. The adoptant parents are listed as parents of their adoptees in the civil register of births.

A child may be adopted on the basis of open adoption until s/he reaches 18 years of age. For adoption of the child older than 10 years of age and capable of understanding the meaning of the adoption, the child’s consent is necessary. Spouses, or one spouse with the permission of the other, as well as the stepmother or the stepfather of the child may adopt a child on the basis of open adoption. A person who is not married or persons who live together for a shorter period of time may adopt a child on the basis of open adoption if especially justifiable reasons therefore exist.

The guardianship authority competent for the adoption procedure is the one from the child’s place of permanent residence. If the place of permanent residence of the child can not be established, the guardianship authority competent for the adoption procedure is the one from the child’s place of temporary residence. The adoption procedure is not open to the public.

Adoption may not be established between a foreign national as an adoptant parent and a Montenegrin national an as adoptee. Exceptionally, a foreign national may adopt a child where an adoptant parent cannot be found among Montenegrin nationals, subject to consent of the ministry competent for social welfare affairs. Consent for adoption is granted on the basis of an

opinion of the expert commission made up of persons who have professional experience in work with juveniles.

The placement of children in another family is given priority over placement in a social protection institution. The guardianship authority decides on the placement in another family, if it is in the best interest of the child; the guardianship authority carries out comprehensive examination of each individual case in order to ensure that every decision reflects the child's needs.

The placement in another family of a child who has both parents is subject to previous consent of the parents; before a decision on such placement is taken, the guardianship authority is under a duty to provide the child with an opportunity to express his/her views freely in the matter of placement in another family and to assess this opinion in accordance with the age and maturity of the child while having the principle of the best interests of the child as its primary consideration.

A child with a physical or mental disability or neglected in terms of provision of guidance may be placed in another family only if it is established that the personal characteristics of family members are such to make them capable of caring for such child and providing him or her with proper guidance.

The placement is carried out through the competent centres for social welfare. There are 10 centres for social welfare in Montenegro, which cover the territory of 21 municipalities through specialized and professional family counselling services.

Legal protection of children with socially unacceptable behaviour

The Criminal Code of Montenegro contains provisions which apply to juveniles. A child is a person who is below 14 years of age, while a juvenile is a person who is above 14 but below 18 years of age at the time of the commission of a criminal offence.

Criminal sanctions may not be imposed on a person who is below 14 years of age (child) at the time of the commission of an offence established as criminal offence by law.

Juveniles may be imposed the following criminal sanctions: corrective measures, juvenile custody or security measures.

A juvenile who is above 14 but below 16 years of age (junior juvenile) at the time of the commission of a criminal offence, may be imposed the following corrective measures:

- disciplinary measures: reprimand and referral to a reformatory for juveniles;
- measures of increased supervision: increased supervision by parents, adoptant parents or guardians, increased supervision by the guardianship authority and increased supervision accompanied by day care within an institution for education of juveniles;
- institutional measures: confinement to a correctional institution, confinement to a reformatory and confinement to special institutions for treatment and professional training.

A juvenile who is above 16 but below 18 years of age (senior juvenile) at the time of the commission of a criminal offence may be imposed corrective measures and, exceptionally, the sentence of juvenile custody.

Security measures may be imposed on juveniles under specific conditions.

A suspended sentence and judicial admonition may not be imposed on a juvenile.

The purpose of corrective measures and juvenile prison is to ensure education, corrective training and proper development of juvenile offenders by performing supervision over them, providing them with protection, assistance, and professional training and developing their personal sense of responsibility. The purpose of juvenile prison is to exert an intensified influence on juvenile offenders with a view to averting them from committing criminal offences in the future, as well as with a view to averting other juveniles from committing criminal offences.

In the case of criminal offences punishable by imprisonment of five or more years, only a senior juvenile may be punished.

Juvenile custody may not be shorter than six months nor longer than eight years. Exceptionally, for criminal offences punishable by a minimum of 10 years of imprisonment, juvenile custody may be imposed for a period of 10 years.

Juvenile custody is imposed for full years and months.

Senior juveniles serve juvenile custody sentences in special detention and rehabilitation centres where they can stay until they reach 23 years of age. If they do not serve their sentence in full by the time they are 23 years of age, they are transferred to detention and rehabilitation institutions where adults serve their sentences. Exceptionally, a person who has reached 23 years of age may stay in a detention and rehabilitation centre for juveniles if so required for the purpose of completion of education or vocational training, but only until s/he reaches 25 years of age.

A person who has been imposed a sentence of juvenile custody, may be granted conditional release provided s/he has served a third of the imposed sentence but not less than one year.

A juvenile offender may be imposed one or more corrective orders for a criminal offence carrying a penalty of fine or imprisonment of up to five years.

A corrective order may be imposed on a juvenile by the court acting on the basis of its own assessment or on a proposal of the Public Prosecutor having jurisdiction.

The conditions for the application of a corrective order are as follows: confession to a criminal offence by a juvenile and juvenile's attitude towards the criminal offence and the injured party.

The purpose of corrective orders is to avoid initiation or continuation of criminal proceedings against a juvenile or to discontinue proceedings or to influence the proper development of a juvenile, strengthen his/her personal responsibility and avert him from the commission of criminal offences in the future through the application of a corrective order.

The corrective orders are as follows:

- settlement with the injured person so as to remove wholly or partially the detrimental consequences of the act via damages, apology, work, or otherwise;
- regular attendance of school or going to work regularly;
- inclusion, without compensation, into the work of humanitarian organizations and social, local or environmental duties;
- undergoing appropriate testing and addiction rehabilitation caused by the use of alcoholic beverages or narcotic drugs;
- inclusion into individual or group treatment in an appropriate medical institution or counseling office.

When opting for a corrective order, in accordance with their powers, the Public Prosecutor having jurisdiction and the court will take into account the interest of the juvenile and of the injured party, while ensuring that the application of one or more corrective orders does not adversely affect the education or employment of the juvenile.

A corrective order may last no longer than six months and may be replaced by another corrective order or terminated during that period.

Selection and application of corrective orders is done in collaboration with parents or guardians of juveniles and the competent guardianship authority.

The court may impose one or more special obligations on a juvenile, if it finds this necessary for purpose of exerting influence on a juvenile and his/her behaviour by means of appropriate requirements and prohibitions.

The court may impose the following obligations on a juvenile: to apologise to the injured party, to compensate the damage caused within the limits of his/her capabilities; to attend school or work regularly; to be trained for a profession that best suits his/her capabilities and inclinations; to donate an amount of money to a humanitarian organization, fund or public institution if s/he earns income through work or possesses property; to perform pro bono work in humanitarian

organizations or duties of social, local or environmental nature; to be submitted to specific tests and treatment of alcohol or drug addiction; to take part in an individual or group treatment within an adequate health institution or counselling office; to act in line with the working programmes developed for him or her in such institutions; to attend professional training courses; not to leave the place of permanent residence without an approval of the court.

When opting for special obligations, the court will particularly endeavour to choose the ones which are adapted to the personality of the juvenile and circumstances s/he lives in, and will value the juvenile's readiness to co-operate in the application of such obligations. When pronouncing these obligations, the court will particularly underline to the juvenile and his/her parents that, in the case of a failure to perform one or more special obligations, these obligations may be substituted by another special obligation or a corrective measure.

The special part of the Criminal Code includes criminal offences against:

- life and body – *killing a child at birth*, Article 146, *instigation to suicide and assisted suicide*, Article 149 paragraphs 3 and 4, *illegal termination of pregnancy*, Article 150;
- freedom, human rights and rights of individuals and citizens – *abduction*, Article 164 paragraph 3;
- sexual freedoms – *rape*, Article 204 paragraphs 3 and 4, *sexual intercourse with a helpless person*, Article 205 paragraphs 2 and 3, *intercourse with a child*, Article 206 paragraphs 2 and 3, *intercourse by abuse of position*, Article 207 paragraphs 2 and 3, *prohibited sexual acts*, Article 208 paragraph 2, *pimping and enabling having a sexual intercourse* Article 209, *mediation in prostitution*, Article 210, *displaying pornographic material*, Article 211;
- marriage and family – *customary marriage with a juvenile*, Article 216, *deprivation of a juvenile*, Article 217, *changing the family status*, Article 218, *neglecting or abusing a juvenile*, Article 219, *violence in a family or a family community*, Article 220, *failure to maintain* Article 221, *violation of family obligations*, Article 222, *incest* Article 223;
- human health – *unlawful transplantation of parts of body* Article 294, *unlawful extraction of parts of body for transplantation*, Article 295, *enabling the enjoying of narcotic drugs*, Article 301, paragraph 2;
- humanity and other rights guaranteed by international law – *trafficking in children for adoption*, Article 445.

The Criminal Code of Montenegro does not provide for the death penalty as type of punishment.

The Criminal Procedure Code includes provisions which govern proceedings conducted against juveniles. These provisions also apply to proceedings conducted against persons who committed criminal offences as juveniles and are below 21 years of age at the time when proceedings are instituted or at the time of trial.

Where it is established during the course of proceedings that a juvenile was below 14 years of age at the time of the commission of a criminal offence, criminal proceedings are discontinued and the guardianship authority is informed thereof.

A juvenile may not be tried *in absentia*. When carrying out actions in the presence of a juvenile, and particularly during his/her hearing, participants to proceedings are under duty to act cautiously, taking into account the mental maturity, sensitivity, personal characteristics and privacy of the juvenile, so that criminal proceedings would not adversely affect the development of the juvenile.

A juvenile must have a defence counsel at the first questioning, as well as during the entire proceedings; if a juvenile or his/her legal representative do not engage a defence counsel, s/he will be appointed an ex officio defence counsel by the judge for juveniles. Only an attorney-at-law who is trained in the rights of the child and juvenile delinquency may act as a defence counsel to a juvenile.

No person may be exempted from the duty to testify about such facts as may be required to assess the maturity, personality and living circumstances of a juvenile.

Possibility of separation and joinder of proceedings – where a juvenile has participated in the commission of a criminal offence together with an adult, the proceedings towards the juvenile will be separated. Proceedings towards a juvenile may be joined with proceedings against an adult only if the joinder of proceedings is necessary for a comprehensive clarification of the matter.

Single proceedings – as a rule, where there is well-founded suspicion that a person has committed a criminal offence as a juvenile and another one as an adult, single proceedings will be conducted before a panel trying juveniles, provided that the person concerned is below 21 years of age at the time when proceedings are instituted.

In proceedings towards juveniles, the guardianship authority has the right to be informed of the course of proceedings, to make suggestions and point to facts and evidence which are of importance for the taking of a proper decision. Whenever the Public Prosecutor institutes proceedings towards a juvenile s/he must inform the responsible guardianship authority thereof.

Summoning of juveniles and service of decisions and written documents – a juvenile is summoned through his/her parents or legal representative, except if not possible because of the necessity of an urgent action or other circumstances. When a juvenile is being brought in, authorized police officers will effectuate the service of the summons in a discreet manner. Written documents must not be served on a juvenile by way of their posting on the bulletin board of the court.

Information about criminal proceedings towards a juvenile as well as the decision taken in such proceedings may not be published in the public media without court permission. Only the part of proceedings or the part of the decision taken in the proceedings against juveniles for which permissions have been issued may be published, but the name of the juvenile and other information on the basis of which the juvenile's identity could be revealed must not be stated.

Duty of urgency of proceedings

Composition of the court – first instance proceedings against juveniles are conducted before a judge for juveniles and the panel for juveniles of the court having jurisdiction. At the second instance, the panel for juveniles of the directly superior court has jurisdiction. The juvenile judge and judges from the panel for juveniles must be persons who have acquired special titles in the field of rights of the child and juvenile delinquency.

As a rule, the court of juvenile's permanent residence has the territorial jurisdiction in proceedings towards the juvenile, and if a juvenile does not have permanent residence or it cannot be established, the court of juvenile's temporary residence has jurisdiction.

The exclusive jurisdiction of the Public Prosecutor – criminal proceedings against juveniles may be instituted only upon a request of a Public Prosecutor.

If the Public Prosecutor fails to lodge a request for instituting criminal proceedings towards a juvenile, s/he must inform the injured party thereof within eight days. The injured party may not assume prosecution, but has the right to require from the panel for juveniles to take a decision on instituting proceedings, within eight days from the day when s/he received the notification from the Public Prosecutor.

Implementation of the principle of opportunity – in relation to criminal offences punishable by a principal punishment of a fine or imprisonment of up to five years, the Public Prosecutor may decide not to request the initiation of criminal proceedings despite evidence which gives rise to well-founded suspicion that a juvenile has committed a criminal offence, if the Public Prosecutor for juveniles considers it would not be effective to institute proceedings against a juvenile in view of the nature of the criminal offence, circumstances in which the offence was committed, past life of the juvenile and his/her character.

The Public Prosecutor may seek an opinion from the guardianship authority as to whether or not it is effective to institute criminal proceedings against a juvenile, but may also entrust the collection of such information to an expert.

A decision of the Public Prosecutor not to institute proceedings may be taken under condition that the juvenile and his/her parents, adoptant parents or the guardian consent thereto. In addition, the juvenile must show readiness to accept and carry out one or more corrective orders.

The consent of the injured party is necessary for the application of corrective orders. If a juvenile fulfils the corrective order imposed in entirety, of which a report is submitted by the guardianship authority, the Public Prosecutor will issue a decision on the dismissal of criminal charges or of a motion of the injured party to institute proceedings.

If a juvenile fails to carry out the corrective order or carries it out only to the extent which justifies the institution of proceedings, the Public Prosecutor submits a request for initiation of preparatory proceedings to the judge for juveniles.

The Public Prosecutor submits a request for initiation of preparatory proceedings to the judge for juveniles within the court having jurisdiction. If the judge for juveniles does not agree with the request, s/he will request the panel for juveniles within the higher court to decide on the issue.

The judge for juveniles may entrust an internal affairs authority with the execution of a search warrant or warrant on seizure of items.

The Code provides that ordering detention to juvenile is a measure of last resort. This means that the judge for juveniles may order detention only exceptionally, ex officio or on a proposal of the Public Prosecutor if there are reasons for detention defined by the Code. If the judge for juveniles does not agree with the proposal of the Public Prosecutor to order detention on a juvenile, s/he will request the panel for juveniles of the same court to decide on the issue. On the basis of a decision taken by the judge for juveniles, detention during preparatory proceedings may last no longer than a month. The panel for juveniles of the same court may, for justifiable reasons, extend detention for no longer than a month more. After the completion of preparatory proceedings, detention of a senior juvenile may last no longer than six months, whereas towards a junior juvenile it may last no longer than four months.

Juveniles are detained separately from adults. Exceptionally, the judge for juveniles may decide that a juvenile should be detained together with an adult, if satisfied that the adult would not exert bad influence on the juvenile and that otherwise solitary confinement of the juvenile would last longer and have harmful effects to the development of his/her personality.

The judge for juveniles is under a duty to take special account of the personal characteristics of the detained juvenile and the needs for the protection of his/her personality during detention.

When a juvenile is tried, the public must always be excluded. At the main hearing, the panel may allow the presence of persons who deal with the protection and education of juveniles or with the suppression of juvenile delinquency.

The juvenile has the right to appeal all decisions. The request for the protection of legality is allowed both in the case that a court decision amounts to a violation of law and in the case where a penalty or a corrective measure has been improperly imposed on a juvenile.

Protection under the Law on Misdemeanours

The Law on Misdemeanours prohibits the impossibility of application of misdemeanour legislation to children, i.e. that misdemeanour proceedings can not be conducted if the juvenile did not reach the age of 14 (a child) at the time of the commission of a misdemeanour.

A juvenile who is above 14 but below 16 years of age (junior juvenile) at the time of the commission of a misdemeanour may be imposed only a corrective measure. A juvenile who is above 16 but below 18 years of age (senior juvenile) at time of the commission of a misdemeanour, may be imposed either a corrective measure or punishment.

A protective measure may be imposed on a juvenile only exceptionally and together with a corrective measure, if this is necessary due to the nature of the misdemeanour.

The law may provide that the parent, adoptant parent or guardian of a juvenile who committed a misdemeanour will be punished if the misdemeanour committed was a consequence of these individuals' failure to duly supervise the juvenile despite being able to do so.

Juveniles who have committed misdemeanours may be imposed the following corrective measures:

- disciplinary measures (reprimand or committal to a disciplinary centre for juveniles),
- measures of increased supervision.

Reprimand is issued to a juvenile who does not require longer-lasting corrective measures, particularly where a misdemeanour was committed as a result of levity or recklessness.

When reprimand is issued, the harmfulness of a juvenile's actions must be clearly underlined to him/her.

Committal to a disciplinary centre for juveniles is imposed on a juvenile where it is necessary to exert influence on the personality and behaviour of a juvenile by way of suitable short-term corrective measures. It is also determined that the juvenile is committed to a disciplinary centre for a fixed number of hours during the holidays for up to four days in a row or for a fixed number of hours during the day, but no longer than for 15 days or for uninterrupted stay for a fixed number of days, but not longer than 10 days.

Increased supervision by parents, adoptant parents or guardians is imposed if the parents, adoptant parents or guardians have failed to exercise supervision over a juvenile despite being able to do so. If the parent, adoptant parent or guardian of a juvenile is not able to supervise the juvenile, s/he will be placed in another family who are willing to accept him and in the position to perform increased supervision over him.

Where a corrective measure is being imposed, all circumstances that are of importance for the choice of a corrective measure best fitted to the purpose of corrective training are taken account of. If, after a corrective measure has been imposed, circumstances occur which did not exist at the time when the decision was made, or those circumstances were unknown, and they would be of influence on the taking of the decision, the imposed measures may be discontinued or replaced by another corrective measure.

Imprisonment may be imposed on a senior juvenile only if at the time when the misdemeanour was committed, s/he was able to understand the meaning of his/her actions and control his/her behaviour and if it would not be justifiable to impose a corrective measure because of serious consequences of the misdemeanour or high degree of misdemeanour responsibility.

Imprisonment may be imposed on a senior juvenile only exceptionally, consideration being given to the nature of the offence, personal characteristics and behaviour of the juvenile. Imprisonment imposed on a juvenile may not last longer than 15 days, nor may fines be replaced by imprisonment longer than 15 days.

If a juvenile has become an adult before a decision in relation to the misdemeanour was made, the regional misdemeanour authority will not impose a corrective measure. If the juvenile has become an adult after the decision on corrective measure was imposed, the regional misdemeanour authority will discontinue the execution of the measure.

Misdemeanour proceedings against juveniles are urgent.

The public is always excluded from proceedings towards juveniles.

Before a corrective measure or punishment is imposed on a juvenile, an opinion of the competent guardianship authority must be obtained. When taking actions in relation to a juvenile offender in his/her presence, particularly during the questioning, persons who participate in the proceedings are obliged to act carefully and to take account of the mental development, sensitivity and personal characteristics of the juvenile.

The juvenile is summoned through parents or guardians, except if this is not possible because of the urgency of proceeding or out of other justifiable reasons. If a juvenile is not summoned through parents or guardians, the first instance misdemeanour authority conducting the proceedings must inform them of the initiation of proceedings.

No person may be exempted from the duty to testify about such circumstances as may be required to assess the maturity, personality and living circumstances of a juvenile.

Where a juvenile has participated in the commission of a misdemeanour together with adults, the proceedings against the juvenile will be separated and conducted under the provisions of this title. Proceedings against a juvenile may be joined with proceedings against an adult and conducted under the general provisions of this law, only if the joinder of proceedings is necessary for a comprehensive clarification of the matter.

In proceedings against juveniles, the guardianship authority and the parents or guardians of a juvenile have the right to be kept informed about the course of proceedings, to make suggestions during the proceedings and to point to facts and evidence which may be of importance for taking of a proper decision.

The misdemeanour judge will discontinue misdemeanour proceedings if it is established that the juvenile was below 14 years of age at the time of the commission of the misdemeanour. The judge may decide that misdemeanour proceedings towards a juvenile should not be instituted, or, if they have already been instituted, that they should be discontinued, if s/he considers that it would not be effective in view of the nature of the misdemeanour, past life of the juvenile and his/her personal characteristics.

The request for initiation of misdemeanour proceedings will be dismissed by way of a ruling containing a statement of reasons, while the parents, guardian or the guardianship authority of the juvenile must be informed about the committed misdemeanour so that they can take measures within their respective responsibilities.

Enforcement of criminal sanctions against juveniles

The Law on Enforcement of Criminal Sanctions provides that, as a rule, adults and juveniles serve their imprisonment and juvenile custody sentences separately. Persons serving imprisonment sentences and persons in detention may not be held in the same room.

Sentenced persons, and particularly juveniles and younger adults who have not completed primary education are provided with the benefit of primary education classes and vocational education classes may also be organized. A sentenced person may be allowed to take exams outside the institution.

The head of the institution may allow a sentenced juvenile who behaves properly and studies and works diligently to visit parents or other close relatives. The leave may be granted not more than twice a year and may last each time up to 14 days. The correspondence between a sentenced juvenile and his/her parents and other close relatives may not be restricted.

A sentenced juvenile may exceptionally be imposed a disciplinary punishment of solitary confinement for a period of up to 10 days. If a juvenile becomes an adult while serving a sentence of juvenile custody, such punishment may last up to 30 days.

The purpose of corrective measures is to ensure education, corrective training and proper development and to avert juveniles from committing criminal offences in the future by providing them with protection, assistance and supervision. In the implementation of corrective measures, one must act humanly and with respect to the personality and dignity of juveniles and in a way that suits their mental and physical development.

During the enforcement of corrective measures, juveniles are provided with primary education and, if possible, with the conditions for obtaining vocational education up to second and third level of professional qualification. Social protection authorities are responsible for the enforcement of corrective measures, unless otherwise provided by this law.

Committal of a juvenile in view of enforcing the corrective measure of committal to a reformatory is conducted by the basic court of the juvenile’s place of permanent or temporary residence. The committal of a juvenile in view of enforcing another corrective measure is carried out by the administration authority responsible for social protection issues from the place of juvenile’s permanent or temporary residence or the institution s/he has been placed in.

The court must deliver an enforceable decision on a corrective measure to authority competent for enforcement no later than three days from the day when the decision became enforceable.

The decision must be accompanied with all important data on the juvenile's personality which has been compiled during the proceedings.

Supervision over the enforcement of a corrective measure is performed by the court which imposed the corrective measure. Supervision over the enforcement of corrective measures is performed by the administration authority responsible for social protection issues.

Institutional measures are enforced in the educational institution, reformatory and special institution for treatment and rehabilitation.

The guardianship authority sends a juvenile who has been imposed an institutional measure to an institution for enforcement of certain institutional measure, in the case that the parents, adoptant parents or the guardians have not assumed the duty take the juvenile themselves. The institution in which an institutional measure is to be enforced, informs the court and the guardianship authority about the admission of the juvenile and about the date when the enforcement of the institutional measure commenced.

If the enforcement of an institutional measure cannot commence or continue because the juvenile has absconded or refused to submit to the enforcement of an institutional measure, the guardianship authority informs the court which imposed the measure in the first instance thereof and notifies the responsible authority of internal affairs from the place of juvenile's permanent or temporary residence.

The commencement of enforcement of an institutional measure may be deferred upon a request of the juvenile, his/her parent, adoptant parent or guardian or guardianship authority. The judge for juveniles decides about the deferral of enforcement.

The first-instance court which imposed an institutional measure on a juvenile may grant suspension of the enforcement of an institutional measure for up to three months, if there are justifiable reasons to do so, upon the juvenile's application, application of his/her parents, adoptant parents or guardians or upon a request of the guardianship authority of head of the institution in which the institutional measure is being enforced. The suspension may also be granted upon a request of the Public Prosecutor if a request for the protection of legality has been lodged.

The enforcement of an institutional measure will be suspended in the case of a female juvenile who is pregnant or has just given birth, provided that accommodation, support and care for such juvenile and the child are ensured. The suspension may last until the child reaches one year of age at the most. The period of suspension is not credited against the time of enforcement of an institutional measure.

Upon a request of the juvenile, parent, adoptant parent, guardian or institution in which the measure is being enforced or upon a request of the competent guardianship authority, the first-instance court which imposed the intuitional measure may transfer the juvenile to another institution. A juvenile is released from an institution when the longest period of time allowed by law for the enforcement of the corrective measure in question expires, or when the court takes a decision on the termination or change of the measure.

Where a juvenile is in the final grade of school or is near completion of vocational education at the time of release from an educational institution, the institution may, at his/her request, provide him with an opportunity to finish schooling or vocational education if the juvenile would otherwise be prevented from finishing schooling or vocational education. In this case, the corrective measures provided for by this law are not applied with regards to the juvenile.

During the enforcement of institutional corrective measures, the responsible social welfare authority maintains constant contact with the juvenile, his/her family and the institution in which the measure is being enforced, in order to prepare the juvenile to the greatest extent possible for the return to his/her family and for reintegration into society.

The institution is under a duty to inform the competent social welfare authority about the release of a juvenile from the institution at least three months before the release and to recommend measures which should be taken for the purpose of preparing the return of the juvenile. In order to organize the return of a juvenile to the community after the enforcement of an institutional

measure in the best manner possible, the responsible social welfare authority is under a duty to take particular care of a juvenile who has no parents or whose family circumstances are not settled.

The competent social welfare authority must take special care of accommodation, food, clothes, treatment, settling of family situation, employment and organization of completion of vocational training and schooling of the juvenile.

If a juvenile being released is ill and not capable of travelling, the institution in which the corrective measure has been enforced will put the juvenile into the nearest health institution for treatment. After a juvenile has been released from the enforcement of institutional measure, his/her parent or guardian is under a duty to register him with the competent social welfare authority in the place of juvenile's permanent or temporary residence.

The competent social welfare authority is under a duty to provide assistance to the juvenile until such time as s/he does not need assistance and protection any longer.

Health Care

The Law on Health Insurance provides that the child enjoys the rights arising from mandatory health insurance until the completion of compulsory education under the regulations governing the area of education. In addition, if the child attends regular or part-time education, health insurance is provided until the expiry of the time limit stipulated for regular education, but at the latest until 26 years of age.

A child whose education has been interrupted because of an illness, enjoys the rights arising from mandatory health insurance even during the time of illness and if the child continues with education, s/he enjoys the rights arising from mandatory health insurance even after the set age limit, for a period that may not be longer that the period of interruption of education.

A child who becomes incapable of leading an independent life and performing work, within the meaning of special regulations, before the expiry of the time limit for regular education (before reaching 15 years of age) enjoys the rights arising from mandatory health insurance also during the time of such incapacity.

The right to mandatory health insurance belongs to a child who becomes permanently incapable of leading an independent life and performing work, within the meaning of special regulations, even after the age set by the law (before reaching 15 years of age) if s/he has no personal means of support. Children born in wedlock or out of wedlock, adopted children, stepchildren and children accepted for maintenance all enjoy the right to mandatory health insurance.

The Law on Health Care provides that priority health care measures include health care of children and youth, until the completion of the stipulated regular education, protection of women in relation to family planning, pregnancy, child birth and maternity, as well as health care of persons with mental and physical disabilities. Primary health care includes health care of the mother and the child and family planning, as well as rehabilitation of children and youth with developmental and health issues.

The right to health care covers *inter alia* prevention, examinations and treatment of illnesses, dental checkups and treatments, rehabilitation, pharmaceuticals, medical devices and medical aids.

Social protection

The Law on Child and Social Protection defines the rights of children without parental care and children with disabilities. Within the social protection system children are entitled to all rights of general interest such as: family maintenance support, personal disability allowance, aid and attendance allowance, institutional placement, placement in another family, support for education of children and young people with disabilities.

The conditions for the realization of the right to family maintenance support are stipulated with reference to personal status and material conditions. When personal status is concerned, a family or a member of a family, may realize a right if: a member of a family is incapable of work or capable of work under legally stipulated conditions (pregnant woman, single parent, parent

who takes care of a minor or an adult incapable of work, a person who completed education under a specially adapted educational programme and child without parental care until s/he gets employment for indefinite term or fixed term longer than six months).

The child who became incapable of independent life and work before the age of 18 has the right to personal disability allowance. The Rulebook on medical indications for exercise of social protection rights defines the illnesses which are the basis for the exercise of the said right.

The right to aid and attendance allowance belongs to the child who enjoys the right to personal disability allowance and the child with severe physical, mental or sensory impairment that requires permanent care and assistance in order to have his/her basic needs satisfied. The Rulebook on medical indications for exercise of the rights on social protection defines the illnesses which are the basis for exercise of the said right.

The right to placement in a social protection institution and placement in another family belongs to the child without parental care, children and youth with physical, mental or sensory impairment and the child with behavioural disorders. The institutional placement is carried out through the centres for social welfare.

With the aim to securing the right of the child to an adequate standard of living, fundamental rights from child protection are provided for as follows: baby equipment for a new born child, children's allowance, one-off financial allowance for the birth of a child, compensation for the part-time work and vacation and recreation of children.

The parent has the right to compensation for the equipment for every new born child. The parent may exercise this right until the child reaches one year of age. The compensation is paid on a one-off basis in the amount of EUR 100.

The right to children's allowance may be exercised by: the child of a user of family maintenance support, child with physical, mental and sensory impairment who may be prepared for independent life and work, child with physical, mental and sensory impairment who can not be prepared for independent life and work and child without parental care. The right to children’s allowance is exercised until the child reaches 18, and if the child attends regular high school until the time-limit stipulated for that schooling.

Financial allowance on the basis of the birth of a child – the employee enjoys the right to compensation of salary during her maternity leave. The right to compensation of salary is exercised by the employee from the employer. A person who performs entrepreneurial activity as the only employee exercises this right through the centre for social welfare. The amount of the compensation of salary is equal to the amount of salary that the employee would earn regularly for the performance of affairs and duties s/he is assigned to. The amount of compensation of salary may not be lower than the minimum wage rate, in accordance with law and the General Collective Agreement.

Compensation of salary for part-time work – the employee exercises the right to compensation of salary for part-time work during the time of absence from work due to more intensive care for a child, or for the purpose of taking care of a sick child, with the employer, in accordance with law. A person who is engaged in entrepreneurial business as the only employee exercises compensation of salary with the centre for social welfare in the amount of 50% of the taxable base.

The right to vacation and recreation belongs to the child of a user of family maintenance support, institutionalized child and child placed in another family, with the purpose of ensuring their engaging in sports, recreational, cultural, entertainment and educational activities. Children who are holders of this right are sent in an institution for vacation and recreation of children.

Under the Rulebook concerning more detailed standards, norms and manner of exercising primary health care through a chosen team of physicians or a chosen physician, day care centres for children with disabilities are to be established for children less than 15 years of age. At the moment, there are three day care centres in Montenegro.

Under the Law on Civil Registers, the child is registered in the official register of births in the municipality where s/he is born. If the child is born in a vehicle, s/he is registered in the civil register of the municipality where the journey of the mother ended.

The birth of the child whose parents are unknown is registered in the civil register in the municipality where the child was found. The registration is conducted on the basis of a decision of the guardianship authority which contains the child's name, family name, sex and place of birth. The place where the child is found is registered as the place of birth. The decision is made on the basis of written records on the finding of a child. The written records are, together with the decision, delivered to the registrar.

The birth of a child must be reported within three days from the date of the child's birth. The birth of a stillborn child must be reported within 24 hours from the moment the stillborn child was born. As a rule, if the child was born in a maternity ward or other health institution, the report for registration is submitted by the health institution, through electronic means of communication.

The father or, if possible, the mother of the child is under a duty to report the birth of the child born out of the health institution. In the case these persons are not capable of reporting the child's birth, the person who helped deliver the baby or who was present at the delivery, or the person in whose apartment the delivery took place, is under a duty to report the birth of the child.

The right and procedure for changing of the personal name is defined by the Law on Personal Name. Personal name or only family name or only first name may be changed following the change of family or personal status (adoption, establishment of paternity or maternity, conclusion of marriage, divorce or nullification of marriage), or upon a request.

Parents` consent is necessary for the change of a child's personal name. If the name of a juvenile who has reached 10 years of age is being changed, the child's consent is required, provided that the child is capable of expressing his/her own opinion.

If the change of the personal name is requested by the guardian of the minor, the approval of the competent guardianship authority is required. Following adoption, the adoptee receives the common family name of the adoptant parents, and if the adoptant parents do not have a common family name, the name of the adoptee is determined by an agreement.

The personal name is given to the child by the parents, based on their agreement. If one of the parents is unknown, not alive or cannot exercise the parental right, the other parent chooses the personal name of the child. The child may get the family name of one or both parents.

If the parents of the child are not alive or not capable of exercising parental rights, the personal name of the child is determined by the guardian based on a prior approval of the competent guardianship authority. The personal name of the child whose parents are unknown is determined by the competent guardianship authority.

If the child whose parents are unknown is adopted before the determination of his/her personal name, the personal name of the child is determined by the adoptant parent. If the parents cannot agree on the personal name of the child even with the help of the guardianship authority, the court will decide on the personal name in non-contentious proceedings, on a proposal of one or both parents or the guardianship authority.

The Labour Law defines that a person who satisfies the general and special conditions stipulated by law, other regulations and Act on job descriptions may conclude an employment contract. General conditions are that the person has reached 15 years of age and that he /she possesses the general health ability. A person with disability whose health makes him or her capable of working on adequate positions may conclude an employment agreement under the conditions and in a way defined in this law, unless otherwise provided by a separate law.

An employment contract may be concluded with a person less than 18 years of age with a written consent of both parents, adoptant parent or guardian, if such work does not jeopardize such person's health, morale and education and is not prohibited by law. A person under 18 years of age may conclude an employment contract on the basis of a health report issued by the responsible health authority certifying that person's ability to execute the tasks defined in the employment contract, provided that those tasks are not harmful for the person's health.

Every type of discrimination, either direct or indirect, of persons who seek employment is prohibited, as well as discrimination of employees based on sex, birth, language, race, religion, colour, age, pregnancy, health or disability, ethnic origin, marital status, family obligations, sexual orientation, political or another belief, social background, financial standing, membership in political and trade union organizations or some other characteristic. In the case of discrimination,

a person seeking employment, as well as an employee, may institute proceedings before the court having jurisdiction, in accordance with law.

The employee under 18 years of age may not work in places where tasks are of extremely hard physical character nor perform work under the earth or water or in circumstances which could be harmful or could put their health and life under an increased risk.

An employee under 18 years of age may not be assigned to work overtime or during the night. By virtue of a collective agreement with the employer, the employee may be entitled to work shorter than full working hours. Exceptionally, an employee younger than 18 years may be required to work during the night when so necessary in order to continue with work interrupted due to natural disasters, or in order to prevent damage to raw or other materials.

Education

The Law on Elementary Education provides for mandatory attendance of primary school for all children from 7 to 15 years of age. In accordance with this Law, elementary education is available free of charge.

Elementary education of persons older than 15 years is carried out through organisation of special classes in elementary schools or in schools for adult education.

The current system of education of children and youth with disabilities is organized in three basic forms: institutions for children with disabilities, special classes in mainstream schools and classes of mainstream schools.

In the first two forms, the system is organized in such a way that the children with the same type of impairment are separated in special schools or special classes. Other children with impairments or some other type of disabilities attend mainstream school together with other children, and are provided with special professional assistance.

Within the Education Office, there are specialized mobile teams which are composed of experts from special institutions and experts from mainstream system which have been trained in inclusive education. They get involved in the work of mainstream schools attended by children with disabilities, depending on the type of disability.

There are 4 institutions for education of children and youth with disabilities in Montenegro.

The exercise of the right to elementary education is governed by the Law on Elementary Education and is mandatory for all children from 6 to 15 years of age. The parent or guardian must ensure that their child attends elementary education, which is completed after nine years. Elementary education lasts nine years and is available free of charge.

High school students in Montenegro may acquire general and vocational education in high schools which are organized as high grammar schools, high mixed schools (educational programmes of both high grammar schools and high vocational schools are simultaneously implemented) and high vocational schools. In order to offer high school students the possibility of choice, programmes of high grammar schools and high vocational schools are organized in each of the 21 Montenegrin municipality.

Protection of juveniles against the use of alcohol is defined by the Law on Public Peace and Order, which provides for punishment of persons selling alcohol to juveniles.

The Law on the Police provides that police officers must act carefully, with due consideration of mental development, sensitivity, personal characteristics and privacy of the juvenile when taking actions in relation to the minor and especially during the minor's hearing. As a rule, the police powers towards the minor are applied in the presence of parents or a legal representative.

The Law on Minority Rights and Freedoms prohibits any form of direct or indirect discrimination on any basis, and in particular on the basis of race, colour, sex, ethnic origin, social background, birth or similar status, religion, political or other belief, financial standing, culture, language, age and mental or physical disability.

The right of the child to be protected against illegal use of narcotic drugs and psychotropic substances – under the Law on Production of and Release into Circulation of Narcotic Drugs, the production of and circulation of these substances may be carried out only in medical, veterinary, educational, laboratory and scientific purposes on the basis of approval and permission of the

competent body. The Law defines conditions for the production of these substances, record keeping thereon and the procedure of competent authorities with the seized drugs.

Under the Law on the Armed Forces, the military duty arises at the beginning of calendar year in which a military conscript reaches the age of 18. All Montenegrin citizens are liable to military duty during the state of emergency or state of war. During the state of peace, military conscripts may, on a voluntary basis, be called to participate in trainings for acquiring necessary knowledge and for performance of war duties, which may not last longer than 15 days during one calendar year.

The Law on the Protection against Domestic Violence, Juvenile Judiciary Law, Law on Amendments to the Law on Protector of Human Rights and Freedoms and the Law on Misdemeanours are in the process of being developed.

In addition to the legal framework described above, the issue of protection of the rights of the child is dealt with by a number of strategic documents adopted by the Government of Montenegro.

This refers to the Strategy for Development and Poverty Reduction (2003-2007), National Plan of Action for Children (2004-2010), National Programme for 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), 2005-2015 National Action Plan for the Decade of Roma Inclusion in the Republic of Montenegro, Strategy for Combating Poverty and Social Exclusion (2007-2011), Strategy for Improvement of the Status of RAE Population in Montenegro (2008-2012), Strategy for Development of Social and Child Protection System in Montenegro (2008-2012), Strategy for Integration of Disabled Persons in Montenegro (2008-2016), Action Plan of the Strategy for Integration of Disabled Persons in Montenegro (2008-2009), Strategy of Inclusive Education in Montenegro (2008-2012), National Strategic Response to Drugs (2008-2012) and Action Plan for the Implementation of the National Strategic Response to Drugs (2008-2009).

The National Plan of Action for Children in Montenegro (NPA) for the period 2004-2010 is a framework document, which outlines the activities, programmes and strategies to be taken by the state and civil society with a view to creating a world fit for children in Montenegro by the end of 2010.

In 2007, the Government of Montenegro established the Council for the Rights of the Child and tasked it to monitor the implementation of the 2004-2010 National Plan of Action for Children, to protect and improve the rights of the child in the area of social and child protection, health care, education and in other areas of importance for the protection of the rights and interests of the child, to monitor the implementation of regulations which govern the protection of the rights of the child, to monitor the performance of duties of Montenegro which stem from the Convention on the Rights of the Child and other international instruments relevant to the protection of the rights of the child, to initiate enactment of regulations for improvement and protection of the rights of the child, to improve co-operation with non-governmental organizations in the process of implementation and protection of the rights of the child, to improve co-operation with local self-government in the process of implementation and protection of the rights of the child, to raise public awareness of the rights of the child and to inform the public on the status of the rights of the child.

113. How is domestic violence against children treated in your legislation and in judicial practice?

Under the Constitution of Montenegro, the family, the mother and the child enjoy special protection. Parents have a duty care for their children, to educate them and send them to school, while the child is guaranteed special protection against psychological, physical, economic and any other form of exploitation or abuse.

By way of confirmation, i.e. ratification, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms became an integral part of the national law and order, which resulted in the need to harmonise the national legislation with international standards, *inter alia* in the area of protection against domestic violence.

In this context, the activities aimed at the development of a Law on the Protection against Domestic Violence are being carried out. This Law should define the manner of protection against domestic violence, protective measures, procedure for the determination of protection measures and other issues of importance for the protection against domestic violence.

The currently applicable Family Law of Montenegro (Official Gazette of Montenegro 01/07) empowers the court to bring a decision on separation of a child from his/her parents in the case of domestic violence. In addition, in the case of domestic violence, the court may adopt a decision on the restriction of the rights of the child to maintain personal relations with the parent with whom s/he does not live.

The parents must not expose their child to humiliating treatment and punishments that offend human dignity of the child and have a duty to protect their child against such actions by other persons.

The guardianship authority is under a duty to provide parents with adequate forms of assistance and support and to take necessary measures in order to protect the rights and best interests of the child, on the basis of direct knowledge or furnished information.

Judicial and other bodies, medical, educational and other institutions, non-governmental organizations and citizens are under a duty to inform the guardianship authority as soon as they learn that a parent is not capable of executing the parental right.

If justifiable interests of the child so require, the guardianship authority will warn the parents about the mistakes and failures in the raising of their child and help them raise their child in a proper way, or may refer the parents, either alone or together with their children, to a counselling, health, social, educational or some other appropriate institution.

When parents need long-term assistance and guidance in the exercise of their parental rights and performance of duties or if so necessary in order to ensure direct monitoring of conditions in which a child lives, the guardianship authority will order supervision over the exercise of the parental rights in relation to all children or in relation to only one child.

By way of a decision made in non-contentious proceedings, the court may restrict the parental right of a parent who exercises the rights and performs duties towards the child unconscientiously.

The court will deprive a parent of the right to live with the child if the parent gravely neglects raising and education of the child or if proper raising of the child is at risk due to specific conditions in the family. The court initiates proceedings for the restriction of the parental right *ex officio* or upon a request of the guardianship authority, other parent or the child. The restriction of the parental right is imposed for a period of one year. Before this period expires, the court examines all circumstances of the case in light of the best interest of the child and may decide either to restore the parental right by new a decision or to extend the duration of the imposed measure or to impose another measure aimed at the protection of the best interest of the child.

The parent who abuses the exercise of the parental right or severely neglects execution of parental duties is deprived of the parental right.

Abuse of the right exists particularly if the parent abuses the child physically, sexually or emotionally or exploits the child by forcing him/her into excessive work, work which jeopardizes the morale, health or education of the child, or work which is prohibited by law, such as inciting the child to commit criminal offences, developing bad habits or inclinations and similar.

Gross neglect of the duties exists particularly if a parent abandons a child or does not care for the basic needs of the child with whom s/he lives at all, if a parent evades to provide support to the child or to maintain personal relations with a child with whom s/he does not live, or prevents maintaining of personal relations between a child and the parent whom the child does not live with,

or if s/he intentionally and unjustifiably evades to create conditions for a joint life with the child who is placed in a social or child protection institution.

The decision on the deprivation of the parental right is made by the court having jurisdiction in non-contentious proceedings. If the guardianship authority learns that there is a danger of abuse of the parental right or danger of gross neglect of parental duties, the guardianship authority is under a duty to take urgent measures for the protection of the personality, rights and interests of the child.

Neglecting or abusing a juvenile (Article 219), as well as *violence in a family or a family community* (Article 220, paragraph 1), are established as criminal offences against marriage and family by the Criminal Code of the Republic of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 47/06 and 40/08).

Parents, adoptant parents, guardians or any other persons who by gross disregard neglect a juvenile they are obliged to take care of and educate, will be punished by an imprisonment sentence not exceeding three years.

Parents, adoptant parents, guardians or other persons who abuse a juvenile or coerce him/her to excessive labor or labor not suited to his/her age or to mendicity or for gain instigate him/her into doing other acts detrimental for his/her development, will be punished by an imprisonment sentence of three months to five years.

Anyone who by use of violence endangers the physical or mental integrity of a member of his/her family or family community will be punished by a fine or imprisonment not exceeding one year.

Where in the commission of this act any weapons, dangerous tools or other means suitable for inflicting grievous bodily injuries or for seriously impairing health were used, the offender will be sentenced to imprisonment of three months to three years. Where due to those acts a grievous bodily injury is inflicted or health is seriously impaired or if such acts have been committed against a juvenile, the offender will be sentenced to imprisonment of one to five years.

In the case of death of a family member or member of family community, the offender is liable to imprisonment for a term of three to twelve years.

The person who violates a measure of protection against domestic violence imposed on by the court under law is liable to a fine or imprisonment for a term up to six months.

The tables given below provide an overview of the total number of cases resolved by final and enforceable judgements in relation to each paragraph of Article 220 of the Criminal Code for the period 2006-2008, as well as an overview of criminal sanctions imposed.

In relation to paragraph 1 of the mentioned criminal offence, in 2006 there were 197 cases which resulted in final and enforceable judgements, 230 in 2007 and 247 in 2008, out of which there were 544 judgments of conviction, 66 judgements of rejection, 61 judgements of acquittal, while in 3 instances the proceedings were discontinued.

In relation to the paragraph 2 of the mentioned criminal offence, in 2006 there were 80 cases which resulted in final and enforceable judgements, 67 in 2007 and 79 in 2008, out of which 190 were judgments of conviction, 18 judgements of rejection, 15 judgements of acquittal and 3 instances of discontinued proceedings.

In relation to paragraph 3 of the above mentioned Article, in 2006 there were 50 cases which resulted in final and enforceable judgements, 35 in 2007 and 44 in 2008, out of which 109 were judgments of conviction, 15 judgements of rejection, 4 judgements of acquittal and in one instance the proceedings were discontinued.

In relation to the imposed sanctions for each of above mentioned paragraphs and for every year, the tables provide an overview of the total number of imprisonment sentences, suspended sentences, fines, security measures and court reprimands.

PARAGRAPH 1

YEAR	TYPE OF DECISION				SANCTION						
	Convictio n	Rejectio n	Acquitta l	Discont .	Imprisonment			Suspende d sentence	Fin e	Security measure s	Court repriman d
					Tota l	Up to 3 month s	From 3 month s				
2006	150	23	22	2	19	14	5	104	14	4	9
2007	189	18	23	0	23	21	2	124	26	13	3
2008	205	25	16	1	29	26	3	142	4	1	2
TOTA L	544	66	61	3	71	61	10	370	44	18	14

PARAGRAPH 2

YEAR	TYPE OF DECISION				SANCTION						
	Convictio n	Rejectio n	Acquitta l	Discont .	Imprisonment			Suspende d sentence	Fin e	Security measure s	Court repriman d
					Tota l	Up to 3 month s	From 3 month s				
2006	68	4	6	2	15	8	7	47	3	2	1
2007	52	10	5	0	13	9	4	34	3	1	1
2008	70	4	4	1	17	12	5	49	2	2	0
TOTA L	190	18	15	3	45	29	16	130	8	5	2

PARAGRAPH 3

YEAR	TYPE OF DECISION				SANCTION						
	Convictio n	Rejectio n	Acquitta l	Discont .	Imprisonment			Suspende d sentence	Fin e	Security measure s	Court repriman d
					Tota l	Up to 3 month s	From 3 month s				
2006	43	7	0	0	18	7	11	24	0	1	0
2007	28	6	1	0	6	3	3	17	1	4	0
2008	38	2	3	1	13	9	4	24	0	1	0
TOTA L	109	15	4	1	37	19	17	65	1	6	0

2006

COURT	PARA			DECISION				SANCTION							
	1	2	3		Convicti on	Acquitt al	Discontinu ed	Imprisonment			Suspend ed sentence	Fin e	Securit y measu re	Court reprima nd
								Tota l.	Up to 3 mont hs	From 3 mont hs				

Kolasin	0	1	2	0	3	0	0	0	0	0	0	0	0	0
Bar	22	4	1	19	4	4	0	5	4	1	11	0	1	2
Kotor	16	5	5	23	1	0	1	6	1	5	13		2	2
Danilovgrad	3	1	2	5	1	0	0	0	0	0	3	2	0	0
Pljevlja	15	8	0	20	2	1	0	0	0	0	15	3	0	2
Berane	28	8	0	30	0	6	0	2	2	0	22	5	1	1
Plav	1	3	1	4	1	0	0	0	0	0	4	0	0	0
Zabljak	2	0	0	2	0	0	0	0	0	0	0	2	0	0
Rozaje	14	0	0	12	2	0	0	0	0	0	10	2	0	0
Niksic	8	8	6	19	3	0	0	6	3	3	12	1	0	0
Cetinje	7	1	4	11	0	1	0	3	3	0	7	0	0	1
Bijelo Polje	15	11	7	18	5	9	1	11	8	3	7	0	0	0
Ulcinj	6	1	0	5	0	2	0	0	0	0	5	0	0	0
H.Novi	4	1	2	7	0	0	0	0	0	0	3	0	2	2
Podgorica	55	28	29	86	12	5	0	19	8	11	64	2	1	1
Total	196	80	50	262	34	28	2	52	29	23	176	17	1	11

2007

COURT	PARA			DECISION				SANCTION						
	1	2	3	Conviction	Rejection	Acquittal	Discontinued	Imprisonment			Suspended sentence	Fine	Security measure	Court reprimand
								Total	Up to 3 months	From 3 months				
Kolasin	1	3	2	3	3	0	0	1	1	0	1	1	0	0
Bar	8	3	4	9	1	5	0	1	1	1	7	0	1	0
Kotor	25	1	8	34	0	0	0	7	6	1	22	2	3	0
Danilovgrad	4	3	1	8	0	0	0	0	0	0	5	2	0	1
Pljevlja	12	7	0	19	0	0	0	10	10	0	6	3	0	0
Berane	31	7	2	32	0	8	0	3	3	0	15	11	3	0
Plav	3	0	0	3	0	0	0	0	0	0	1	2	0	0
Zabljak	1	0	0	1	0	0	0	0	0	0	0	0	0	1
Rozaje	16	1	0	14	1	2	0	1	1	0	11	2	0	0
Niksic	7	3	0	8	2	0	0	1	0	1	6	1	0	0

Cetinje	10	4	0	10	1	3	0	1	1	0	9	0	0	0
Bijelo Polje	8	7	4	13	6	0	0	3	2	1	8	1	1	0
Ulcinj	3	0	0	1	1	1	0	0	0	0	1	0	0	0
H.Novi	5	2	0	7	0	0	0	0	0	0	4	1	1	1
Podgorica	95	26	13	104	19	10	1	12	7	5	79	4	9	0
TOTAL	229	67	34	266	34	29	1	40	31	9	175	30	18	3

2008

COURT	PARA			DECISION				SANCTION						
								Imprisonment						
	1	2	3	Conviction	Rejection	Acquittal	Discontinued	Total	do 3 up to 3 months	From 3 months	Suspended sentence	Fine	Security measure	Court reprimand
Kolasin	1	0	2	1	2	0	0	0	0	0	1	0	0	0
Bar	14	3	6	20	1	1	1	5	3	2	10	5	0	0
Kotor	15	4	4	22	1	0	0	4	4	0	14	2	2	0
Danilovgrad	3	3	0	6	0	0	0	1	1	0	3	2	0	0
Pljevlja	9	4	2	14	0	1	0	5	5	0	7	2	0	0
Berane	15	7	3	22	0	2	1	5	5	0	11	6	0	0
Plav	3	3	0	3	1	2	0	0	0	0	3	2	0	0
Zabljak	2	0	0	2	0	0	0	0	0	0	1	1	0	0
Rozaje	17	0	0	15	2	0	0	2	2	0	12	1	0	0
Niksic	7	9	3	18	1	0	0	6	6	0	12	0	0	0
Cetinje	12	2	0	9	0	5	0	4	3	1	5	0	0	0
Bijelo Polje	11	10	7	22	4	2	0	10	6	4	10	2	0	0
Ulcinj	13	3	1	10	1	6	0	1	1	0	7	2	0	0
H.Novi	16	1	2	18	0	0	1	0	0	0	15	0	1	2
Podgorica	113	32	14	133	18	6	2	16	9	7	105	9	3	0
TOTAL	251	81	44	315	31	25	5	59	45	14	214	34	6	2

Source: data received from the Supreme Court.

114. How is child labour addressed in the legislation and what is the practical experience with its implementation?

The Labour Law provides that the minimum age for employment is 15 years of age and that no person below 15 years of age may be employed.

The work of children below 15 years of age (because of various types of abuse) is punishable under the criminal legislation in Montenegro.

The Criminal Code (Article 224) provides for the criminal offence of infringement of labor rights, which carries a fine or imprisonment for a term of up to two years and which occurs where a person knowingly fails to abide by laws or other regulations, collective agreements and other general acts governing labour-related rights and special protection of youth, women and persons with disabilities at the workplace and thereby impairs or nullifies the enjoyment of a right of another.

Procedural safeguards

- Liberty and security

115. How do you ensure that natural and legal persons from EU Member States have access to your courts free of discrimination compared to your own nationals?

The Constitution of Montenegro prohibits any direct or indirect discrimination, on any grounds, which as well refers to prohibition of discrimination in access of foreign natural and legal persons to courts compared to country nationals.
The Constitution also guaranties the right of every individual to equal protection of his/her rights and freedoms. Rights and freedoms are exercised based on the Constitution and ratified international agreements. Everyone is equal before the law, regardless of any type of particularity or personal feature. Everyone has the right to address international organisations in order to protect his/her rights and freedoms guaranteed by the Constitution. Equal access to courts of national and foreign natural and legal persons implies equality of rights to legal aid, which the Constitution guarantees to everyone.
Montenegro is the signatory of a number of multilateral and bilateral treaties with the European Union states and also other countries which govern free access to courts, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Hague Convention on Civil Procedure from 1905 and 1954, the 1980 Convention on International Access to Justice**,** signed at The Hague, 1966 International Covenant on Civil and Political Rights, the Universal Declaration on Human Rights from 1948, bilateral treaties on legal aid within civil and criminal matters with Czech Republic and Slovakia from 1964, Algeria from 1982, Bosnia and Herzegovina from 2005, Croatia from 1997, Iraq from 1986, Cyprus from 1984, Macedonia from 2004, Mongolia from 1981, Poland from 1962, Russia from 1962, Austria from 1954, Belgium from 1971, Bulgaria from 1956, Greece from 1959, Hungary from 1982, Romania from 1960, Italy from 1960, Turkey from 1934 and Great Britain from 1936 as well as special agreements on facilitation of the 1954 Hague Convention on Civil Procedure implementation concluded with France in 1969 and Sweden in 1990.
In May 2009, Montenegro and Republic of Serbia concluded three treaties in the area of judicial cooperation: the Treaty on Legal Aid in Civil and Criminal Matters, the Treaty on Extradition and the Treaty on Mutual Enforcement of Judicial Decisions in Criminal Matters.

In the absence of an international treaty, the Law on Resolution of Conflict of Laws with Regulations of Other Countries stipulates that foreign nationals have the right on exemption from civil procedure fees on the condition of reciprocity. Apart from natural persons, foreign legal persons also have free access to courts, and are in this regard treated as nationals of Montenegro. Regarding natural person's capacity to be a party and procedural capacity, the governing law is the law of the country of nationality.

Law on Courts stipulates the right of every individual to access the court and to be equal before the court. Law on Civil Procedure also stipulates equality of parties and binds the court to provide each party with opportunity to enter their plea regarding claims and allegations made by the opposing party. Party to the proceedings may be any natural and legal person. If the proceedings are not conducted in the language of the parties or other participants to the proceedings, they will, upon request, be provided with interpreter in their own language or a language they understand, including translation of all submissions and written evidences and everything that is said during the hearing.

The Law lays down that parties and other participants in the proceedings will be instructed on the right to monitor oral proceedings before the court in their own language with assistance of an interpreter. Parties and other participants in the proceedings who do not understand or do not speak official language of the court have the right to use their own language or language they understand.

Law on Business Organization Insolvency provides for the right of foreign legal and natural persons to directly address courts in Montenegro.

116. Pre-trial detention:

a) What is the average duration of pre-trial detention?

According to data of Institution for Enforcement of Criminal Sanctions of Montenegro, the average duration of detention in 2008 was 7 months and 6 days and in 2009 (up to 20 August 2009) was 5 months and 2 days.

b) Please describe the rules and procedures governing pre-trial detention and, in particular, the rules on extending it. What are the rules regarding the revision of decisions for pre-trial detention (automatic and upon request of the detainee)? For how long can a suspected person be deprived of his freedom before a court review takes place? Is there a maximum time limit for the total duration of pre-trial detention?

The Constitution of Montenegro (Official Gazette of Montenegro 1/07) provides that a person suspected of a criminal offence may, based on a ruling of a court having jurisdiction, be detained and kept in detention only if it is necessary for conducting criminal proceedings. The detainee must be served a ruling on detention, with the statement of reasons, at the time of being placed in detention or at the latest within 24 hours from detention. Detainees may appeal against the ruling on detention and the court will decide within 48 hours. Duration of pre-trial detention must be reduced to the shortest possible time.

The Constitution stipulates that the duration of detention must be reduced to the shortest necessary time; it also provides for time limits for duration of detention, stipulating that detention may, by the decision of a first instance court, last up to 3 months from the day of detention, and this time limit may be extended for another 3 months by the decision of a High Court; if no indictment is raised by that time, the detainee is released.

The Criminal Procedure Code defines well-founded suspicion as an initial criterion for ordering pre-trial detention. That level of suspicion that an individual committed a criminal offence is an important condition, not only for ordering pre-trial detention but also for conducting criminal proceedings against an individual. Namely, investigation, as the beginning phase of criminal proceedings, is initiated against a person when there is well-founded suspicion that s/he has committed a criminal offence, which includes a number of serious indications implying that the suspect has committed a criminal offence. The very fact that criminal proceedings cannot be conducted in absence of well-founded suspicion implies that neither can pre-trial detention be ordered for a person. The Criminal Procedure Code defines five reasons for which pre-trial detention may be ordered if there is well-founded suspicion that a person has committed a criminal offence: 1. if the person hides or if his/her sameness cannot be established, or if other circumstances indicate danger of escape; 2. if there are circumstances that imply a person will destroy, hide, change or falsify evidences or traces of the criminal offence, or if specific circumstances lead to conclusion s/he will obstruct proceedings through the impact on witnesses, accomplices or accessories by virtue of concealment; 3. if there are circumstances which indicate that a person will repeat the criminal offence or complete the attempted criminal offence, or that s/he will perpetrate the criminal offence the threatens to commit; 4. if there are criminal offences punishable under law by imprisonment of 10 years or a more severe punishment, if that is justified due to exceptionally grave circumstances of the offence; 5. if a duly summoned accused obviously avoids to appear at the main hearing.

According to the Criminal Procedure Code, authorised police officials may deprive of liberty a person if any grounds for ordering a detention exist, but they are under a duty to bring that person before the competent investigative judge without delay, and inform the investigative judge about the reasons and time of deprivation of liberty. If, due to unavoidable obstacles, the escort of detainee lasted longer than eight hours, they are bound to give a statement of reasons to the investigative judge and the investigative judge makes a note or records thereof. The investigative judge enters into the record a statement of the person deprived of liberty about the time and place of his/her deprivation of liberty.

Pre-trial detention during the investigation is ordered by a ruling of the investigative judge and may last up to a month at the longest; the Panel composed of three judges of the same court may extend it by an additional 2 months. If the proceedings is conducted for a criminal offence punishable by imprisonment of five years or longer, the Panel of the Supreme Court may, if important reasons exist, extend the detention for no longer than another three months.

Total duration of pre-trial detention during the investigation cannot exceed six months, including the time of duration of detention before issuing a ruling on detention, and in the case that indictment is not raised within that time limit, the detainee will be released. During the investigation, the investigative judge may terminate the pre-trial detention if the authorized prosecutor agrees. If there is no agreement between the investigative judge and the authorized prosecutor, the investigative judge will request the Panel to decide upon it, which is bound to render a decision within 48 hours.

After the indictment has been brought, detention may be ordered or terminated only by the ruling rendered by the Panel of the court having jurisdiction. The Panel is bound, upon the request of the parties or ex officio, to review whether grounds for detention still exist and to issue a ruling on extension or termination of detention, after the expiry of each 30 days before the indictment has entered into effect, and every two months from the moment the indictment enters into effect. After the indictment has been brought, detention may last two years at the longest. If within this period a first instance judgment has not been delivered to the defendant, detention shall be terminated and the defendant released. After the first instance judgment has been delivered, detention may last one year at the longest. If within this period a second instance judgment, by which the first instance judgment is reversed or confirmed, has not been delivered, detention shall be terminated and the accused released. If within a term of one year a second instance court judgment is delivered to the defendant overruling the first instance judgment, detention may last at the longest for one more year from the day the second instance judgment has been delivered.

Summary proceedings may be conducted for criminal offences punishable by fine or imprisonment for a term not exceeding three years as a principal punishment. Also, upon a motion of an

authorized Prosecutor and with the accused person's explicit consent, summary proceedings may be conducted for criminal offences punishable by imprisonment for a term not exceeding five years. In case of summary proceedings for criminal offences, and for the purpose of an uninterrupted conduct of the proceedings, detention may be ordered against a person against whom there is well-founded suspicion of having committed an offence if: 1) s/he is hiding or his/her sameness cannot be established or there are other circumstances indicating a risk of flight; 2) a criminal offence involved is punishable by imprisonment for a term of three years and special circumstances indicate that the accused person will commit the attempted criminal offence or perpetrate the criminal offence s/he threatens to commit. Before bringing a bill of indictment, pre-trial detention may last only for the time necessary to conduct investigatory actions, but no longer than eight days. After the bill of indictment is brought, the Panel is bound every month to review whether the grounds for detention still exist. An appeal against the ruling on detention or ruling extending detention may be lodged and the court is bound to decide upon it in urgent terms.

The Criminal Procedure Code stipulates a minor may be placed in detention in exceptional cases if any of the grounds referred to in the Code for ordering detention exist. In pre-trial proceedings, detention ordered upon a ruling of a judge for juveniles may last at the longest for one month.

The Panel for juveniles of the same court may, for justifiable reasons, extend detention for a term not longer than an additional month. After pre-trial proceedings are completed, detention may last up to six months at the longest for senior juveniles and up to four months for junior juveniles.

In the cases of extension of pre-trial detention, the Penal for juveniles is to examine, on monthly basis, the existence of pre-trial detention grounds and issue a decision on terminating or extending pre-trial detention.

A ruling on pre-trial detention, either ordering or extending pre-trial detention, may be contested by an appeal.

At the sitting of 27 July 2009, Parliament of Montenegro adopted the new Criminal Procedure Code. The Code entered into force on 13 August 2009, and its implementation will start one year upon its entry into force. This Code improves the past regulations referring to grounds for ordering pre-trial detention and time limits for deciding on pre-trial detention.

c) How are human and secure conditions for detainees (in respect of international human rights standards) ensured by the police, justice, prosecution and penitentiary systems? What measures are taken if such standards are not respected?

The basis of human and secure treatment of persons detained by the police and persons against whom pre-trial detention is ordered is contained in the normative framework, i.e. appropriate legal regulations and secondary legislation which governs provisional confinement, i.e. pre-trial detention, and, by all means, supervision of implementation of these regulations.

In accordance with the Law on Police, premises intended for detention of persons deprived of liberty must fulfil the necessary hygienic and technical requirements, especially concerning the quantity of air, minimal area, lighting and ventilation. Rulebook on requirements for premises for detention of persons deprived of liberty (Official Gazette of the Republic of Montenegro 57/06) provides for the necessary hygienic and technical requirements which premises intended for detention of persons deprived of liberty must fulfil regarding the proper size, general hygienic and sanitary requirements, quantity of air, lighting, ventilation, temperature and proper furniture.

After the adoption of the above mentioned Rulebook, regional organisational units of the Police Directorate of Montenegro have performed detailed reconstruction of detention premises. Construction interventions and technical interventions referred to the provision of general conditions: area, air quantity, lighting, ventilation and temperature, as well as provision of sanitary facilities in the same premises or as an annex to detention premises. Direct access to clean water was ensured in detention premises, in places where it was technically feasible, as well as daylight by installing so-called "anti vandal" window panes. System for ventilation and infiltration of hot and

cold air is installed in all premises, as well as wooden beds and spongy mats; functionality of sanitary facilities is also ensured.

Reconstruction of premises for detention is seriously obstructed by general inadequacy of police facilities, primarily the impossibility of redesigning premises, that is, adaptation of existing facilities for police needs, influenced by the general structure of facility, etc. Namely, large number of police facilities was not built for a specific purpose and without any construction norms regarding detention premises. During the construction of new facilities regulations are fully respected, and where all norms cannot be respected in the process of adaptation of existing facilities, we seek to respect and implement standards to the greatest extent possible.

All regional organisational units have installed video surveillance in detention premises as a technical support for supervision of detainees. Use of video surveillance enables monitoring of detainees and electronic recording, archiving, retrieving and exploitation of memorised video material. In parallel to video surveillance it enables interphone connection function (»panic button«) between detainees and police officials.

Besides maintenance of daily hygiene of the premises, all the premises are hygienically whitened and refreshed with neutral colours; there is also an in-depth cleaning of furniture and space.

The Police Directorate has introduced a twenty-four-hour duty shift in order to provide detainees with meal in regular intervals (by delivering »packed lunches«), and in accordance with their religious beliefs. For organisational units of Police Directorate which do not have employees responsible for providing accommodation and food, food is provided from local shops by delivering adequate meals.

With regard to protection of persons deprived of liberty and their rights and the provision of legality of their treatment, a Record on provisional confinement of detainees has been introduced. It is comprised of the data on all aspects of a person's detention, starting from reception of persons in police units until bringing the detainees to competent authorities (Institution for Enforcement of Criminal Sanctions, courts having jurisdiction, and other authorities dealing with internal affairs): reception of persons by the officers on duty; accommodation in detention premises; seizure of personal things and objects; meal provision; data on possible medical assistance; appeals against the ruling on detention; noticed injuries during delivery of persons; as well as data referring to bringing detainees to competent bodies for further proceedings. The Record is the basis for every detainee's police file; the police file comprises ruling on detention with reference to legal grounds, record on persons breath-test (if a person has been breath-tested), medical test results if a detainee has been examined, copy of possible appeal against ruling on detention, and ruling on termination of detention.

Every detainee is delivered a so-called »Informative paper for a detainee«, whose reception detainee confirms by personal signature, printed in Montenegrin, English, French, German, Russian and Albanian language. The purpose of this is that the detainee is again introduced to his/her rights, i.e. that s/he gets introduced with reasons for detention in his/her own language or a language s/he understands. The rights are the following: detainee may remain silent; s/he may hire a defence attorney of his/her own choice; his/her closest family, upon his/her request, is informed about detention; s/he may request medical assistance from the doctor provided by police or a doctor provided at his/her own expense; s/he gets meals in regular intervals according to his/her religious beliefs and is provided with access to drinking water.

All detainees are placed in detention premises that are appropriate to human dignity, including permanent supervision of detainees' behaviour and their health. Same sex persons cannot be placed in the same premises.

Media campaigns (TV commercials, flyers, compliment slips) have significantly promoted the role of telephones for citizens' petitions and complaints regarding police operations, thus encouraging complaints by citizens who believe they have been illegally detained or have experienced torture.

Public Prosecutor's constitutional competence and basic legal duty (Criminal Procedure Code) is prosecution of offenders. Accordingly, for criminal offences prosecuted ex officio, Public Prosecutors are competent to: conduct pre-trial proceedings; request that an investigation be carried out and direct the course of preliminary proceedings in accordance with the Code; bring

and represent an indictment or bill of indictment before the court having jurisdiction; lodge appeals against court decisions that are not final and enforceable and to lodge extraordinary legal remedies against final and enforceable court decisions.

In order to exercise the previously mentioned powers, all authorities taking part in pre-trial proceedings are bound to notify the Public Prosecutor having jurisdiction before taking any action, except in the case of emergency. Police authorities and other state bodies in charge of detecting criminal offences are bound to proceed upon any request of the Public Prosecutor having jurisdiction.

Prosecution is conducted ex officio in all criminal offences where freedom and rights of individuals and citizens are to be guarded, and the offender is an offical.

Execution of pre-trial detention, that is treatment of detainees, is regulated by the Criminal Procedure Code and the Rules of conduct for persons serving detention; provisions of the Rulebook on manner of performing security service, armament, and equipment of the security officers in the Institution for Enforcement of Criminal Sanctions (Official Gazette of the Republic of Montenegro 68/2006) are accordingly applied to the execution of pre-trial detention.

Basis of detainees' treatment in terms of Criminal Procedure Code provisions is generally comprised of prohibition of offending personality and dignity of the detainee; exclusion of possibilities to impose against detainees other restrictions than the ones needed to prevent their flight, instigation of third persons to destroy, conceal, alter and fabricate evidence or traces of a criminal offence or to prevent direct or indirect contacts of detainees for the purpose of influencing witnesses, accomplices and accessories by virtue of concealment.

After reception in prison unit of the Institution for Enforcement of Criminal Sanctions, detainee is informed about fundamental rights and duties which s/he is entitled to during detention; s/he may communicate with the family and defence attorney; general medical examination of detainee is obligatory. Detainees are separated from convicted persons and it is prohibited to keep in the same room persons of different sexes. Juveniles are separated from adults. Accommodation of detainees must meet hygienic requirements, and the rooms where detainees are accommodated may not be damp, must be alighted, regularly ventilated and heated depending on climate conditions. Hygiene of detainees' accommodation is subject to control, for the purpose of which necessary measures are taken.

In accordance with the rights provided by the Criminal Procedure Code, detainees are entitled to:

- uninterrupted night rest for every 24-hour period,
- at least two hours of movement in the open air daily,
- wear their own clothes, to use their own bedding or to obtain and use at their own expense food, books, professional publications, newspapers, stationery and drawing supplies and other things related to their daily needs, except those suitable for infliction of injures, impairment of health or preparation of flight,
- visits of close relatives, doctors and other persons,
- visits of representatives of local and international organisations which deal with protection of human rights, as well as visits of diplomatic and consular representatives.

Detainees must be provided with conditions for maintaining clothes or for their replacement during visits. Detainees who do not have their own clothes are given clothes appropriate to climate conditions and season. In the case when the detainee has no money and does not have toiletries, s/he will be provided with the most necessary things. Health care of detainees is provided based on standards of prison health service and state medical institutions.

Security service of the Institution for Enforcement of Criminal Sanctions is under a duty to secure detainees, including an obligation to protect detainees within the Institution and outside of it, as well as maintenance of house rules and discipline of detainees. Control of security activities is within the competencies of a superior officer and is performed through direct visits, debriefings, reports and in other manners.

Supervision over the enforcement of detention is within the competencies of an authorised court president; the court president or a judge designated by him/her visits the detainees at least once a month, and if they find it necessary, even without the presence of keepers and guards, they will be informed about the manner in which the detainees are fed, about their fulfillment of other needs and the manner in which they are treated. President, i.e. judge designated by him/her, conducts measures to remove irregularities noticed during the prison visit. The court president and the investigative judge may visit detainees at any time, talk to them and hear their complaints.

Investigative judge or the president of panel may impose against the detainee for disciplinary offences a disciplinary penalty consisting of restrictions of visits, such restriction not referring to the communications between the detainees and their defense attorney. Detainees have the right to appeal to the court panel within 24 hours from the day the decision is received and the panel is under a duty to decide upon an appeal within 3 days from its reception.

Development and improvement of the prison system is the subject of strategic documents of the Government of Montenegro (Action Plan for Implementation of the Judicial Reform Strategy, Action Plan for Torture Prevention), which seek to improve accommodation conditions for prisoners, i.e. to achieve higher standards in this area.

In this respect, a number of activities have been implemented regarding the construction of new prison facilities and the reconstruction of existing prison facilities.

Namely, in the previous period, construction and equipping of four new prison facilities was finished, and these are: facility for accommodation of convicted males (floor area 1250m2, 144 persons capacity); facility for accommodation of juveniles, females and foreigners (floor area 1250m2, 56 persons capacity); facility for enforcement of short prison sentences - up to 6 months (floor area 1250m2, 92 persons capacity); and facility for enforcement of disciplinary sentences – solitary cells (8 separate rooms). Also, reconstruction and adaptation of two existing facilities intended for accommodation of convicted males has been finished, as well as the equipping of prison hospital.

Naturally, certain measures and activities have been envisaged for improvement of detainees' treatment. Those are specific measures aimed at solving the overcrowdedness problem of the current prison facilities. That is achieved through the construction of two new prison facilities for detainees' accommodation, as well as measures for security system improvement and improvement of health treatment of persons deprived of liberty.

Action Plan for Torture Prevention also provides measures intended to improve conduct of police operations, such as implementation of standards which provide torture protection of persons detained by the police, improvement of system for conducting legality control and control of efficiency of police operations, and ensuring that premises for detention of persons deprived of liberty fulfil the necessary hygienic and technical requirements.

d) Do police, prison and other officers receive training on human rights, including training on the rights of women and of minorities?

The issue of professional development and training of civil servants and state employees, including police and prison officers, is fundamentally covered by the Law on Civil Servants and State Employees (Official Gazette of the Republic of Montenegro 27/04 and 31/05), the Law on the Police (Official Gazette of the Republic of Montenegro 28/05) and also by the Law on the Enforcement of Criminal Sanctions (Official Gazette of the Republic of Montenegro 25/94, 29/94, 69/03 and 65/04).

In accordance with the Law on Civil Servants and State Employees, professional development is the right and obligation of a state employee or civil servant. The head of a state body provides for the conditions for professional development. Civil servants and state employees are professionally developed in accordance with the professional development programme defined by the human resources management authority and that programme especially defines contents of professional

development and the amount of funds necessary for the realisation of the programme. When it is of importance for the work of the state body, civil servants and state employees are entitled to apply for special professional development.

Administrative affairs referring to preparation and establishment of the programs and plans for the professional development of civil servants and state employees are conducted by the special administration authority - Human Resources Administration.

In accordance with the Law on Police, professional development and training of police officers is conducted within a special organisational unit. Training and professional development of police officers is covered by the Code of the Police Ethics (Official Gazette of the Republic of Montenegro 1/06), where training of police officers is based on fundamental democratic values, rule of law and protection of human rights and freedoms. The basics of police training at all levels consist of training on the use of means of coercion and restrictions thereof, with reference to the established principles for protection of human rights and civil freedoms, and fight against xenophobia. Professional development and adoption of social values and special values related to the police vocation are a permanent task of a police officer.

The Police Academy, within its regular annual training programme, plans and implements training of police officers in the field of human rights. For that purpose, the Police Academy has, with participation of the Council of Europe, Police Academy TADOC from Turkey, Police Academy «Vaxjo» from Sweden and Team of Austrian Police from Vienna, conducted a number of seminars aimed at introducing police officers to goals, programmes and activities of the Council of Europe related to protection of human rights: right to life and rights of minorities, right to freedom of expression, techniques of conducting interviews, etc.

Permanent training of Police Directorate officers started in 2007 through the programme of professional development of civil servants and state employees adopted by the Human Resources Administration, in accordance with the Law on Civil Servants and State Employees.

According to the Law on Enforcement of Criminal Sanctions, continuous vocational education and verification of knowledge are compulsory for the officers of the Institution for Enforcement of Criminal Sanctions, in accordance with the curriculum for vocational education, training and development. Training, specialised courses and other types of vocational training are performed in a special organisational unit of the Institution – Centre for Human Resources Education. Curriculum for vocational education, training and development, as well as acts on the exam taking manner, and composition of examining board, are adopted by the head of the Institution on the proposal of the head of the Centre.

Before entering into permanent employment, candidates are obliged to attend a 4-month specialised course in the Centre. All employees have an obligation of continuous education and verification of knowledge. The curriculum does not include human rights as a separate subject but human rights are studied through subjects such as Penology and Rules of Engagement. Ten officers have completed training for trainers on human rights in prisons, which was organized by the Council of Europe. Trainers transfer their acquired knowledge and skills to other employees in the Institution. Twenty officers of the Institution attended a seminar organised by the Human Resources Administration; one of the topics of this seminar was protection of human rights and freedoms. Human resources curriculum includes the rights of women and minority groups as vulnerable groups among persons deprived of liberty.

Continuous vocational education and verification of knowledge of the officers of the Institution for Enforcement of Criminal Sanctions has been covered as a separate goal within the framework of the Judicial Reform Strategy (2007-2012). Measures for achieving this goal (conduct of vocational training according to regular work agenda and improvement of training programme) have a permanent character.

Apart from police officers and prison officers, judicial office holders (judges and public prosecutors) have the right and obligation to develop professionally, in accordance with the Law on Education in Judicial Bodies (Official Gazette of the Republic of Montenegro 27/06). Education in judicial bodies is performed within a special organisational unit of the Supreme Court of Montenegro – Judicial Training Centre. Education is organised as initial and continuous, and it is based on the annual

programme and special education programmes which include, among other things, introduction and familiarization with the most important areas of international law, international standards and recommendations, including the European Union *acquis* and the issue of human rights.

e) What measures have been put in place to prevent or prosecute the occurrence of torture and other inhuman or degrading treatment?

Apart from vocational training of officers and supervision of enforcement of pre-trial detention, there are other measures aimed at preventing the occurrence of torture and other inhuman or degrading treatment, and they are:

- placement of detainees,
- right to correspondence with persons outside prison, i.e. right to written communication with defence attorney, local legislative, executive and judicial authorities, international courts,
- right of foreign diplomatic and consular representatives to visit and talk, without supervision, with detainees who are nationals of their state,
- possibility of visits by representatives of local and international organisations dealing with protection of human rights,
- possibility of visit of a supervising judge,
- possibility to talk with Human Rights and Freedoms Ombudsman, without presence of officials,
- possibility to talk with a defence attorney and supervising judge,
- right to submit complaints to a competent judge,
- right to submit complaints to Human Rights and Freedoms Ombudsman, in a sealed envelope,
- prohibition for a security officer to enter on his own during the night into the premises of persons deprived of liberty,
- tying may not be applied for the purpose of punishing, but only for security reasons, and it is done in the case of: prevention of escape of a person deprived of liberty when taking them to prison; physical assault on another person; offering resistance which cannot be overpowered in another way; attempt of self-injury and suicide; causing material damage, and alike.
- obligation of security officers to immediately draw up a written report on the use of coercive measures,
- obligation of the head of the organisation competent for enforcement of criminal sanctions to submit written report on the use of coercive measures to the Ministry of Justice, and to the president of the court supervising the legal treatment of detainees.

Also, based on petitions of citizens and persons deprived of liberty, and through constant internal control measures and supervision of authorizations implementation, Police Directorate Internal Control identifies possible cases of overstepping authorizations and cases of torture, and ensures processing of cases, without exception.

Media campaigns (TV commercials, flyers, compliment slips) promote the role of telephone and e-mail of the Police Directorate; their purpose is to enable submitting petitions and objections by persons deprived of liberty by the police, especially in cases when they believe to have been illegally deprived of liberty or to have suffered torture.

Posters “Let us build trust – Do you believe that a policeman acted in an irregular and unprofessional manner” are put on visible places at the entrances to police facilities. In this manner, a person deprived of liberty by the police is introduced to the possibility of submitting

objections by phone, fax or electronic mail if they consider to have been illegally deprived of liberty or to have suffered torture, or other degrading and inhuman treatment.

117. Detention:

a) What is the ratio of prison sentences compared with alternative sentences?

During 2008, Basic Courts imposed imprisonment sentences in 26.55% of judgements, fines in 9.64% of cases and suspended sentences in 63.42% of cases.

During 2008, High Courts imposed imprisonment sentences in 94.4% judgements of conviction, fines in 0.44% of cases and suspended sentences in 5.14% of cases.

b) Are inquiries into cases and allegations of ill treatment of detainees followed up? If so, how is this done? What is done to ensure a thorough, transparent and independent process?

Treatment classified as ill treatment of detainees by prison officers is subject to disciplinary procedure stipulated by the Law on Civil Servants and State Employees (Official Gazette of the Republic of Montenegro 27/04 and 31/05). According to this Law, *abuse of official position* or *overstepping of authorizations* are classified as major disciplinary offences.

Conduct of disciplinary procedure, as well as decision proposal, is within the competence of the disciplinary commission appointed by the head of the state body. By means of a conclusion, the head of the state body initiates a disciplinary procedure. Provisions of the law that governs the general administrative procedure for the matters not regulated by the Law on Civil Servants and State Employees are applied accordingly to the disciplinary procedure. Disciplinary procedure must include a hearing, and a civil servant is entitled to defence: s/he may defend him/herself, or through his/her attorney-at-law, representative, or representative of a trade union. Upon the proposal of the disciplinary commission, the head of the state body imposes a disciplinary measure against a civil servant or a state employee. An appeal against the decision of the head of the state body may be lodged to the Appeals Commission; administrative dispute may be initiated against the decision of the Commission.

There is also a possibility of temporary removal from work of a civil servant or a state employee against whom disciplinary procedure was initiated (until the completion of disciplinary procedure), and the head of the state body takes a decision thereon. This refers to a situation when a disciplinary procedure was initiated due to major disciplinary offence, and if the presence of a civil servant or a state employee may harm the interest of the state body or obstruct the course of the disciplinary procedure.

Apart from disciplinary responsibility, ill-treatment of prisoners by prison officials is subject to criminal liability where actions of officers constitute elements of a criminal offence. Mutual ill-treatment among prisoners is subject to conduct of a disciplinary procedure, as well as to conduct of criminal proceedings.

c) What is the average number of prisoners per cell? Are prisons over-crowded?

On 20 August 2009, the average number of prisoners per facility was:

Name of facility	Capacity	Number of rooms	Area	Number of persons
Pavilion A	100	11	998	76
Pavilion B	100	24	998	118
Pavilion C	24	8	272	17
Pavilion D	144	36	1200	138
Disciplinary section	8	8	420	6
Section «E»	40	6	260	18
Half-open section	102	23	1250	102
Special hospital	30	8	770	31
Facility for women, foreigners and juveniles	56	19	1250	18
TOTAL	604	143	7418	524

Podgorica prison	Capacity	Number of rooms	Area m2	Number of persons
Detainees	350	54	2100 m2	493
Misdemeanour offenders and convicts	160	20	1680m2	142
TOTAL	510	74	3780m2	635

Bijelo Polje prison	Capacity	Number of rooms	Area m2	Number of persons
Detainees	90	10	290	59
Misdemeanour offenders and convicts	60	7	240	63
TOTAL	150	17	530	122

Overcrowding is evident only in the detention unit of Penitentiary in Podgorica.

d) Is special attention devoted to female prisoners and young offenders? If yes, please provide a detailed description.

Podgorica Detention and Rehabilitation Centre has a separate section where sentenced females serve their sentences. The same facility has a separate complex with special entrance to juveniles section where juvenile custody sentence is served.

Except having separated accommodation from convicted males, female prisoners are given special attention regarding their physical, social and psychological needs. Female prisoners serve their sentences together, regardless of the length of imposed sentence. Female security officers are responsible for their internal security. Pregnant women and child-bearing women with children are

provided with necessary conditions within special rooms for nursing and raising of their children till they are one year of age, all at the expense of the Institution.

In principle, treatment of juveniles is based on similar principles as treatment of adults, but with an adjusted approach in the contents of applied methods, depending on age. Juveniles who serve their custody sentences in the Institution enjoy the same human rights given to adults, and they are never subjected to any kind of physical punishment. Disciplinary procedures are conducted with respect of human rights and dignity of the juvenile's personality and disciplinary punishment of conferral to a solitary cell as a result of committed disciplinary offence is limited to 10 days at the most. Imprisonment is served separately from adults and they are provided full communication with family through visits, letters and telephone conversations. Files on juvenile convicts are kept secret. Primary education classes are organised depending on the juvenile's age, and there is also a possibility of organising classes for vocational education. The Institution covers the expenses of education. Within the juvenile premises, security officers do not carry arms and parents are informed about all changes in juveniles' treatment in a timely manner.

e) Are alternative measures to imprisonment being developed or in place? If yes, please describe the measures.

Criminal justice system of Montenegro includes certain sanctions and measures which by their nature represent an alternative to imposition or enforcement of imprisonment. They are regulated through the Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 47/06 and 40/08), and they are: community service, fine, suspended sentence, judicial admonition and parole.

As a type of punishment, community service has existed from 2003 and it includes any kind of socially beneficial work that does not offend human dignity and is not performed in order to gain profit. It may be imposed for criminal offences punishable by fines or imprisonment of up to 3 years, in a scale between 40 and 240 hours, and the timeframe for imposing the sentence may not be shorter than 30 days, nor longer than 6 months. Community service is imposed with the consent of the offender and may not be longer than 40 hours of work during one month; when imposing the sentence, the court pays attention to the type of the committed criminal offence, and to offender's personality.

The enforcement of community service is governed by the Law on Enforcement of Criminal Sanctions (Official Gazette of the Republic of Montenegro 25/94, 29/94, 69/03 and 65/04); the court that imposed the sentence, ex officio initiates the enforcement procedure before the competent public employment service or the competent employment agency, which, for the purpose of enforcing the court decision, mediate between persons sentenced to community service and employers, and are obliged to monitor the enforcement of the sentence, inform the court thereon and keep the required records.

Fine is a specific type of a sentence as it may be imposed as a principal and accessory punishment. Certain criminal offences are only punishable by a fine, while certain criminal offences (punishable by imprisonment of up to 3 years) may be punished either by a fine or imprisonment. The fine may not be less than two hundred euros or over twenty thousand euros, while criminal offences committed out of greed may not be punished by more than one hundred thousand euros. Instead of imprisonment, unpaid fine may be replaced by a community service by converting each initiated twenty five euros of fine into eight hours of community service, provided that the length of community service may not exceed two hundred forty hours.

Suspended sentence is a warning measure by which court determines a punishment to offender and at the same time orders it shall not be enforced provided that the sentenced person does not commit a new criminal offence during the period defined by court (probation term). Probation term may not be shorter than one or longer than five years. Suspended sentence may be imposed when offender is punished by imprisonment of up to two years. For criminal offences punishable by prison sentence of ten years or a more severe punishment, a suspended sentence can not be

imposed. A suspended sentence may not be imposed unless more than five years have elapsed from the day when the offender's sentence punishing him/her for a criminal offence committed with wrongful intention became final and enforceable.

When the court imposes a suspended sentence, it can order that during a certain period during the probation term, the offender be placed under protective supervision, if on the basis of his/her personality, former conduct, conduct after the commission of the criminal offence, particularly his/her attitude toward the victim of crime and circumstances of commission of the criminal offence, it could be expected that the protective supervision will better serve the purpose of the suspended sentence. The court imposes protective supervision through a judgement imposing suspended sentence and defines protective supervision measures, their duration and manner of their implementation. Protective supervision comprises measures of assistance, care, supervision and protection stipulated under law, i.e. it may include one or more of the following obligations:

- reporting to a competent authority in charge of enforcement of protective supervision within the time limits defined by that authority,
- training of offender for a specific profession,
- accepting a job appropriate to offender's abilities and preferences,
- accomplishment of the obligation to support family, care and bringing up of children and other family obligations,
- refraining from visiting certain places, clubs or events if it may be a chance or incentive for repeated commission of criminal offences,
- timely reporting the change of residence, address or job,
- refraining from drug and alcohol consumption,
- treatment in an appropriate medical institution,
- visiting particular professional and other counselling centres or institutions and following their instructions,
- eliminating or mitigating the damage caused by the criminal offence in question, and particularly reconciliation with the injured party.

Judicial admonition is also a type of the warning measure that may be imposed for criminal offences punishable by imprisonment of up to one year or a fine, and which have been committed under such mitigating circumstances that they render them particularly minor. For certain criminal offences and under conditions stipulated by law, a judicial admonition can be imposed even in cases for which a penalty of imprisonment is stipulated not exceeding three years.

Judicial admonition may also be imposed for several concurrent criminal offences, if the above mentioned conditions have been met for each of these offences. The purpose of suspended sentence and judicial admonition is to avoid punishing the guilty offender for minor criminal offences when it is not necessary for the purpose of protection under criminal law and when it may be expected that an admonition with the threat of punishment (suspended sentence) or an admonition alone (judicial admonition) will influence the offender enough to deter him/her from committing criminal offences in the future.

Parole is a measure that relates to enforcement of imprisonment and represents suspension of further enforcement of imprisonment. Parole may be implemented when the convicted person has served two-thirds, and exceptionally half of the prison sentence or 40 years of imprisonment, if during serving the sentence the convicted person has improved so that it is reasonable to expect that s/he will behave well while at liberty and, particularly that s/he will refrain from committing criminal offences till the expiration of imprisonment period. In this connection, behaviour of the convicted person during the period of serving the sentence, performance of work tasks appropriated to his/her working abilities, as well as other circumstances indicating that the purpose of punishment has been achieved are taken into consideration. If the parole is not revoked, the convicted person is considered to have served the sentence.

Parole procedure of convicted persons is governed by the Law on Enforcement of Criminal Sanctions (Official Gazette of the Republic of Montenegro 25/94, 29/94, 69/03 and 65/04) and may be initiated based on proposal of the organisation competent for enforcement of imprisonment sentences – Institution for Enforcement of Criminal Sanctions, or an application of the convicted person or a member of his/her close family. The Parole Commission, established by the Minister of Justice, decides upon parole of convicted persons. The Commission has a president and six members from: Supreme Court of Montenegro, Public Prosecution Office, Ministry of Interior, Ministry of Health, Minister of Justice and Director of Institution for Enforcement of Criminal Sanctions.

The Director of Institution for Enforcement of Criminal Sanctions also has the right to release on parole the convicted person, up to six months before the expiration of punishment, if such person behaves properly, works hard and actively participates in other useful activities, provided that s/he has already served three-fourths of punishment, which is done in accordance with the Law on Enforcement of Criminal Sanctions.

Apart from previously mentioned sanctions and measures which are alternatives to imposition and enforcement of imprisonment, there is also a possibility of deferral of prosecution of persons under age, provided by the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03 and 47/06).

Namely, in spite of existing evidence that a juvenile has committed a criminal offence, for criminal offences punishable by imprisonment for a maximum term not exceeding five years or a fine, the Public Prosecutor may decide not to request the institution of criminal proceedings if s/he finds that it would not be effective to conduct the criminal proceedings against a juvenile, taking into account the nature of the criminal offence, circumstances under which it has been committed, previous conduct of the juvenile and his/her personal characteristics. In order to define these circumstances, Public Prosecutors may request information from parents, i.e. juvenile's guardians, other persons and institutions, and when it is necessary, s/he may summon those persons and the juvenile to obtain direct information. Public Prosecutor may request the opinion of the guardianship authority concerning the effectiveness of conducting criminal proceedings against the juvenile.

If, for rendering the decision not to request institution of criminal proceedings, it is necessary to examine the personal characteristics of a juvenile, the Public Prosecutor may, upon the consent of a guardianship authority, send the juvenile to a shelter or institution for examination or education, but for one month at the most.

When the enforcement of the punishment or corrective measure is pending, the Public Prosecutor may decide not to request the institution of criminal proceedings for another criminal offence committed by a juvenile, if, taking into account the gravity of that criminal offence and the punishment or corrective measure which is being enforced, the conduct of the criminal proceedings and the imposition of criminal sanction for that offence would be purposeless.

When, in the above mentioned cases, the Public Prosecutor finds that it would not be effective to initiate proceedings against a juvenile, s/he shall inform the guardianship authority and the injured party thereof, along with the statement of reasons, and they may, within a term of eight days, request that the Panel for juveniles decide on the institution of proceedings.

Regarding criminal offences punishable by imprisonment of up to five years or fine, the Public Prosecutor may dismiss criminal charges, i.e. the court may, on the proposal of the Public Prosecutor, discontinue criminal proceedings against the juvenile and impose a corrective order under conditions stipulated by the Criminal Code, and they are: juvenile's confession of the criminal offence and his/her attitude toward the criminal offence and the injured party.

118. 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? (See also the section on the judiciary.)

According to the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03 and 47/06), authorised police officers may deprive a person of liberty if any reason for ordering detention, stipulated by the Code exists. However, the police officers have the obligation to immediately bring that person before a competent investigative judge, together with a crime report. If the escort of the person deprived of liberty takes longer than eight hours due to unavoidable obstacles, the authorised police officer is bound to give a statement of reasons to the investigative judge and the investigative judge makes a note or a record thereof, including a statement of the person deprived of liberty on the time and place of deprivation of liberty.

Exceptionally, the person deprived of liberty and a person summoned by the police in the capacity of a suspect may be held by a police authority for the purpose of collecting information or interrogation, not longer than 48 hours from the moment of deprivation of liberty or his/her appearance upon summons.

The police authority renders a decision on provisional confinement immediately or at the latest within a term of two hours, and serves it on the detained person and his/her defence attorney. The suspect and defence attorney may lodge an appeal against the decision on confinement, which is immediately submitted to the investigative judge together with the case file. The investigative judge is bound to decide on the appeal within a term of 4 hours upon reception of the appeal.

The police are bound to inform the investigative judge and the Public Prosecutor immediately about the provisional confinement. If the police within 48 hours fail to file a crime report and bring the detained person to the investigative judge, it is bound to release the detained person.

Authorised police officers are entitled to hold the person found at the crime scene until the arrival of the investigative judge if this person may disclose important data for the criminal proceedings and if it is likely that their interrogation at later stage might be impossible or might entail considerable delays or other difficulties. These persons may not be held at the crime scene for longer than 6 hours.

A person who has been held in the above-mentioned manner is entitled to file a complaint to the Public Prosecutor having jurisdiction or to the directly superior police body.

Immediately after interrogation of the person deprived of liberty who was brought by authorized police officers, the investigative judge decides whether to release a person deprived of liberty or to order detention against him/her. Should the investigative judge order detention against a person deprived of liberty, s/he notifies the Public Prosecutor thereon and forward him/her the files within 2 hours.

On the basis of a ruling of the investigative judge or the Panel of three judges of the court of first instance (in the case when the investigative judge does not agree with the Public Prosecutor's motion to order detention) the accused may be kept in detention at the longest for one month from the day of deprivation of liberty. After this term has expired, the accused may be detained only on the basis of a ruling extending the custody. Detention may be extended upon a substantiated motion of the investigative judge or the Public Prosecutor by means of a ruling of the Panel of the first instance court, for no longer than two months. If the proceedings are conducted for a criminal offence punishable by imprisonment for a term of five years or longer, the Panel of the Supreme Court may extend the detention for no longer than another 3 months.

If the indictment is not brought till expiration of the above mentioned terms, the accused will be released.

According to the data received from courts, in all detention cases (completed and not completed) processed in 2008, the average length of pre-trial detention, from the day of lawful deprivation of liberty till the first trial, was 77.71 day.

Based on the Law on Police (Official Gazette of the Republic of Montenegro 28/05), authorised police officers may, exceptionally, deprive of liberty a person who disturbs public peace and order or jeopardises traffic safety if public peace and order or traffic safety may not be established in other manner. In these cases detention does not last longer than 6 hours. Exceptionally, detention may last up to 12 hours in the following cases: if it is necessary to establish the identity of a person and deprivation of liberty is the only way to do so; if a person was extradited by a foreign body in order to be delivered to a competent body; and if such person endangers the safety of other person under serious threat of an attack to his life or body.

Deprivation of liberty, in the terms of the above mentioned, is defined by the detention decision issued by the head of a police unit, and the decision is rendered and served to a detainee immediately or 2 hours from the beginning of detention at the latest. A detainee may lodge an appeal against the detention decision to a competent Ministry, within 6 hours upon being served the decision, or within 12 hours if deprivation of liberty lasted up to 12 hours. As a second instance body, the competent Ministry is obliged to render a decision upon detainee's appeal within 6 hours from the reception of appeal, i.e. within 12 hours if deprivation of liberty lasted up to 12 hours.

- Right to a fair trial

119. How is the right to a fair trial enshrined in the legislation?

In accordance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the right to a fair trial, this right is enshrined in the Montenegrin legislation and guaranteed by the legal regulations in Montenegro by guaranteeing various elements of this right.

The Constitution guarantees as a personal right the right to a fair and public trial, which implies that every person has the right to a fair and public trial within a reasonable time, before an independent, unbiased, and court established under law. Also, the Constitution stipulates that hearing before the court is public and that judgments are pronounced publicly. Exceptionally, the court can exclude the public from the hearing or one part of the hearing for the reasons necessary in a democratic society, only to the extent necessary: in the interest of morality; public order; when juveniles are tried; for the protection of private life of parties; in marital disputes, in proceedings related to guardianship or adoption; for the protection of military, professional or official secrets, and protection of security and defence of Montenegro.

The Constitution guarantees presumption of innocence, which implies that every person is considered innocent until guilt has been established by a final and enforceable judgment of the court. The accused is not obliged to prove his/her innocence. The court is obliged to interpret the doubt regarding the quilt in favor of the accused. The Constitution also guarantees that every person has the right to present his/her defence, and especially: to be informed in the language he/she understands about the charges against him/her; to have sufficient time to prepare defence and to be defended personally or through a defence attorney of his/her own choice. Likewise, the Constitution guarantees the right to legal aid provided by the Bar, as an independent and autonomous profession, and by other services, as well as that legal aid may free in accordance with law.

These constitutional principles, i.e. guaranteed rights, as aspects of the right to a fair trial are elaborated in detail by the Law on Courts, Law on Civil Procedure, Criminal Procedure Code, and Law on Protection of the Right to Trial within a Reasonable Time, in accordance with the Constitution and relevant international standards related to the right to a fair trial. Regarding administrative disputes that deal with the right to a fair trial, the provisions of the Law on Civil Procedure and Law on Courts are applied accordingly.

The Law on Courts stipulates the following as basic principles of the work of courts: independence, autonomy, mandatory character of courts, accessibility, equality of parties, publicity and neutrality.

In accordance with the mentioned principles, judges adjudicate and decide independently and autonomously. The judicial office must not be performed under any influence. No one is allowed to influence judges in the performance of the judicial office. The court is obliged to decide in a lawful, objective and timely manner in legal matters for which it has jurisdiction. Every person has the right to address the court in order to exercise his/her rights. All men are equal before the court. The work of court is public, except in cases provided by law. Every person has the right to impartial trial within reasonable time and to have his/her legal issue heard by a randomly selected judge, regardless of the capacity of parties to the case or the virtue of the legal issue. Also, in accordance with the Law on Courts, the courts are organizationally instituted in such a way that they ensure the right to citizens to exercise this right, considering the fact that the network of courts is established in a way that the parties can access the court in a quick and simple way.

Basic provisions of the Law on Civil Procedure stipulate that the court decides concerning a claim on the basis of oral, direct and public hearing. Exceptionally, the court can decide concerning a claim based on legal actions presented in writing and indirectly presented evidence, if stipulated so by the Law. Main hearing is public, and the public can only be excluded in accordance with the Law. The court gives each party an opportunity to enter their plea regarding the claims and allegations of the opposing party. The court is authorised to decide on request about which the opposing party was not given the opportunity to enter his or her plea only if this is provided for by law.
The court is obliged to conduct the proceedings without causing any delays, within a reasonable time, and with the minimum of costs, and prevent any form of abuse of rights vested in the parties during the proceedings. If the parties, interveners, their legal representatives or proxies, with the intention to harm another person or with a goal which is contrary to good practice, conscientiousness, and honor, misuse the rights granted by law, the court can impose a fine or other measures stipulated by this Law. According to the Law on Civil Procedure, the court renders a judgment at the latest 30 days from the day when the main hearing was closed. The day when the judgment was made in writing is considered to be the time when the judgment was rendered. After the closure of main hearing the court notifies the parties present about the date of rendering the judgment. The parties, i.e. their legal representatives, or proxies are obliged to collect the judgment by themselves in the building of the court. The judgment must contain an introduction, enacting terms, reasoning of judgment, and instruction on legal remedy. Likewise, the Law on Courts stipulates the right of every person that has justified interest in the case to have access to court files; therefore, the judgment is public and accessible.

The Criminal Procedure Code stipulates that the accused has the right to be brought before the court in the shortest possible time and to be tried without delay. The court is obliged to conduct the proceedings without delay and to prevent any abuse of rights pertaining to any participant in the proceedings. Criminal proceedings are conducted according to the accusatory principle, which implies that criminal proceedings can be initiated solely upon the request of an authorized prosecutor. Criminal proceedings are conducted in the language that is in the official use in the court. Parties, witnesses, and other persons participating in the proceedings have the right to use their own language in the proceedings. If proceedings are not conducted in the language of that person, interpretation will be provided as well as translation of documents and other written evidence. A person may waive such right, if he/she understands the language in which the proceeding is conducted, but he/she will be instructed on the right to interpretation. Interpretation is performed by a court interpreter. The expenses of interpretation into a language which is not in official use in the court, and which have been incurred while exercising the right of parties, witnesses and other participants in the procedure to use their language, are not charged to persons that are obliged to compensate the expenses of the criminal proceedings.

The presumption of innocence in terms of the Criminal Code Procedure is also guaranteed since each person is considered innocent of a crime until guilt has been established by the final and enforceable decision of court; state bodies, media, associations of citizens, public figures and other persons are obliged to respect the presumption of innocence and not to violate other procedural rules, rights of the accused and the injured party and the principle of independence of judiciary by their public statements regarding the criminal proceedings that is in progress. The accused, on his/her first interrogation, must be informed about the criminal offence he/she is charged with and

of the grounds for suspicion against him/her, and he/she must be provided with an opportunity to make a statement regarding all the facts and evidence incriminating him/her and to present all facts and evidence in his/her favor. The accused is not bound to present his/her defence or answer the questions posed to him/her. The accused has the right to present his/her defence or defend him/herself with the professional aid of a defence attorney of his/her own choice from among the members of the Bar. On his/her interrogation, the accused has the right to have a defence attorney present. Prior to first interrogation the accused is instructed on his/her right to have a defence attorney, to agree with the defence attorney on the manner of presenting defence and that a defence attorney may be present during his/her interrogation. The accused will be warned that everything he/she states may be used as evidence against him/her. If the accused does not retain a defence attorney by himself/herself, the court appoints a defence attorney to the accused, when required so by law. When conditions for mandatory defence are not met, and the procedure is conducted for a criminal offence punishable by imprisonment exceeding three years, as well as in other cases when the interests of justice so require, the court may upon the request of the accused appoint a defence attorney to the accused if, due to an adverse financial situation, s/he is not able to pay the expenses of the defence.

The accused has to be given adequate time and possibilities to prepare his/her defence. A suspicion with respect to the existence of facts satisfying the elements of a criminal offence or on which depends an application of certain provisions of criminal legislation is decided by the court in a manner that is more favorable for the accused. The accused is entitled to examine witnesses and to be present at the questioning of witnesses of both prosecution and defence. The judgment is announced in a way that in the presence of parties, their legal representatives, proxies and defence attorneys the Chair of the Panel publicly reads the enacting terms and briefly states the grounds for the judgment. The judgment is also announced when the party, legal representative, proxy or defence attorney are not present. The Panel can order that the judgment is orally stated by the Chair of the Panel to the defendant who is not present or that he/she is submitted the judgment. If the public was excluded at the main hearing, the enacting terms of judgment are always read out in a public session. The Panel decides whether to exclude the public while announcing grounds for the judgment.

The protection of the right to a fair trial is provided through the possibility of lodging regular and extraordinary legal remedies to decisions of criminal and civil courts, taking into account that non-conformance with previously mentioned guaranteed rights as aspects of a right to a fair trial constitutes substantial violations of provisions of the proceedings, because of which one can lodge legal remedies in both civil and criminal proceedings.

Regarding the protection of the right to a trial within a reasonable time, as one aspect of the right to a fair trial, a separate Law on Protection of the Right to a Trial within a Reasonable Time has been adopted, which stipulates two legal remedies for the protection of that right: request for expedition of the proceedings and action for equitable satisfaction for the purpose of providing more effective protection at the national level in accordance with the Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Also the Constitution provides a possibility of filing a constitutional complaint because of the violation of human rights and freedoms guaranteed by the Constitution, after exhaustion of all effective legal remedies, which represents the last national means of protection of all human rights and freedoms guaranteed by the Constitution, as well as the right to a fair trial.

120. How is effective access to free legal aid in criminal cases ensured? Can free legal aid also be obtained in civil cases? Please give details on the criteria for receiving legal aid in civil matters.

In Montenegrin legal system everyone has the right to legal aid and this right is guaranteed by the Constitution. Everyone has the right to legal aid in accordance with the Constitution. Legal aid can be provided by the Bar and other services, and it can be provided free of charge in accordance

with law. Also, the Constitution guarantees the right to defence. Particularly, here it is stressed that the right to defence is guaranteed to everyone as well as concerning the right to a defence attorney. Free legal aid in criminal matters is regulated by the provisions of the Criminal Procedure Code of Montenegro (Official Gazette of Montenegro, 71/2003, 7/2004, and 4/2006). The Code stipulates that the accused has the right to a defence attorney during the entire criminal proceedings. The suspect has the right to a defence attorney from the very moment of deprivation of liberty and the right to a confidential conversation with the defence attorney, which can solely be controlled through observation, but not through listening. The right to legal aid is stipulated by the Criminal Procedure Code, through provisions on mandatory defence, right to a defence attorney because of poor financial standing, and the right to be exempted from paying the costs of the proceedings.

The Criminal Procedure Code provides for the obligation of the court to afford a defence attorney to an accused person, even against his/her will, when provided so by this law, i.e. in the case of mandatory defence, as well as the obligation of providing sufficient time and possibilities for preparation of the defence of the accused.

Professional defence is the right of the accused which means that it depends on him/her whether s/he will use it or not, i.e. the accused cannot be forced to take a defence attorney. However, there are derogations to this rule, where the Criminal Procedure Code stipulates cases when professional defence is mandatory regardless of the will of the accused, because the nature of a criminal offense or the capacity of the accused require so. Mandatory defence is stipulated if the accused is mute, deaf or otherwise unable to defend himself/herself successfully or if the procedures are conducted for a criminal offence punishable by the maximum term of imprisonment, the accused must have a defence attorney as early as at his/her first interrogation. When the indictment is brought for the criminal offence punishable by law by the imprisonment of ten years, the accused must have a defence attorney while s/he is served the indictment. An accused against whom detention has been ordered must have a defence attorney while s/he is in detention, and also the accused who is tried in absence must have a defence attorney as soon as the court renders the ruling on trial in absence. If the accused fails to retain a defence attorney by him/herself in the previously mentioned cases, the President of the Court will, ex officio, appoint a defence attorney to represent the accused in further criminal proceedings up until the judgment becomes final, and in the case of most severe sentence of imprisonment – than even in the proceedings under extraordinary judicial remedies. The expenses of mandatory defence are paid from the court funds, but when the court pronounces the accused guilty of charge it binds him/her to compensate the expenses of the procedure which have been paid in advance from the court funds. However, the court can exempt the accused from the duty of paying the costs of the proceedings if the payment should jeopardize his/her support and the support of the persons whom s/he is obliged to support.

The Criminal Procedure Code stipulates that when conditions for mandatory defence are not met, and the interests of justice so require, the court may, upon the accused's request, appoint a defence attorney to the accused if, due to an adverse financial standing, s/he is not able to pay the expenses of the defence. This defence differs from mandatory defence because it does not come into effect ex officio and under the initiative of state bodies. Instead, it always refers to the request of the accused to have a defence attorney, and later comes the estimation of the interest of fairness and financial standing of the accused. Investigative judge, Chair of the Panel, i.e. single judge decides on the request posed by the accused, and the defence attorney is appointed by the President of Court.

In lieu of the appointed defence attorney the accused may retain another defence attorney by himself/herself. In such a case the appointed defence attorney will be released. Only a member of the Bar may be engaged as defence attorney, and in the proceedings for a criminal offence punishable by imprisonment for a term of less than five years s/he may be replaced by a trainee counsel. Only a member of the Bar may be a defence attorney before the Supreme Court. The appointed defence attorney may request to be released only for a good cause. Before the trial, the decision on release of the defence attorney is taken by the investigative judge, single judge or the Chair of Panel, at the trial by the Panel, and in the appellate proceedings by the President of the first instance Panel or the Panel having jurisdiction to decide on appeal. The appeal against this

ruling on release is not allowed. The President of the Court may release the appointed defence attorney who negligently carries out his/her duties. The President of the Court appoints another defence attorney in lieu of the released defence attorney. The Bar Association is notified of the release thereof.

The provisions on free legal assistance in civil procedure are contained in the Law on Civil Procedure (Official Gazette of Montenegro 22/04 and 76/06).

In civil proceedings a proxy can be every person that has full capacity to exercise rights, except the person engaged in unlicensed practice of law. Since any person, even the one not qualified, can be a proxy in proceedings, it is stipulated that the court will warn the party which actions in civil procedure one can take in case that s/he does not have a qualified proxy, or that out of ignorance s/he is not using the rights vested in him/her under law. In this way the court gives legal advice to a lay party which legal actions to take for the purpose of protection of his/her own interests. The right to free representation is established within the meaning of exemption from the duty of paying the costs of the proceeding which are governed in detail by the Law on Civil Procedure. Thus, it is stipulated that the court will exempt from duty of paying costs of the proceeding a party that is unable to bear the expenses without damage for their own necessary support and for the support of their family. Upon the request of the party the court will appoint a qualified proxy as a representative if it is necessary for protection of justified interest of the party and when the party is not able to bear the expenses of a qualified proxy because of their general financial standing. The party to whom a proxy is appointed is exempted from the duty of paying real expenses and the remuneration to the appointed proxy. The real expenses and the remuneration of the assigned proxy are paid from court funds. The decision on exemption from the duty to pay the costs of proceedings is rendered by the first instance court, at the motion of the party. The party is obliged to submit along with the motion a certificate on financial standing issued by the authorized body. The certificate on financial standing must contain the amount of tax paid by the household and by individual members of the household, as well as other sources of their income and the general financial standing of the party to whom the certificate is being issued. When it is necessary the court itself, ex officio, obtains necessary data and information on financial standing of the party asking to be exempted from payment, and the opposing party can also be heard thereon. No appeal is allowed against the ruling of the court upholding the party's motion.

The development of the Law on Free Legal Aid is in progress. This Law will entirely govern the forms of free legal aid, beneficiaries, legal aid providers, legal aid services, and financing of free legal aid.

121. Elaborate on the legislative structures in place to ensure effective access to legal aid, commenting on the scope and resources of the legal aid service.

The existing legislative structures which provide effective access to legal aid are governed by the Law on the Bar (Official Gazette of the Republic of Montenegro 79/06), and the Law on Local Self-Government (Official Gazette of the Republic of Montenegro 42/03, 28/04, 75/05 and 13/06).

In accordance with the Law on the Bar, the Bar Association can organize provision of free legal aid to citizens independently or based on the contract concluded with a state body or a local self-government authority in charge of providing financial and other conditions for providing aid. Such definition of free legal aid makes it clear that the Bar Association itself estimates whether it will provide legal aid to someone *pro bono*. Also, the Bar Association can conclude a contract on providing free legal aid with a state body or local self-government authorities, provided that they ensure financial and other conditions for the provision of aid.

The Law on Local Self-Government stipulates that municipality, inter alia, performs the affairs related to organization of providing legal aid to citizens. Therefore, for the purpose of ensuring the conditions for a more complete provision of legal aid, a municipality can organize provision of legal aid to citizens. In accordance with the estimate of its needs and in accordance with the financial capacity, every municipality can organize this type of legal aid. By means of the Act on

Organization of Legal Aid Service, a municipality defines the position of legal aid service, its internal organization, terms under which legal aid is provided, the amount of remuneration for providing legal aid, cases where legal aid is provided free of charge, as well as the mode of financing of legal aid service.

The services which already exist at certain municipalities mostly provide legal aid related to provision of legal advice, preparation of petitions and development of documents on legal transactions. Most of the services are free of charge or are made more accessible to citizens of poor financial standing, through rates which are lower than those offered by attorneys-at-law. There is no limitation in terms of access to these services so any citizen can address them with a request for provision of legal aid. In accordance with the Law on Local Self-Government, legal aid services are organized in the Capital Podgorica, municipality of Herceg Novi and Municipality of Bijelo Polje.

The drawing up of the Law on Free Legal Aid is in progress. This Law will entirely govern the forms of free legal aid, beneficiaries, legal aid providers, free legal aid services, and financing of free legal aid.

In 2007, 2008 and first half of 2009, EUR 2 060 996.18 were allocated from the court budgets for remunerations for ex officio representation.

122. 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 guarantees as a personal right the right to a fair and public trial within a reasonable time limit before an independent, unbiased, and law-instituted court. Also, the Constitution lays down that hearing before the court is public and that judgments are pronounced publicly. Exceptionally, the court can exclude the public from the trial or one part of it for reasons required by a democratic society, and only in the scope which is necessary: in the interest of morality; public order; when juveniles are being tried; for the protection of the private lives of parties; in matrimonial causes, in proceedings related to guardianship or adoption; for the purpose of protection of military, professional or official secrets and protection of the safety and defense of Montenegro. The publicity of judicial procedure is provided in accordance with the Constitution and the Criminal Procedure Code and the Law on Civil Procedure.

The Criminal Procedure Code (Official Gazette of Montenegro 71/03, 7/04, and 47/06) lays down that the main hearing should be public. Since the opening of the sitting until the end of the main hearing the panel can, at any time, *ex officio* or at the motion of parties, but always after their questioning, exclude the public for the entire main hearing or one part of it, if it is necessary for reasons of safeguarding secrets, preservation of public order, protection of morality, protection of the interests of juveniles, or protection of the personal or family life of the accused or injured party. The exclusion of public does not refer to parties, the injured party, proxies, and the defense attorney. The panel can allow the presence of certain officials and scholars at the main hearing closed for the public, and upon the request of the accused, the panel can also allow the presence of their spouse and their close relatives as well as to their partner to a common-law marriage. The Chair of the Panel warns the persons present at the main hearing closed for the public that they are obliged to keep secret everything they have heard at the hearing, and points out to them that disclosure of a secret is a criminal offence. The decision about the exclusion of publicity is taken by the panel issuing a decision which has to contain a statement of reasons and to be publicized. It is also stipulated that if the public was excluded at the main hearing, the enacting terms of the judgment is always to be read at the public sitting. The panel decides whether it will exclude the public when pronouncing the grounds for the judgment.

Substantive violation of the provisions of a criminal procedure exists if the public was excluded from the main hearing contrary to law, which always results in overruling the judgment in cases of unlawfully excluded public.

The Law on Civil Procedure (Official Gazette of the Republic of Montenegro 22/04 and 76/06) lays down that the main hearing should be public. Only adult persons can be present at the main hearing. The court can exclude the public during the entire main hearing or one part of it as required by the interests of safeguarding state, official, business or personal secrets, interests of public order or reasons of morality. The court can also exclude the public in cases when measures to maintain order for the undisturbed holding of hearing cannot be ensured. The exclusion of public does not refer to parties, their legal representatives, proxies or interveners. The court can allow the presence of certain officials and scholars at the main hearing closed for the public if that is in the interest of their profession, scientific or public activity. In case of exclusion of public, upon the request of the party, the court can allow the presence of, at the most, two persons chosen by the party. The court will warn the persons present at the main hearing closed for the public that they are obliged to keep secret everything they have heard at the hearing, and will point out to them the consequences of disclosing a secret. The ruling about the exclusion of public is issued by the court, and it must contain a statement of reasons and be publicized. A special appeal against the ruling about the exclusion of public is not allowed.

Substantive violation of the provisions of a civil procedure exists if the public at the main hearing was excluded contrary to law, which always results in overruling the judgment in cases of illegally excluded public and constitutes a reason for filing an appeal.

123. Is the presumption of innocence a central part of your criminal justice system and, if so, how is it applied in practice?

The presumption of innocence is at the centre of the Montenegrin criminal-law system. The Constitution of Montenegro stipulates that each person is to be considered innocent until guilt has been established by the final and enforceable judgment of the court. The accused is not obliged to prove his/her innocence. The court is obliged to interpret doubt in terms of guilt in favor of the accused.

The presumption of innocence in the terms of the Criminal Procedure Code is also guaranteed since each person is considered innocent of a crime until his/her guilt has been established by the final and enforceable judgment of court. State bodies, media, associations of citizens, public figures and other persons are obliged to respect the presumption of innocence and not to violate other procedural rules, rights of the accused and the injured party and the principle of the independence of the judiciary by their public statements regarding the criminal proceedings that are in progress. A suspicion with respect to the existence of facts satisfying the elements of a criminal offence or on which the application of certain provisions of criminal legislation depends is to be decided by the court in a manner that is more favorable for the accused. The suspect, on his/her first questioning, must be informed about the criminal offence that s/he is charged with and of the grounds for suspicion against him/her, and s/he must be provided with an opportunity to make a statement regarding all the facts and evidence incriminating him/her and to present all the facts and evidence in his/her favor. The suspect, i.e. the accused is not bound to present his/her defense or answer the questions posed to him/her. Likewise, the accused is not bound to make a statement regarding the indictment or to present his/her defense: it is presumed that s/he is innocent. The burden of proof is upon the Prosecutor. If the Public Prosecutor or the plaintiff upon whom the burden of proof rests in a criminal proceeding does not manage to prove the guilt of the defendant, the court passes a judgment of acquittal because of lack of evidence that s/he committed the offence s/he was charged with, which represents an immediate application of the presumption of innocence in practice.

Constitutional principles guarantee the right to damages because of illegal action, so that the person who was deprived of liberty without grounds or convicted without grounds has the right to damages from the state. The right to damages because of an ungrounded conviction applies to a person to whom final and enforceable criminal sanction was imposed or a person that has been declared guilty, and remitted of penalty, and later because of an extraordinary legal remedy the new procedure was finally discontinued or the person was acquitted by means of a final and

enforceable judgment, or the indictment was rejected, unless the discontinuation of procedure or a judgment rejecting the indictment came as a result of the fact that in the new procedure the subsidiary prosecutor, i.e. the plaintiff, abandoned prosecution, and the abandonment is the result of an agreement with the accused, or if the indictment was dismissed by means of a ruling in the new procedure because of the absence of jurisdiction on the part of the court, and the authorized prosecutor has assumed prosecution before the court of the appropriate jurisdiction. The convicted or the acquitted person does not have the right to damages, if s/he with a false confession in pre-trial procedure or in some other way caused institution of criminal procedure, i.e. with such statements in the procedure caused his/her own conviction, unless forced to do so. In the case of conviction for criminal offences in concurrence, the right to damages can refer to individual criminal offences in terms of which conditions for admittance of compensation have been fulfilled. The right to damages lapses after three years from the day the first instance judgment of acquittal or rejection becomes final and enforceable, i.e. irrevocability of the first instance decision discontinuing the procedure. In cases when a High Court was deciding on the appeal – from the day of receipt of the decision of the High Court. Before filing an action for damages to the court, the injured person is obliged to address the Ministry of Justice with his/her claim for the purpose of making an agreement on the existence of damages and the type and quantity of compensation. If the claim for damages is not adopted or the Ministry of Justice does not pass a decision upon it in a period of three months from the day of filing the claim, the injured person can file an action for damages to the court of appropriate jurisdiction. If the agreement is solely made for a part of a claim, the injured person can file an action for the entire claim. The action for damages is submitted against Montenegro. Heirs inherit only the right of the injured person to material damages. If the injured person has already filed a claim, heirs can continue the procedure only within the limits of the already submitted claim for compensation of material damages. Heirs of the injured person after his/her death can continue the procedure for damages, i.e. institute the procedure, if the injured person has died before the expiration of the deadline for lapsing and has not waived the claim, in accordance with the rules on damages prescribed by the Law on Contractual Relations. Besides the right to damages to a person for whom, because of an ungrounded conviction or ungrounded deprivation of liberty, employment or the capacity of the policy holder of social insurance was terminated, years of service are recognized as if s/he has been employed during the period in which s/he lost years of service because of ungrounded conviction or ungrounded deprivation of liberty. Years of service also include the time of unemployment which came as a result of an ungrounded conviction or ungrounded deprivation of liberty, which was not a result of the wrongful action of that person.

The presumption of innocence is a personal right and because of violation of this right we could speak of the right to compensation for non-pecuniary damages in accordance with the Law on Contractual Relations.

In accordance with the Law on Contractual Relations, in case of violation of individual rights, the court can order publication of the decision, i.e. rectification at the expense of the offender or it can order the offender to withdraw the statement that constitutes a violation or anything else that might satisfy the purpose achieved by compensation. Likewise, the Law on Contractual Relations stipulates that for mental anguish suffered because of loss of reputation, honor and individual rights and because of the anguish suffered the court awards a just financial compensation. So far, there were no cases of this type in our case law.

124. Regarding the rights of defence, please provide information on how the following rights are guaranteed in legislative and practical terms. (Please comment on the allocation of resources and the institutional framework in place to facilitate the exercise of these rights.)

a) The right of the defendant to be informed promptly in a language which s/he understands of the nature and cause of the accusation against him/her;

The Constitution of Montenegro guarantees each person the right to be familiarized with the charge against him/her in a language s/he understands, to have adequate time to prepare his/her defense and that s/he has the right to present his/her defense or defend himself/herself with the professional aid of a defense attorney of his/her own choice.

The Criminal Procedure Code prescribes that the suspect on his/her first questioning must be informed about the criminal offence s/he is charged with and of the grounds for suspicion against him/her. The accused must be provided with an opportunity to make a statement regarding all the facts and evidence incriminating him/her and to present all facts and evidence in his/her favor. The suspect and the accused, on his/her first questioning, must be instructed about the fact that s/he is not bound to make a statement or to answer the questions posed to him/her, and that everything s/he states may be used as evidence against him/her.

The Criminal Procedure Code prescribes that a person deprived of liberty must, in his/her native or any other language that s/he understands, be immediately informed about the reasons for his/her apprehension and, at the same time, instructed about the fact that s/he is not bound to make a statement, about his/her right to a defense attorney of his/her own choice as well as about his right to demand that his family be informed about his/her deprivation of liberty, as well as the fact that the accused, on his/her first questioning, must be informed about the criminal offence s/he is charged with and of the grounds for suspicion against him/her.

Proceeding contrary to the above mentioned actions represents a substantive violation of the provisions of criminal procedure and it entails abolishment of the decision in the appellate procedure.

b) The defendant's right to have adequate time and facilities for the preparation of his/her defence;

The Criminal Procedure Code stipulates that the accused must be provided with an opportunity to make a statement regarding all the facts and evidence incriminating him/her and to present all facts and evidence in his/her favor. Furthermore, the Criminal Procedure Code stipulates that the accused must be provided with adequate time and facilities to prepare his/her defense.

If the accused is a person kept in provisional confinement or a person detained, s/he is questioned immediately after s/he is brought before the investigative judge. Before the questioning the accused has the right to a confidential conversation with the defense attorney. The conversation is enabled in a separate room. The authorized person in an official capacity can only observe but not listen to that conversation. If the accused on the other hand is not a person kept in provisional confinement or a person detained, in accordance with legal provisions from the day when the summons was delivered until the day of questioning, the person must be given 8 days at least in order to prepare his/her defense.

After the decision on conducting investigation is issued or after a direct indictment has been brought, and even before that if the suspect was questioned under the provisions on the questioning of the accused, the defense attorney has the right to inspect the files and examine collected items serving as evidence. When speaking of summoning to the main hearing, the summons has to be submitted to the defendant in such a way that between the day when the summons was submitted and the day of the main hearing there should be enough time for preparation of the defense, at least eight days. On the proposal of the defendant or the prosecutor and upon the consent of the defendant, this period can be shortened.

The accused is questioned orally and has the right to use his/her notes while being questioned. During the questioning the accused has to be provided with an opportunity to make an unimpeded statement regarding all the circumstances incriminating him/her and to present all facts serving him/her as evidence.

The accused, and the suspect, when questioned under the provisions on questioning of the accused or after a direct indictment has been brought, have the right to inspect and examine the collected items serving as evidence. In cases where the charge is brought, the court is obliged to provide adequate time and facilities until the main hearing for the accused and the defense attorney to prepare their defense and upon their request, if it is necessary, the same can be requested in case of the charge being altered.

The Law on Courts stipulates that the court is obliged to enable the parties and their representatives to inspect, transcribe and copy court documents immediately after a request to that effect has been submitted, and at the latest within three days; that the party or another person deprived of the right to inspect the documents, has the right to submit a petition to the Court President, who is obliged to decide that those documents be available for inspection to the interested parties within three days.

c) The right to defend oneself in person or through legal assistance of one's own choosing;

The Constitution of Montenegro guarantees each person the right to defence and states that the accused is entitled to defend himself/herself or with the professional aid of a defence attorney of his/her own choice from among the members of the Bar. On his/her first questioning the accused must be informed about that right, and advised that s/he has the right to arrange with the attorney the mode of defence and to have a defence attorney present at his/her questioning; such a caution is recorded in the minutes of the questioning of the accused, including his/her statement related to that.

The Criminal Procedure Code stipulates cases when professional defence is mandatory, regardless of the will of the accused, because it is demanded by the nature of the criminal offence or a capacity of the accused. The accused must have a defence attorney in the following cases:

- if the accused is mute, deaf or otherwise unable to defend him/herself successfully or if the procedures are conducted for a criminal offence punishable by the maximum term of imprisonment, the accused must have a defence attorney as early as his/her first interrogation,
- - when an indictment is brought for a criminal offence punishable under law by imprisonment of ten years, the accused must have a defence attorney when the indictment is delivered to him/her,
- - the accused person to whom detention was ordered must have a defence attorney while s/he is in custody,
- - the accused tried in absence must have a defence attorney as soon as the court renders the ruling on the trial in absence.

If the accused fails to retain a defence attorney by him/herself in the previously mentioned cases, the President of the Court shall, *ex officio*, appoint a defence attorney to represent the accused in the further criminal proceedings up until the judgment becomes final and enforceable, and in the case of the most severe sentence of imprisonment being imposed, also in the proceedings under extraordinary judicial remedies lodged. A member of the Bar shall be appointed as a defence attorney according to the order from the list submitted to the President of the first instance court by the Bar Association of Montenegro. The President of the Court may release the appointed defence attorney who negligently carries out his/her duties and appoint another defence attorney in lieu of the previous one.

The accused is notified on the appointment of an ex officio defense attorney. In cases when the accused is appointed an ex officio defense attorney, the accused has the right to retain a defence

attorney by him/herself. In that case the rights and duties of the ex officio defense attorney are terminated.

The indictment is submitted to the accused who is at liberty without delay, and if s/he is in custody, within 24 hours from the moment of confirmation of the indictment. The Chair of the Panel determines the main hearing, at the latest, within two months of the confirmation of the indictment.

If the interests of fairness demand so, the accused, upon his/her request, can be appointed a defence attorney, if s/he cannot bear the costs of defence because of his financial standing. The investigative judge, Chair of the Panel, or single judge decide on the request of the accused depending on the stage of procedure or the type of procedure in which the decision is being taken.

d) The right to examine, or have examined, witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her;

In accordance with the Criminal Procedure Code, the accused has the right to propose the questioning of witnesses and expert witnesses and to examine co-defendants, witnesses and expert witnesses. The questions are posed through the presiding judge, or directly, with his/her approval. The presiding judge has the right to prohibit a question or to refuse an answer to an already posed question or an unallowed question or to a question which is not related to the subject of the trial. If the presiding judge prohibits the posing of a question or the giving of an answer, the accused can demand that the Panel decide on that matter. The accused must be provided with an opportunity to make a statement regarding all the facts and evidence incriminating him/her and to present all the facts and evidence in his/her favor.
Such a legal provision implies the right of the accused to propose presentation of evidence, including by questioning of witnesses. The accused, on his/her first questioning, must be informed about this right and such instruction has to be given to him/her even before the main hearing. In accordance with that provision, the accused are informed before the beginning of the main hearing about their right to pose questions, give objections, and provide explanations in terms of the statements of the co-defendants witnesses and experts.

e) The right to have the free assistance of an interpreter, if one cannot understand or speak the language used in the court.

The Criminal Procedure Code laid down that criminal procedure is conducted in the language that is used by the court officially. Parties, witnesses and other persons participating in proceeding have the right to use their own language in the proceeding. If the proceeding is not conducted in the language of that person, interpretation of the statements of that person, or other persons and the translation of documents and other written evidence will be provided. If the person understands the language in which the proceeding is being conducted, s/he may waive such a right, but s/he will be instructed about the right to interpretation. A note shall be made in the record that the instruction and the statement of the participants were given. Interpretation is entrusted to a court interpreter. The costs of interpretation are provided at the expense of the court's budgetary resources.

This entire matter is also regulated by the new Criminal Procedure Code which was published in the Official Gazette of Montenegro, and which will be applied after the expiration of one year from the day of its entry into force.

125. Provide information about the elaboration and implementation of legislation regarding the following legal concepts:

a) The principle that a person cannot be prosecuted for something that was not a criminal offence in national or international law at the time when it took place;

The Constitution of Montenegro stipulates that no one can be punished for an act which, before it was committed, was not stipulated by law as a punishable act, nor can a sentence be imposed which was not provided for that act. In accordance with the above mentioned constitutional provision, the Criminal Code stipulates that a punishment or other criminal sanction can be imposed only for an act which, before it was committed, was provided in law as a crime punishable by law.

Presented in this way, the principle of legality in the Montenegrin criminal-law system fully expresses its four segments, as follows:

- That the law has to be written and published, which means that criminal offences and criminal sanctions can be provided, i.e. stipulated solely by law.
- Prohibition of retroactive application of criminal law, which means that one is criminally liable solely for an action which, at the time when it was committed, was provided by law which at that time was in force. This segment of the principle of legality excludes the possibility for criminal liability for an offence which was envisaged as a criminal offence in a law which was in force at the time of trial but was not criminalized by law which was in force at the time when it was committed. However, if the new law no longer stipulates the offence as a criminal offence, it will be applied.
- The requirement that law, i.e. criminal norms are as specific and as precise as possible, as the third component of the principle of legality, illustrates the obligation that the measures of criminal justice coercion which can be imposed to the offender (punishments and other criminal sanctions) have to be stipulated by law in advance, and general conditions for their application have to be stipulated. This is achieved in the three following ways: firstly, the law has to provide for the system of criminal sanctions and the offender can be imposed only some of those sanctions stipulated in the law which was in force at the time when the criminal offence was committed. Secondly, for every criminal offence a criminal sanction has to be stipulated, by the type and measure, regardless of the mode of prescription of the punishment and whether it is one or more punishments.
- Prohibition of the creation of law through analogy, i.e. exclusion of the possibility of application of analogy in criminal law, because it is only law that can stipulate which and what kind of human behavior constitutes a criminal offence. Thus, in case of any doubt about the existence of some element of a criminal offence, no body applying criminal law may apply legislative or legal analogy or take that, through similarity or based on general legal principles in a specific case there exists a criminal offence, even though its elements were not satisfied in the manner stipulated in law.

b) Non-application of a heavier sentence than was applicable at the time the criminal offence was committed;

The Constitution of Montenegro stipulates that criminal and other punishable offences are provided and that sentences for them are imposed under the law which was in force at the time of commission of criminal offence, unless the new law is more favorable to the offender. In accordance with the mentioned constitutional provision, the Criminal Code stipulates that the law

which was in force at the time the criminal offence was committed applies to the offender. If, at the time the criminal offence was committed, the law is changed, then the law which was in force at the time the criminal offence was completed applies. If the law has been changed one or more times after the commission of a criminal offence, the law which is more favorable to the offender will be applied.

Therefore, a more severe punishment that the one which was provided at the time the criminal offence was committed cannot be applied to the offender. On the contrary, a more favorable punishment that the one provided at the time of commission of a criminal offence will be applied to the offender, if a more lenient punishment was provided by the law which was adopted later.

c) Proportionality of the severity of the penalty to the criminal offence.

In accordance with the Criminal Code, the general purpose of prescribing and imposing criminal sanctions is the suppression of offences which violate or jeopardize the values protected by criminal legislation. Within this general purpose of criminal sanctions, the purpose of sanctioning is to prevent the offender from committing criminal offences and to discourage him/her from committing criminal offences in the future; to discourage others from committing criminal offences; expression of social condemnation for a criminal offence and duties of observing law; and to strengthen morality and influence the development of social responsibility.

On the occasion of adopting the Criminal Code and providing for the type and severity of punishment, the legislator has taken into consideration proportionality between the sanction and the criminal offence.

The court is authorized by the Criminal Code to impose punishment within the boundaries prescribed by law for that offence, having in mind the purpose of sanctioning and taking into account all circumstances that have a bearing on the magnitude of the punishment (mitigating and aggravating circumstances) and especially: the degree of guilt, motives for committing the criminal offence, the degree of threat or violation of the protected right, circumstances under which the offence was committed, prior life of the offender, his/her personal situation, his/her behavior after the committed criminal offence, and especially his/her attitude towards the victim of a criminal offence and other circumstances related to the offender's personality.

The court can impose punishment on the offender below the limit provided by law or a more lenient type of punishment when:

- the law provides for that the offender can be punished more leniently,
- the law provides for that the offender can be remitted of penalty,
- it has been established that there are particularly mitigating circumstances and if it determines that even with a more lenient punishment the purpose of punishment can be achieved.

On the occasion of imposing a more lenient punishment below the limit stipulated by law, the court is bound by limitations stipulated by law concerning the mitigation of punishment (Article 46 of the Criminal Code).

In cases of criminal offences committed with guilty mind punishable by an imprisonment sentence, the court can impose a more severe punishment than the one provided for, under the following conditions:

- If the offender was previously sentenced two or more times for criminal offences committed with guilty mind to imprisonment of at least one year and shows an inclination to commit criminal offences;
- If less than 5 years have lapsed from the day of the offender's release from serving a previously imposed sentence until the commission of a new criminal offence.

The more severe punishment must not exceed double duration of the provided punishment nor twenty years imprisonment. When determining whether to impose a more severe punishment than the one provided for, the court particularly takes into account the number of previous convictions, similarity of committed criminal offences, motives out of which they were committed, circumstances under which they were committed, as well as the need to impose such a sentence which will achieve the purpose of punishment.

126. Please provide details on how the right not to be tried or punished twice in criminal proceedings for the same criminal offence is interpreted in your domestic law.

The right of a person not to be tried twice (*ne bis in idem*), is provided and guaranteed in Article 36 of the Constitution of Montenegro in such a way that no person may be tried again or convicted for the same punishable offence. Likewise, the Criminal Procedure Code (Official Gazette of Montenegro 71/03, 7/04 and 47/06) stipulates prohibition of retrial - *ne bis in idem*, by stating that no person will be tried again for a criminal offence of which s/he has already been convicted by a final and enforceable judgment or acquitted, unless otherwise laid down by that Code. Likewise, the new Criminal Procedure Code (Official Gazette of Montenegro 57/09) stipulates prohibition of retrial - that no person may be tried again for a criminal offence of which s/he has already been convicted or acquitted by a final and enforceable judgment. This prohibition does not prevent criminal rehearing in accordance with this Code. Thus, criminal proceedings completed by means of a final and enforceable judgment can be repeated in favor of the accused if someone has been tried several times for the same criminal offence. When the court passes a judgment in the new proceeding, it will decide that the prior judgment is partially or fully repealed or that it remains in force.

Law on Cooperation with the International Criminal Tribunal (Official Gazette of Montenegro 53/09) in Article 18 stipulates that the accused whose guilt was decided by the International Criminal Tribunal can not be tried for the same offence in Montenegro nor can the judgment of the court in Montenegro referring to the same criminal offence be enforced. Upon the request of the Public Prosecutor or the accused whose guilt was decided by the International Criminal Tribunal, the judgment in Montenegro for the same criminal offence will be repealed in accordance with the enforcement of provisions of the Criminal Procedure Code referring to criminal rehearing (quasi criminal rehearing).

- Minority rights and cultural rights

127. 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).

Population by national or ethnic origin – according to censuses 1991 and 2003[3]

	1991	2003	Structure	
			1991	2003
TOTAL	615 035	620 145	100.0	100.0
Montenegrins	380 467	267 669	61.9	43.2
Serbs	57 453	198 414	9.3	32.0
Yugoslavs	26 159	1 860	4.3	0.3
Albanians	40 415	31 163	6.6	5.0
Bosniaks	-	48 184	-	7.8
Egyptians	-	225	-	0.0
Italians	58	127	0.0	0.0
Macedonians	1 072	819	0.2	0.1
Hungarians	205	362	0.0	0.1
Muslims	89 614	24 625	14.6	4.0
Germans	124	118	0.0	0.0
Roma	3 282	2 601	0.5	0.4
Russians	118	240	0.0	0.0
Slovenes	369	415	0.1	0.1
Croats	6 244	6 811	1.0	1.1
Others	437	2 180	0.1	0.4
Non-declared-undefined	1 944	26 906	0.3	4.3
Regional affiliation	998	1 258	0.2	0.2
Unknown	6 076	6 168	1.0	1.0

Source: MONSTAT

1 When using census results, it should be taken into account that data are not fully comparable in the sense of definition of permanent or total population in census 2003 and previous censuses. In census 1991 beside in-country population, Montenegrin citizens at temporary work abroad, as well as their family members living with them abroad were counted as permanent inhabitants.

In accordance with international recommendations, in Census 2003, Montenegrin citizens whose temporary work abroad (that is residence) is shorter than a year, as well as foreign citizens working in our Republic, or residing as family members for longer than one-year period, beside in-country population, are considered permanent inhabitants.

Population by religion – according to censuses 1991 and 2003[1]

	1991	2003	Structure	
			1991	2003
TOTAL	615 035	620 145	100.0	100.0
Islam	118 016	110 034	19.2	17.7

Jewish	156	12	0.0	0.0
Roman Catholic	27 153	21 972	4.4	3.5
Orthodox	425 133	460 383	69.1	74.2
Protestant	853	383	0.1	0.1
Oriental cults	71	58	0.0	0.0
Other denominations	8 780	2 424	1.4	0.4
Non-declared	180	13 867	0.0	2.2
Unbeliever	9 850	6 003	1.6	1.0
Unknown	24 843	5 009	4.0	0.8

Source: MONSTAT

Population by mother tongue – According to censuses 1991 and 2003[1]

	1991	2003	Structure	
			1991	2003
TOTAL	615 035	620 145	100.0	100.0
Serbian	510 291	393 740	83.0	63.5
Montenegrin	-	136 208	-	22.0
Bosnian	-	14 172	-	2.3
Bosniak	-	19 906	-	3.2
Hungarian	-	255	-	0.0
Macedonian	628	507	0.1	0.1
German	-	126	-	0.0
Slovenian	447	232	0.1	0.0
Croatian		2 791	0.0	0.5
Albanian	43 894	32 603	7.1	5.3
Bulgarian	117	-	0.0	-
Romani	3 099	2 602	0.5	0.4
Vlach	4	-	0.0	-
Other	49941	3 101	-	0.5
Non-declared	-	13 902	-	2.2
Unknown	6 614	-	1.1	-

Source: MONSTAT

128. What is the legal status of religious and ethnic minorities living in Montenegro?

The Constitution of Montenegro has clearly defined Montenegro as a civil state in which religious communities are separated from the state (Article 14). Religious communities are equal and free in the exercise of their religious rites and affairs.

In the previous period, major efforts of the Government of Montenegro and the Ministry for Protection of Human and Minority Rights went into normative protection of minority communities in Montenegro as well as into strengthening of the existing, and establishing of the new institutional forms for improvement of minority status. The Constitution of Montenegro gave the wide range of rights and guaranteed the exercise of fundamental human rights and freedoms. We would like to point out two very important constitutional categories:

- prohibition of direct and indirect discrimination, i.e. clear definition of the affirmative action; and
- - supremacy of international law over the domestic law.

In addition, the Constitution enables the adoption of laws and introduction of special measures aimed at creating conditions for exercising national, gender and overall equality and protection of persons who are in an unequal position on any grounds, while these regulations and measures shall not be considered discrimination (positive discrimination, affirmative action). These special measures are limited in time i.e. they may only be applied until the achievement of the aims for which they are undertaken. Article 17 of the Constitution prescribes equality before law, regardless of any particularity or personal feature. The Constitution guarantees everyone the right to equal protection of his or her rights and liberties (Article 19). In the Constitution, infliction or encouragement of hatred or intolerance on any grounds is explicitly prohibited (Article 7). During the proclaimed state of war or emergency, the limitations of the exercise of certain human rights and freedoms shall not be introduced on the grounds of gender, national origin, race, religion, language, ethnic or social origin, political or other beliefs, financial standing or another personal feature (Article 25). Article 50 of the Constitution specifies that a competent court may prevent dissemination of information and ideas via the public media if required so, to prevent, *inter alia*, propagating racial, national and religious hatred or discrimination. Constitution also prohibits the operation of political and other organizations which is directed towards instigating national, racial, religious and other hatred and intolerance.

Montenegro accepted the majority of international treaties on the protection and improvement of human rights and freedoms. According to the Constitution, the ratified and published international treaties and generally recognised rules of international law shall be an integral part of the internal legal order and shall have the supremacy over the national legislation. In the area of fight against discrimination, Montenegro is a signatory to the following, most important international documents: International Convention on the Elimination of All Forms of Racial Discrimination (1965), Convention on the Elimination of All Forms of Racial Discrimination Against Women adopted in 1979, Convention on the Rights of the Child (1989), International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), International Labour Organisation Convention No 100 - Equal Remuneration Convention (1951), International Labour Convention No 111 - Discrimination (Employment and Occupation) Convention (1958), UNESCO Convention Against Discrimination in Education (1960), Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Framework Convention for the Protection of National Minorities (1995).

Beside the Constitution and international treaties, there is a range of laws in the national legislation with provisions prohibiting discrimination, promoting equality and adopting anti-discrimination measures. The most significant legislation prohibiting discrimination and promoting equality in the legal system of Montenegro are:

- *The Law on Minority Rights and Freedoms* guarantees that the persons belonging to minorities are equal with other citizens and shall enjoy equal legal protection. In addition,

this Law prohibits any direct and indirect discrimination on any grounds, and consequently in respect to race, colour of skin, gender, national origin, social origin, birth or similar status, religion, political or other beliefs, financial standing, culture, language, age and mental or physical disability.

- *The Law on Employment* provides for equality of unemployed persons in the process of exercising their right to employment regardless of their national origin, race, gender, language, religion, political or other beliefs, education, social background, financial standing or other personal features.
- *The Law on Labour* prohibits any direct or indirect discrimination against any person seeking employment, as well as any employed person, in respect to their gender, birth, language, race, religion, colour of skin, age, pregnancy, health condition i.e. disability, national origin, marital status, family obligations, sexual orientation, political or other beliefs, social background, financial standing, membership in political organizations and trade unions or to any other personal feature (Article 5). Forms of discrimination are precisely determined in this Law. Any action based on treating any person seeking employment as well as the employed person in any less favourable manner than others in the same or similar position shall be considered direct discrimination. Indirect discrimination, within the meaning of this Law, exists when certain provision, criterion or practice treat or is likely to treat in less favourable manner any person seeking employment, as well as any employed person due to his or her personal feature, status, orientation or belief (Article 6). These forms of discrimination are prohibited in relation to employment conditions and selection of candidates for a certain job; working conditions and all rights resulting from the labour relationship; education, training and advanced training; promotion at work; termination of the labour contact. In cases of discrimination pursuant to Article 10 of the Law on Labour, any person seeking employment or any employed person may initiate the procedure before a competent court, in accordance with law.
- *Law on Child and Social Welfare* envisages that citizens are equal in exercising rights in the area of social and child welfare, regardless of their national origin, race, gender, language, religion, social background or other personal features.
- *Law on Health Care* stipulates that citizens are equal in exercising rights in the field of health care regardless of their national origin, race, gender, age, language, religion, education, social background, financial standing and any other personal feature.
- *Law on Gender Equality* defines and regulates the method of providing and exercising rights in respect to gender equality and the method of creating equal opportunities for women and men in all spheres of social life.
- Set of laws in the area of education (General Law on Education, Law on Elementary Education, Law on Secondary Education, Law on Higher Education), as well as set of laws in the area of media (Law on Media, Law on Broadcasting, Law on Public Broadcasting Services Radio and Television of Montenegro), also contain provisions on non-discriminatory approach in exercising rights concerning these areas.

Criminal Code - In the legal system of Montenegro, discrimination is criminalised by criminal legislation. Criminal protection regarding these matters is provided for in Chapter Fifteen of the Criminal Code of Montenegro – Criminal offences against freedoms and rights of a man and citizen.

Criminal offence - infringement of the right to free use of language and alphabet- provided for in Article 158 of the Criminal Code is special form of infringement of equality principle concerning denial or restriction to citizens, the use of their mother tongue or alphabet when exercising their rights or addressing authorities or organizations, contrary to the regulations governing the use of language and alphabet of peoples or members of national and ethnic communities living in Serbia and Montenegro. Sentence that shall be imposed in respect to this criminal offence is a fine or imprisonment not exceeding one year.

Criminal offence – infringement of equality is prescribed in Article 159 of the Criminal Code which specifies that anyone who, due to national affiliation or affiliation to an ethnic group, race or

confession, or due to absence of such 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 rights of man and the citizen prescribed by the Constitution, laws or other regulations or general acts or recognized by international treaties or, on grounds of such differences, grants privileges or exemptions, shall be sentenced to imprisonment not exceeding three years. Should the mentioned act be committed by a person acting in an official capacity while performing his/her duties, that person shall be imposed a sentence of three months to five years of imprisonment.

Infringement of the right to expression of national or ethnic affiliation is prescribed by Article 160 of the Criminal Code in which 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. Sentenced to the mentioned punishment shall also be every person who coerces other person to declare his/her national or ethnic affiliation. Should the mentioned act 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.

Infringement of the freedom of confession of religion and performance of religious rites is criminalised in Article 161. Mentioned criminal offence specifies that everyone who prevents or restricts freedom of confession or practice of religion shall be sentenced to a fine or imprisonment not exceeding two years. This sentence is also prescribed for anyone who prevents or disturbs performance of religious rites. Anyone who coerces others to declare their religious beliefs shall be sentenced to a fine or imprisonment not exceeding one year. A person acting in an official capacity who commits the act referred to in this Article shall be sentenced to imprisonment not exceeding three years.

In Chapter Twenty of the Criminal Code, Articles 224-232 prescribe criminal offences against labour rights. Criminal offence – violation of the principle of equality at employment is thus prescribed in Article 225.

Instigating national, racial and religious hatred, divisions and intolerance is prescribed in Article 370 of the Criminal Code and it specifies that anyone who instigates and spreads national, racial or religious hatred, divisions or intolerance among people or ethnic groups living in Montenegro, shall be imposed a sentence of six months to five years of imprisonment. If the act referred to in 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 imposed a sentence of one to eight years of imprisonment. Anyone who commits the said act by abusing his/her position or authorities or if as a 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 imposed a sentence of one to eight years of imprisonment, and for the act done by coercion, maltreatment, endangering of safety, exposure to mockery of national, ethnic or religious symbols, by damaging other things, desecration of monuments, memorial-tablets or tombs, an offender shall be imposed a sentence of two to ten years imprisonment.

Racial and other discrimination is criminalised in Article 443 of the Criminal Code which prescribes that anyone who, on grounds of difference in race, colour of skin, nationality, ethnic origin or some other personal feature violates fundamental human rights and freedoms guaranteed by generally recognised principles of the international law and international treaties ratified by Serbia and Montenegro, shall be imposed a sentence of imprisonment in duration of six months to five years. The same punishment shall be imposed on persons who persecute organizations or individuals for their efforts to ensure equality of people. Anyone who spreads ideas about the superiority of one race over another, or promotes racial hatred, or instigate racial discrimination, shall be imposed a sentence of three months to three years imprisonment.

The above-mentioned criminal offences shall be prosecuted *ex officio*, by a public prosecutor having jurisdiction in the matter. In all mentioned cases during criminal procedure, a potential victim of discrimination shall have the status of the injured party as a person with personal or property rights being infringed or violated by committing criminal offence. The injured party is entitled to report the criminal offence to a public prosecutor having jurisdiction in the matter. The

right to file a report is envisaged in Article 229 of the Criminal Procedure Code. If the report was filed with a court, police authority or a public prosecutor lacking jurisdiction, they shall receive it and immediately forward it to a public prosecutor having jurisdiction.

Strategic documents

The following adopted strategies are among the most important ones in this area: Strategy on Minority Policy (2008 - 2012); Strategy for the Improvement of the Situation of RAE Population in Montenegro (2008 - 2012), as well as the National Action Plan for the Decade of Roma Inclusion 2005 - 2015 in the Republic of Montenegro.

Efforts for the minority status improvement are particularly focused on the status of RAE population. The Government of Montenegro did not close their eyes to the evidently difficult situation of Roma in Montenegro. The Government of Montenegro began to tackle problems of the RAE population immediately after the Regional Conference “Roma in an Expanding Europe“, when Montenegro had supported the project The Decade of Roma Inclusion 2005 - 2015. In January 2005, the Government of Montenegro adopted its Decade Action Plan with the aim to break the vicious circle of poverty and exclusion of Roma from the social life in Montenegro. By the end of the 2007, we also adopted the Strategy for the Improvement of the Situation of RAE Population in Montenegro 2008 - 2012. In the sphere of improving situation of Roma people, the Government puts focus not solely on the Strategy for the Improvement of the Situation of RAE Population in Montenegro. Activities of other ministries as well, including their considerable financial support, are directed towards the integration of Roma population within the Montenegrin contemporary society. The activities of the Ministry of Education and Science, Ministry of Culture, Sports and Media, Ministry of Health, Labour and Social Welfare, local Social Welfare Centres or Primary Health Care Centres, as well as the activities of particular local self-governments and other must not be neglected. All these efforts are to be appreciated since they go, day by day, into better social inclusion of Roma people and into lessening vulnerability of this population.

a) *The Government of Montenegro* – all the ministries and other state administration bodies, within the scope of their competences and activities, when implementing normative acts, have the imperative to guarantee equality and non-discrimination. Combat against discrimination, which is a basic prerequisite for respecting guaranteed human rights and freedoms, the most directly falls under the competencies of the Ministry of Human and Minority Rights, Ministry of Justice, Ministry of Labour and Social Welfare, Ministry of Education and Science, Ministry of Health, Ministry of Culture, Sports and Media, Ministry of Interior and Public Administration, Police Directorate, Institution for Enforcement of Criminal Sanctions, Refugee Care and Support Office, Employment Agency of Montenegro, Human Resources Administration etc. Since the status of national minorities (the status of Roma population, in particular) and gender equality are delicate matters, two independent departments - Department for Gender Equality and Department for Improvement and Protection of RAE Population Rights are established within the Ministry of Human and Minority Rights.

b) *Parliamentary Committee for Human Rights and Freedoms* – examines proposals of laws, other regulations, general acts and other issues related to: freedoms and rights of human and citizens, with special emphasis on minority rights, the implementation of ratified international acts concerning exercising, protection and improvement of these rights; supervises the implementation of documents, measures and activities for the improvement of national, ethnic and other equality, in particular in the area of education, health care system, information, social policy, employment, entrepreneurship and decision-making process etc.; participates in drafting and preparing documents and in harmonization of legislation with the European Union standards in this area; cooperates with analogous committees of other parliaments and NGOs dealing with these issues.

c) *Protector of Human Rights and Freedoms (Ombudsman)* – protects human rights and freedoms guaranteed by the Constitution, law, ratified international treaties on human rights and generally recognised rules of international law, when violated by means of an act, actions or omissions of the state bodies, local self-government bodies and

public services as well as by other holders of public authorities. Protector represents a body which a citizen in need of an urgent action may easily access without dealing with formalities or bearing any costs, but Protector may also act *ex officio*. The procedure before Protector is confident and no person filing a complaint before Protector or participating in any way in the procedure pursued by Protector may not be cold accountable nor brought into unfavourable situation on these grounds. Protector informs the Parliament and general public about his/her findings, convictions and opinions, thus contributing to the opening and transparency of the public administration and other public services and bodies towards the Parliament, Government, public and citizens. According to the present normative solutions, Protector shall have two deputies, one of them dealing with protection of minority rights.

d) *Judicial system* – In Montenegro, the judicial power is exercised by fifteen Basic Courts, two High Courts, two Commercial Courts, one Appellate Court, one Administrative Court and one Supreme Court. Beside its traditional function of reviewing constitutionality, the Constitutional Court shall decide on harmonization of the domestic laws and general acts with the Constitution and ratified international treaties as well, and with the aim to ensure the high level of protection of human rights and freedoms, it introduces constitutional appeal as a legal device guaranteed by the Constitution which provides for a right to constitutional appeal. Every person shall have the right to constitutional appeal before the Constitutional Court when human rights and freedoms are violated, after all legal remedies have been exhausted.

129. How is the principle of non-discrimination and equal treatment of minorities ensured? Please provide details of both constitutional and legislative provisions.

Discrimination is prohibited by the Constitution of Montenegro. Article 8 reads as follows: “Direct or indirect discrimination on any grounds shall be prohibited. 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.”

The Constitution of Montenegro, in Subsection Five – Special - Minority Rights, ensures the observance of the principle of non-discrimination and treating minorities on an equal footing with special reference to the protection of identity referred to in Article 79. Persons belonging to minority nations and minority national communities shall be guaranteed the rights and freedoms which they can exercise individually or collectively with others, as follows:

1) the right to exercise, protect, develop and publicly express national, ethnic, cultural and religious particularities;
2) the right to choose, use and publicly post national symbols and to celebrate national holidays;
3) the right to use their own language and alphabet in private, public and official use;
4) 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;
5) the right, in the areas with significant share in the total population, to have the local self-government authorities, state and court authorities carry out the proceedings in the language of minority nations and other minority national communities;
6) the right to establish educational, cultural and religious associations, with the material support of the state;

7) the right to write and use their own name and surname in their own language and alphabet in the official documents;

8) 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 in the language of minority nations and other minority national communities;

9) the right to authentic representation in the Parliament 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;

10) the right to proportionate representation in public services, state bodies and local self-government bodies;

11) the right to information in their own language;

12) 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 historical heritage, as well as religious beliefs;

13) the right to establish councils for the protection and improvement of special rights.

Prohibition of assimilation of the persons belonging to minority nations and other minority national communities is prohibited by the Constitution of Montenegro. The state shall protect the persons belonging to minority nations and other minority national communities from all forms of forceful assimilation (Article 80).

Beside the above-mentioned provision, a range of minority rights and freedoms is recognised by the Constitution. In addition to this new provisions provided for in the Constitution and provisions in our national legislation, one may freely say that we are only a step away from the completing of work regarding minority rights in terms of normative activities.

When it comes to institutions, the Government of Montenegro, that is the inception of the Ministry of Human and Minority Rights as well as other departments which, within the scope of their competences, deal with the improvement of minority rights, then, the inception of the Committee for Human Rights and Freedoms within the Parliament, Protector of Human Rights and Freedoms and a range of reliable NGOs reaffirm the commitment of Montenegro to further improving of its concept of multi-ethnicity. It must be mentioned that we successfully established and put into function three new institutions, vital to the improvement of minority situation, even to the situation of Roma people in Montenegro.

1. Law on Minority Rights and Freedoms prescribes that persons belonging to minorities shall be equal with other citizens and enjoy equal legal protection, and that any violation of minority rights shall be deemed unlawful and punishable. In addition to the rights provided for in generally recognised international rules and ratified international treaties, this law ensures full exercise of minority rights which cannot be of a lesser extent than ones already attained, under equal terms and with a view to providing full equality of persons belonging to minorities with other citizens. State signs international agreements with other countries on protection of rights of minorities' members. When signing international agreements the State shall ensure that the agreements do create and promote the conditions necessary for maintenance, development and protection of national, ethnic, cultural, linguistic and religious identity.

The Government of Montenegro (hereinafter referred to as the "Government") passes the Strategy on Minority Policy.

With a view to providing conditions for unhindered exercise and promotion of national and ethnic particularities of minorities and persons belonging to minorities, state bodies shall undertake appropriate measures pursuant to the Strategy on Minority Policy. The Strategy shall in particular define measures for enforcement of this Law and improvement of living conditions for minorities, as well as measures and activities for the greatest possible integration of Roma population into the social and political life of the Republic.

Minorities and persons belonging to minorities shall have the right to expression, preservation, development, transmission and public manifestation of national, ethnic, cultural, religious and linguistic identity as a part of their tradition. State shall foster and promote the study of history, tradition, language and culture of minorities. In accordance with this Law and undertaken international commitments, the competent bodies shall ensure the protection of cultural heritage of minorities and persons belonging to minorities. With a view to preserving and developing national or ethnic identity, minorities or persons belonging to minorities are also entitled to establish institutions, associations and non-governmental organizations in all areas of social life.

State also takes part in funding the said organizations, according to its financial standing. Persons belonging to minorities have the right to freely and independently express their nationality, to freely choose and use their names and surnames and the names of their children, as well as to register those names in public registers and identification documents in their language and alphabet. Minorities and persons belonging to minorities are entitled to use of their language and alphabet.

In municipalities in which national minorities forms a majority or significant part of the population, as registered by the latest census, the language of that minority shall also be in official use.

The official use of language of minorities, as provided for in this Law shall particularly imply the following: the use of language in administrative and court proceedings and in conducting administrative and court proceedings, the use of language when issuing public documents and keeping official records, on ballot papers and other electoral material as well as the use of language in the work of representative bodies. On the territory of a local self-government where the majority of population belongs to a minority, the names of local self-government units executing public authorities, names of municipalities, settlements, squares and streets, institutions, businesses and other companies and toponyms shall also be written in language and alphabet of that minority.

Minorities and persons belonging to minorities shall be given freedom of information to the extent set forth in the international documents on human rights and freedoms.

Persons belonging to minorities are entitled to freely establish media and to free work regarding: freedoms of expression, research, collect, disseminate, publish and receive information, freedom to access all sources of information, protection of personality and dignity and free flow of information.

The competent managerial or programme bodies of media founded by the State shall provide appropriate number of hours of broadcast, for the purpose of broadcasting information, cultural, educational, sports and entertainment programmes in the language of minorities and persons belonging to minorities, as well as programmes regarding life, tradition and culture of minorities and shall provide financial means for funding these programmes.

Programmes regarding life, culture and identity of minorities shall be broadcasted at least once in a month, in the official language, through public broadcasting services.

The State may provide translation (subtitling) of programmes from the minority languages to its official language, according to its financial standing.

Minorities and persons belonging to minorities have the right to education in their language and to appropriate representation of their language in general and vocational education, depending on the number of students and financial means the State can afford. These rights shall be exercised in all levels of education. These rights shall be exercised through special schools or special classes in regular schools. Teaching is fully delivered in the language of a minority. When delivering teaching in the minority language, learning of the official language and alphabet is compulsory. Pupils and students not belonging to a national minority may learn the language of the minority they live with. A class where teaching is delivered in the minority language and alphabet may be established even for a smaller number of pupils than what the standard for such institution prescribes, but not if the number of pupils is below 50% of the standard prescribed by law. Educational and pedagogical work in schools or in special classes of regular schools where teaching is delivered in language of a minority shall be delivered by teachers who themselves belong to that minority and have full command of that minority language, or teachers not belonging to a minority but who have a full command of language and alphabet of that minority.

Every year, the University of Montenegro may, upon the proposal of the Minority Council, and with a view to fully respect minority rights, enroll a number of students belonging to minorities, in accordance with the University Statute.

Minorities and their members are entitled to use national symbols in accordance with the law. Minorities and their members shall have the right to celebrate certain dates, events and dignitaries from their tradition and history.

Minorities and persons belonging to minorities are entitled to associate freely, in compliance with the law and principles of international law on freedom of association.

Minorities and persons belonging to minorities have the right to articulate their interests and to contribute efficiently to governance and to public control of the governance.

Minorities and persons belonging to minorities can cooperate with governmental and non-governmental organization in country and abroad for the purpose of exercising common interests.

With the aim of enforcing the Law on Minority Rights and Freedoms, the Ministry of Human and Minority Rights and Freedoms passed the Rulebook on First Election for the Minority Councils as well as the Instructions for Uniform Forms for Carrying out Elections of Members of Minority Councils. These acts pave the way for the electing Minority Councils for the first time. Pursuant to the existing laws, there have been held six electoral meetings for the members of the councils, and the Roma Council held its electoral meeting on 22 March 2008, a year ago. The constitutional council sessions were held, and the councils were registered at the Ministry of Human and Minority Rights. Since August 2008, Councils have been funded by the Ministry to the amount of EUR 5 000.00 per month for each council.

2. Upon the Government proposal, in February 2008 the Parliament passed the Decision on Establishing Fund for Minorities. The Fund for Minorities is established with the aim to provide support to the activities important for the preservation and development of the national or ethnic particularities of the minority nations and other minority communities and their members in the area of national, ethnic, cultural, linguistic and religious identity. In July 2008, the Management Committee counting fifteen members was elected, and the Law on Amendments to the Law on Budget for 2008 provided for allocation of funds in the amount of EUR 422 125.00 to the Fund. For this year, the allocated funds approved by the budget are in the amount of EUR 1 018 000.00.

3. Culture and protection of cultural heritage is one of the basic segments for the protection of the overall national identity. Recognising the significance of multiculturalism and Montenegrin cultural diversity, the Ministry of Human and Minority Rights has taken up activities to put the Centre for Preservation and Development of Minority Cultures into function. Upon adopting the amendments to the Decision on establishing the Centre for Preservation and Development of Minority Cultures, its four-member Management Committee is appointed and adequate premises for performing activities as well as the necessary equipment provided. The Director of this institution is appointed and necessary budgetary funds provided, so the year 2009 started with conditions already met for the normal functioning of this institution.

The Law on Employment provides for equality of unemployed persons in the process of exercising their right to employment regardless of their national origin, race, gender, language, religion, political or other beliefs, education, social background, financial standing or other personal features.

The Labour Law prohibits any direct or indirect discrimination against any person seeking employment, as well as any employed person, in respect to their gender, birth, language, race, religion, colour of skin, age, pregnancy, health condition i.e. disability, national origin, marital status, family obligations, sexual orientation, political or other beliefs, social background, financial standing, membership in political organizations, trade unions or any other personal feature (Article 5). Types of discrimination are precisely determined in this Law. Any action based on treating any person seeking employment as well as the employed person in any less favourable manner than others in the same or similar position shall be considered direct discrimination. Indirect discrimination, within the meaning of this Law, exists when certain provision, criterion or practice treat or is likely to treat in less favourable manner any person seeking employment, as well as any employed person due to his or her personal capacity, status, orientation or belief (Article 6). These

forms of discrimination are prohibited in relation to employment conditions and selection of candidates for a certain job; working conditions and all rights resulting from the labour relationship; education, training and advanced training; promotion at work; termination of the labour contact. In cases of discrimination pursuant to Article 10 of the Law on Labour, any person seeking employment or any employed person may initiate the procedure before the competent court, in accordance with law.

Law on Child and Social Welfare envisages that citizens are equal in exercising rights in the field of social and child welfare, regardless of their national origin, race, gender, language, religion, social background or other personal features.

Law on Health Care stipulates that citizens are equal in exercising rights in the field of health care regardless of their national origin, race, gender, age, language, religion, education, social background, financial standing and any other personal feature.

Law on Gender Equality defines and regulates the method of providing and exercising rights in respect to gender equality and the method of creating equal opportunities for women and men in all spheres of social life.

Set of laws in the area of education (General Law on Education, Law on Elementary Education, Law on Secondary Education, Law on Higher Education), as well as the set of laws in the area of media (Law on Media, Law on Broadcasting, Law on Public Broadcasting Services Radio and Television of Montenegro), also contain provisions on non-discriminatory approach in exercising rights concerning these areas.

Criminal Code - In the legal system of Montenegro, discrimination is criminalised by criminal legislation. Criminal protection regarding these matters is provided for in Chapter Fifteen of the Criminal Code of Montenegro – Criminal offences against freedoms and rights of man and the citizen.

Criminal offence - infringement of the right to free use of language and alphabet - provided for in Article 158 of the Criminal Code is a separate form of infringement of equality principle concerning denial or restriction to citizens the use of their mother tongue or alphabet when exercising their rights or addressing authorities or organizations, contrary to the regulations governing the use of language and alphabet of peoples or members of national and ethnic communities living in Serbia and Montenegro. Sentence that shall be imposed in respect to this criminal offence is a fine or imprisonment not exceeding one year.

Criminal offence – infringement of equality is prescribed in Article 159 of the Criminal Code which specifies that 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 rights of man and the citizen prescribed by the Constitution, laws or other regulations or general enactments or recognized by international treaties or, on grounds of such differences, grants privileges or exemptions, shall be sentenced to imprisonment not exceeding tree years. Should the mentioned act be committed by a person acting in an official capacity while performing his/her duties, that person shall be imposed a sentence of three months to five years of imprisonment.

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Infringement of the freedom of confession of religion and performance of religious rites is criminalised in Article 161. Mentioned criminal offence specifies that everyone who prevents or restricts freedom of confession or practice of religion shall be sentenced to a fine or imprisonment not exceeding two years. This sentence is also prescribed for anyone who prevents or disturbs performance of religious rites. Anyone who coerces others to declare their religious beliefs shall be

sentenced to a fine or imprisonment not exceeding one year. A person acting in an official capacity who commits the act referred to in this Article shall be sentenced to imprisonment not exceeding three years.

In Chapter Twenty of the Criminal Code, Articles 224-232 prescribe criminal offences against labour rights. Therefore, criminal offence – violation of equality at employment is prescribed in Article 225.

Instigating national, racial and religious hatred, divisions and intolerance is prescribed in Article 370 of the Criminal Code and it specifies that anyone who instigates and spreads national, religious or racial hatred, divisions or intolerance among people, national minorities or ethnic groups living in Montenegro, shall be imposed a sentence of six months to five years of imprisonment. If the act referred to in 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 imposed a sentence of one to eight years of imprisonment. Anyone who commits the said act by abusing his/her position or authorities or if as a 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 imposed a sentence of one to eight years of imprisonment, and for the act done by coercion, maltreatment, endangering of safety, exposure to mockery of national, ethnic or religious symbols, by damaging other things, desecration of monuments, memorial-tablets or tombs, an offender shall be imposed a sentence of two to ten years of imprisonment.

Racial and other discrimination is criminalised in Article 443 of the Criminal Code which prescribes that anyone who, on grounds of difference in race, colour of skin, national or ethnic origin, or some other personal feature, violates fundamental human rights and freedoms guaranteed by generally recognised principles of the international law and international treaties ratified by Serbia and Montenegro, shall be imposed a sentence of six months to five years of imprisonment. The same punishment shall be imposed on persons who persecute organizations or individuals for their efforts to ensure equality of people. Anyone who spreads ideas about the superiority of one race over another, or promotes racial hatred, or instigate racial discrimination, shall be imposed a sentence of three months to three years of imprisonment.

130. What measures have been taken to ensure proper budgetary allocations to meet equitable representation objectives? Please specify the budgets allocated for this purpose.

The Fund for Minorities is established on account of support for the activities that are important for the protection and development of national and/or ethnical characteristics of minorities and other ethnic minority communities and their members within national, ethnic, cultural, language and religious identity sphere. In July 2008, the 15-member Management Committee was elected, and within the Law on Amendments to the Budget Law of Montenegro, for the year 2008, the resources amounted to EUR 422 125.00 were provided for the functioning of the fund. It is provided EUR 1 018.00 by budget for this year. It is provided EUR 975 704.76 for the Fund for Minorities by budget revision of Montenegro. The Management Committee provides resources on the basis of open advertisement that is announced in all print and electronic media.

131. Please provide statistical information, if available, on access to public and private employment, housing, education, health services, etc., including data concerning the situation of minorities as compared with the majority population in respect of:

Employment and unemployment rates

Montenegro	2006	2007	2008
1. employment rate	34.5	41.7	43.2
men	41.0	49.1	50.8
women	28.7	34.8	36.1
2. unemployment rate	29.6	19.4	16.8
men	29.1	18.1	15.9
women	30.1	20.9	17.9

Source: MONSTAT

Participation in primary, secondary and university education:

Population rate (percentage participation) in primary, secondary and university education

Montenegro	2006/07	2007/08	2008/09
Primary education	12.0	11.9	11.8
Secondary education	5.1	5.0	4.9
University education	2.6	3.1	3.6

Source: MONSTAT – The rates are collected on the basis of the number of enrolled students (primary, secondary and university education) for the school years 2006/07; 2007/08 and 2008/09 and on the basis of mid-year estimated population, so that during the school year 2006/07, 12% of the population of Montenegro attended primary school.

Infant mortality and anticipated life expectancy

Infant mortality rate, anticipated life expectancy by gender,

Montenegro for the period 2000-2008

Indicator	2006	2007	2008
Infant mortality rate	11.0	7.4	7.5
Anticipated life expectancy – men	70.7	71.2	71.2
Anticipated life expectancy – women	74.8	76.1	76.1

Source: MONSTAT

- employment and unemployment rates;

Employment and unemployment rates

Montenegro	2006	2007	2008
1. employment rate	34.5	41.7	43.2
men	41.0	49.1	50.8
women	28.7	34.8	36.1
2. unemployment rate	29.6	19.4	16.8
men	29.1	18.1	15.9
women	30.1	20.9	17.9

Source: MONSTAT

- participation in primary, secondary and tertiary education;

Participation in primary, secondary and university education:

Population rate (percentage participation) in primary, secondary and university education

Montenegro	2006-07	2007-08	2008-09
Primary education	12.0	11.9	11.8
Secondary education	5.1	5.0	4.9
University education	2.6	3.1	3.6

Source: MONSTAT – The rates are collected on the basis of the number of enrolled students (primary, secondary and university education) for the school years 2006/07; 2007/08 and 2008/09 and on the basis of mid-year estimated population, so that during the school year 2006/07, 12% of the population of Montenegro attended primary school.

- infant mortality and life expectancy.

Infant mortality rate, anticipated life expectancy by gender,

Montenegro for the period 2000-2008

Indicator	2006	2007	2008
Infant mortality rate	11.0	7.4	7.5
Anticipated life expectancy – men	70.7	71.2	71.2
Anticipated life expectancy – women	74.8	76.1	76.1

Source: MONSTAT

132. What programmes have been established in order to achieve equitable representation of all communities at all levels of the security forces, what is their stage of implementation and what are the plans for the future in this respect? Please specify the budgets allocated for this purpose in the last give years.

Basic provisions of the Constitution include three provisions, essential for enjoyment of human rights and freedoms. Article 6 guarantees the general protection of human rights and freedoms as inviolable categories. Article 7 provides a prohibition of causing hatred or intolerance on any ground, and Article 8 provides a prohibition of discrimination, as general prerequisite for enjoyment of all human rights and freedoms. Precisely, Article 8 prescribes a prohibition of any “indirect or direct discrimination on any ground”, including that “the regulations and introduction of specific measures, aimed at creation of conditions for providing national, gender and overall equality and protection of the persons who are not equal on any ground, shall not be considered as discrimination. Special measures could be applied, not later than the aims for which those measures are taken, could be achieved”, which leaves the space for establishing additional mechanisms for protection and promotion of minority rights, that is minority integration in conjunction to the protection of its particularity.

The Montenegrin Constitution, in Articles 79 and 80, guarantees to the members of minority peoples and other minority groups the rights and freedoms that can be exercised individually and in conjunction to other rights and freedoms, and it prohibits any assimilation of the members of minority peoples and other minority groups. The Constitution also prescribes the minorities to be proportionally represented in public services, state administration bodies and local self-government bodies.

This right is defined in more detail within a few specific and systemic laws. Those laws are the following:

The Law on Minority Rights and Freedoms (Official Gazette of the Republic of Montenegro 31/06, 51/06, 38/07) governs the set of minority rights and the mechanisms for exercising and protecting those rights in more detail. The text of the Law is adjusted to the:

- Universal Declaration of Human Rights;
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Framework Convention for the Protection of Minority Rights;
- European Charter for Regional or Minority Languages;
- The Hague, Oslo and Lind Recommendations (OSCE);
- Guidelines for the Participation of Minorities in Electoral Process (OSCE);

The Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08) that proclaims the following principles: transparency, equal opportunities, promotion and employment, depending on professional and working skills, the quality of work and the achieved results of the work. Human Resources Administration, within the meaning of Articles 117 and 118 of this Law, performs the affairs of monitoring and undertaking the measures with the aim of achieving proportional representation of minority people and other minority groups in state bodies, and also keeps the Central Human Resources Records on civil servants and state employees that contains following personal data: name and surname, nationality and mother tongue. In such a way, the Law provides an obligation of keeping human resources records containing the data about minority aspect of the employed in the Police Directorate. Human Resources Records kept by the former Law on Civil Servants and State Employees, contained the section about national affiliation that one wasn't obliged to fill in, and that was in accordance with the former constitutional principles that a citizen was not obliged to declare his/her national affiliation.

Within the project: Educational Reform of Montenegrin Police, the obligation of Police Academy has been determined to realize the procedure of candidates' recruitment and selection for enrolment in a transparent way in order to provide more equal gender and ethnic population structure so the structure of elected candidates would reflect society structure in general. During the last three years, the candidates who enrolled for Police Academy reflect the participation and representation of members of minority and other ethnic communities proportionally to their own participation within total population estimates.

Within these facts, constitutional and legal solutions represent solid legal framework for further implementation of rights for members of minority peoples and other minority groups, including this additional right. However, this concept should be developed by setting up special programmes established in order to achieve proportional representation of all communities in safety forces at all levels. Before that, education system should be used for creation of human resources base for reaching this standard, with equal conjunction to ethnic affiliation, qualifications and reference as aims for overall reform. This particularly refers to fields in which educational and officers' improvement and public office holders' concept started operating at the level of law (judiciary, administration etc.). There are no reliable statistical data that would show factual situation of minority representation.

For more details please see under reply to question 104 in subchapter Human Rights.

133. What measures have been taken in relation to the use of flags and community symbols?

The Law on the Use of National Symbols (Official Gazette of the Republic of Montenegro 55/00) defines clearly the use of symbols of minorities.

By Article 1 of the Law on the Use of National Symbols, it is proclaimed that the members of national and ethnic communities in the Republic of Montenegro (hereinafter referred to as the "Republic") have the right to use and emphasize national symbols, as required by this Law.

In this respect, the symbols, which the members of national and ethnic groups use to express their own national identity, are considered as national symbols.

By Article 3 of the stated Law, it is proclaimed that the use of national symbols is also free, except in the following cases:

- in front of and in the buildings of the Parliament of the Republic of Montenegro, President of the Republic of Montenegro, Government of the Republic of Montenegro, Constitutional Court of the Republic of Montenegro, Supreme Court of the Republic of Montenegro, Public Prosecutor of Montenegro, other state bodies and organizations which perform public service and local self-government bodies;
- during international meetings, political, scientific, cultural and artistic, sport and other events where the Republic is represented;
- during celebrations, festivals, sport, cultural and other manifestations organized by the Republic or local self-government bodies;
- in other cases provided for by Law.

Article 5 proclaims that, in the units and direct structures of local self-government where the members of national and ethnic groups have significant share in the majority of population, during the days of public holidays of the Republic of Montenegro, in front of the buildings of local self-government bodies, apart from state symbols, national symbols are emphasized as well.

When national symbols are used, that is emphasized together with state symbols; the state symbol takes place of pride.

Amendments to the Law on the Use of National Symbols are expected to happen during the following year so that until the end of 2010 we will adopt the new Law that will define more precisely the use of symbols for minority people.

134. What proportion of university students belongs to national minorities? Do enrolment procedures at State universities include rules or programmes that encourage the enrolment of candidates belonging to non-majority communities, and how is this implemented?

Law on Higher Education (Official Gazette of the Republic of Montenegro 60/03) proclaims that university education is available to all persons, under the conditions that are prescribed by the Law and the Statute of the institution and it also prohibits discrimination in exercising this right. In accordance with Article 6 of the Law while exercising the right for university education, it is prohibited any discrimination on grounds of: gender, race, marital status, colour, language, religion, political or any other conviction, national, ethnic or any other origin, national affiliation, property status, disablement (invalidity) or any other similar ground, situation or circumstance.

The enrolment of students for study programmes of state University is done in accordance with the Rulebook on conditions, criteria and enrolment procedure for the first year of the studies. The enrolment is done on the competitive basis and in accordance with the achieved results during the previous education. University of Montenegro, in accordance with its Statute, announces call for the enrolment into the study programmes.

The call for enrolment is announced for each enrolment period.

The first enrolment period is organized in the second half of June of the current year. In cases when in the first enrolment period the number of qualified candidates is less than fixed number for enrolment, the second and/or the third enrolment period is organized.

The second enrolment period is organized in the first half of July of the current year.

The third enrolment period is organized in the first half of August of the current year.

Within the Decision on Call for Enrolment, the Senate of University can anticipate that the fixed total number of students, who enrol during two enrolment periods, is of percentage rate 90:10%.

Consequently, there are neither special standards for enrolment of national minorities nor special programmes for enrolment of candidates who belong to national minorities.

135. Has the Framework Convention for the Protection of National Minorities been ratified and how is it implemented?

After re-establishing its independency, and by the letter of Minister of Foreign Affairs of the Republic of Montenegro of 6 June 2006, Montenegro declared to accept all obligations that follow from the conventions and agreements of the Council of Europe which signed or ratified ex state community of Serbia and Montenegro. By assigning the observer status to Montenegro, the Committee of Ministers of the Council of Europe, recognized the membership of Montenegro in the conventions and protocols opened for entering of non-member states even in pre-admission period, and it also recognized successive status in a number of so-called 'closed conventions', among others within the Framework Convention for the Protection of Minority Rights.

On 11 May 2007, the Republic of Montenegro became full member of the Council of Europe, and on 6 July 2006 its membership in the Framework Convention was recognized (this date is the date of declaration on successive status in conventions and protocols of the Council of Europe, of which the signatory party was ex state community of Serbia and Montenegro).

On the basis of provision of Article 25 paragraph 1 of Framework Convention, the contracting parties have a duty to submit complete information about legislative and other measures (taken because of the implementation of principles that are defined by the Framework Convention) to General Secretary of the Council of Europe, within one year from its entering into force. Montenegro submitted its First State Report on the implementation of this Convention in June 2007. The working group, consisted of the representatives of relevant ministries that the provisions of the Framework Convention refer to, and two representatives of non-governmental sector, prepared this report.

The Advisory Committee of the Framework Convention gave a list of provisions for additional informing in relation to submitted report, and in October 2007 the answers on these additional questions were given. The Delegation of Advisory Committee visited Montenegro during the period from 4 to 8 December 2007 in order to get additional information from the representatives of the Government, NGO sector and other independent sources regarding the implementation of the Framework Convention. The Advisory Committee adopted its own opinion about Montenegro during its 31st meeting on 28 February 2008.

The implementation of the Framework Convention for the Protection of Minority Rights is achieved through harmonization of domestic legislation with these international documents and through practical application of those provisions. The Government of Montenegro through the Ministry of Human and Minority Rights exercises the supervision over the implementation of these documents. Also, regarding the duty of submitting the periodic reports on the implementation of the conventions of the Council of Europe, the specialized Advisory Committee of the Framework Convention gives its opinions and recommendations when submitting the periodic reports.

136. Please provide an overview (including statistics) of the situation of Roma, and the Government's plans for their integration (adoption and implementation, including details on funding, with examples of concrete results).

Low economic power, low level of education, small number of the employed ones, inadequate housing conditions, social unacceptability with ethnical stereotypes and prejudices, non-integrity with the ways of life of modern societies, often changes of residence, as well as the way of life itself, are only some of the causes of difficult position of the Roma in the society.

The answer of the Government of Montenegro to these problems followed after the regional conference "Roma in an Enlarged European Union" after what Montenegro accepted the project "The Decade of Inclusion of the Roma People 2005-2015". In January 2005, the Government of Montenegro adopted its Action Plan for implementation of the Decade in order to stop vicious circle of poverty and exclusion of the Roma from the social life of Montenegro, using the projects from this Action Plan. The Action Plan represents the framework for the activities aimed at full integration of the Roma population into Montenegrin society, but without any indications of the assimilation process. This document is fully compatible with the strategic documents adopted by the Government, and it represents particular unity with those documents. Primarily, we have in mind the Strategy for Development and Reduction of Poverty, the Agenda on Economic Reforms, the Strategy for Permanent Solving of Questions of Refugees and Internally Displaced Persons and National Action Plan for Children.

Regarding the fact that the Action Plan had limited scope, and that the source and the quantity of means for its implementation weren't stated precisely, at the Ministry for Protection of Human and Minority Rights' proposal, during the conference of 8 November 2007, the Government of Montenegro adopted the "Strategy for Improvement of the Position of RAE Population in Montenegro 2008-2012". The Strategy represents a set of concrete measures and activities in the following four-year period of legal, political, economic, social, urban and communal, educational, cultural and informative, health and any other necessary character, as well as their holders, time limits and financial expenses. Beside fundamental aims and purposes that are desired to achieve by the implementation of this document, the Strategy defines the scopes, priority tasks, the methods of realization, the duration of the Strategy, the mechanisms of evaluation, etc. The priority scopes are: the creation of RAE population database, recognizing legal status of RAE population (the registration and solving the problems concerning identification documents), education, the protection of culture and tradition, employment and employment rights, health and health protection, social and children protection, the improvement of the housing conditions and the participation in public and political life. Gender equality is particularly emphasized in each field.

For the year 2008, beside the resources intended for the improvement of position of the Roma within some fields, the Government provided EUR 400 000.00. For the realization of the programmes and projects from this Strategy, the resources amounted to EUR 600 000.00 have been provided for the year 2009. Within the decision of the Government of 20 December 2007, the Commission for Monitoring the Implementation of this Strategy was appointed. The Commission consists of the representatives of the relevant ministries, at the level of deputy ministers, who are involved in implementation of the Strategy (the Ministry for Protection of Human and Minority Rights; the Ministry of Education and Science; the Ministry of Culture, Sports and Media; the Ministry of Interior and Public Administration; the Ministry of Health, Labour and Social Welfare), the representative of the Ministry for European Integration, the representative of the Refugee Care and Support Office, a National Coordinator for the Implementation of Action Plan for "The Decade of Inclusion of the Roma People 2005-2015", and the representative of Roma NGOs. This Commission coordinates the activities for the realization of the Strategy, conducts supervision over the projects' implementation, evaluates the achieved results and proposes the measures for elimination of the observed disadvantages, informs the Government of Montenegro about its activities.

According to the present data from the last census in Montenegro conducted in 2003, 2 601 persons declared themselves to belong to the Roma ethnic affiliation or 0.42% of the total number of the population. The population of Egyptians stands at 225 persons that is 0.04% of the total number of the population, while 2 602 persons use the Roma language as mother tongue. According to the unofficial data based on various sociological researches of non-governmental organizations, the Roma – RAE population in Montenegro stands at about 20 thousand. The majority number lives in the suburban areas of central and coastal part of Montenegro, while they are very rare in a majority of municipalities in the north of the country. There are 4 316 of displaced persons of RAE population in Montenegro, mostly from Kosovo, what is 26% of the total number of displaced persons in Montenegro.

One of the first steps towards the implementation of this Strategy was the creation of official, statistic and analytical document with the relevant data on the number of the Roma – RAE population in Montenegro, their age, gender, educational structure, life conditions, problems and all other relevant data necessary for improvement and enhancement of their position, that is the implementation of the measures of the Strategy. The Statistical Office – MONSTAT did the research for the needs of creation of the database of RAE population in Montenegro in October 2008. The research was done in the whole territory of Montenegro, and in cooperation with the Roma Council and the Coalition of NGO "Romski krug". According to the results of this overall research, the number of the members of the RAE population (domiciled and internally displaced) in Montenegro is 11 001 of which 9 943 persons live in Montenegro, and 1 058 persons live in foreign countries.

1. EDUCATION

Within the reform of education system, the Ministry of Education and Science devotes special attention to the Roma integration in the formal education system, with the aim to provide high-quality primary education and as a result of this to help to their full integration into Montenegrin society.

Regarding the education of the Roma minority and studying of the Roma mother tongue in Montenegro, it can be stated that there are significant problems concerning the integration of this minority into formal education system. The problems of the Roma education are the following:

- the lack of necessary teaching staff;
- the Roma language is not standardized and the Roma people in Montenegro speak various dialects that are very different;
- there aren't necessary textbooks for lecturing in the Roma language;
- a lot of the Roma people are displaced persons from Kosovo and they are not familiar with the official language;
- (about 5 000 of the Roma people are displaced persons);
- the lack of suitable clothes and adequate accommodation in the Roma families;
- low economic power of the family;
- traditional – nomadic way of life;
- lack of interest of the family for the education of the children, etc.

According to the done researches in Montenegro and wider, the Roma people represent the poorest class of the population, and their widespread illiteracy (over 50%) is one of the basic causes of their extreme poverty, what is considerably more than the illiteracy of the domiciled population in Montenegro (2.35% of illiterate persons according to the census from 2003). Within growing support to the education of the Roma people and the decrease of their overall poverty, the Ministry of Education and Science took a series of considerable measures in order to increase the inclusion of the Roma children in formal education system, that is:

- in the last two years, the Ministry distributed free textbooks and school supplies to all Roma pupils who enrolled in the first grade of primary school;

- with the aim of creation the growing support of the society for the integration of the Roma children, the Ministry of Education and Science organized a big media campaign under the slogan “ALL TOGETHER TO SCHOOL” in primary schools;
- also, with the aim of providing necessary material support to Roma children, there was organized the collecting of textbooks, clothes and shoes for the Roma pupils in all primary schools that the Roma children attended. The activity took place under the slogan »A Book and Clothes for the Friend«;
- six Roma students were enrolled at the Department of Pre-School Education at the Faculty of Philosophy in Niksic with the aim of providing the Roma teaching staff;
- Roma teaching assistants have entered the education process in primary and nursery schools (the municipalities of Podgorica, Niksic and Berane included in the project the Roma Educational Initiative – REI);
- within the project “ Roma Educational Initiative”, the Ministry established a special database in order to monitor numerical data and the achievements of the Roma pupils in some primary schools in Montenegro.

The Ministry of Education and Science, in coordination with the Education Office, created a favourable milieu and conditions for integration and socialization of Roma children through education of teaching and nursery staff in education institutions (nursery and primary schools). The Administrations of school institutions, pedagogic and psychological service, as well as professional services of the Ministry and the Education Office, monitor the integration of these children very carefully.

Certainly, the most important project in the field of education of the RAE population that is realized in Montenegro is “Roma Educational Initiative”, with the support of REF (the Roma Education Fund) that is realized in partnership of the Ministry of Education and Science and Pedagogy Centre of Montenegro. Beside various training seminars for the teaching staff, make-up/advanced classes for the RAE children, work with the families, the database for the children included in the education system, the Roma teaching assistants entered the project, and they had the role of link between the family and school, as well as the role of overcoming language barriers among the children who did not speak the official language. In its three-year period of realization, the project showed significant results of improvement within the field of RAE population education.

1.1. Pre-school education

According to the data of statistical research in the project “The Creation of Database of RAE Population in Montenegro“, done by the Statistical Office of Montenegro – MONSTAT (in October 2008), 14% of RAE children is included in pre-school education in Montenegro. During the school year 2007-2008, 99 children were included in the institutions for pre-school education, and during the school year 2008-2009, 114 children of RAE population attended those institutions. There is a general problem in Montenegro concerning low inclusion of all children in the pre-school education (only 22% of children are included in pre-school education). The main reason for low inclusion of the children in the pre-school education in Montenegro is the lack of space and greater investments in this aspect of education.

1.2. Primary education

During the last years, thanks to the measures the Ministry implemented, as well as thanks to the help of international donors, the number of the Roma pupils in primary education of Montenegro increased significantly. In the last three years, the number of Roma children in primary education increased at the rate of about 20% per annum. In the school year 2007-2008, 1 263 pupils of RAE population attended primary schools in Montenegro, and in the school year 2008-2009, 1 461 pupils. The comparison of the data on the number of pupils shows increase to 15.40%, which is a significant progress in a quantitative sense.

Regarding the fact that 638 RAE pupils attend primary school „Bozidar Vukovic“ in Podgorica, which is about 44% of the total number of RAE pupils in primary education, the analysis of the success of these pupils at the end of the school year 2008-09 is given in the following table:

Residential school

Class	Total number of pupils	Excellent	Very good	Good	Pass	Positive success	%	Negative success	%	Make-up exam	The number of those who left school
I	79	-	-	-	-	72	91.14	1		-	6
II ref.	25	-	-	-	-	22	88.00	3		-	-
II	80	-	7	21	46	74	93.75	2		-	4
III	46	2	1	7	29	39	84.78	2		-	5
IV	31	2	5	13	11	31	100.00	-		-	-
VI ref.	68	-	-	4	8	12	48.53	21		21	14
VI	16	-	-	-	-	-	31.25	2		5	9
VII	14	-	1	1	1	3	64.29	-		6	5
VIII	6	-	-	2	2	4	100.00	-		2	-
I-VIII	365	4	14	48	97	257	79.73	31	8.49	34	4 3 11.78

District class – „Konik Camp 2“

Class	Total number of pupils	Excellent	Very good	Good	Pass	Positive success	%	Negative success	%	The number of those who left school
I	85	-	-	-	-	61	71.77	5	5.88	19 (22.35)
II	68	7	12	21	16	56	82.35	3	4.41	9 (13.23)
III	64	2	11	12	11	36	56.25	17	26,.56	11 (26.56)
IV	56	-	5	3	19	27	48.21	13	23.21	16 (28.57)
I - IV	273	9	28	36	46	180	65.93	38	13.93	55 (20.14)

1.3. Secondary education

During the school year 2008-2009, 30 students attended secondary schools in Montenegro. The scholarship amounted to EUR 70 per month was awarded to all secondary school students. At the beginning of the school year, they were donated EUR 100 for the textbooks. Their work and success were monitored, and they were given additional help to follow the curriculum. The scholarships for secondary school students are provided in school year 2009-2010 as well, and those students will also be provided with the computer equipment. The analysis of the students who attended secondary schools, by cities and grades, is given in the following table:

Ord. num.	Municipalities	I grade	II grade	III grade	IV grade
1.	Kotor	-	-	1	-
2.	Herceg Novi	3	1	-	-
3.	Cetinje	1	-	2	-
4.	Podgorica	6	1	6	1
5.	Niksic	5	1	1	-
6.	Bijelo Polje	-	-	1	-
	Total number	15	3	11	1

1.4. University education

During the school year 2008-2009, 8 members of RAE population attended university studies in Montenegro. More detailed data are given in the following table:

Ord. num.	Name and surname of the student:	Name of the University Department:
1.	Beganaj Kumrija	Faculty of Philosophy, Department of Pre-School Education
2	Jaha Samir	Faculty of Philosophy, Department of Pre-School Education
3.	Zeciri Anita	Law Faculty
4.	Ramovic Behija	Faculty of Political Science, course: social work
5.	Alkovic Biljana	Faculty of Political Science, course: journalism
6.	Nuraj Teuta	Faculty of Political Science, course: diplomacy
7.	Jefkaj Emrah	Faculty of Philosophy, Department of Psychology
8.	Delija Miljaim	Economic Faculty – course: management

All students were awarded monthly scholarships of EUR 150, and it was also provided the financial support amounted to EUR 150 at the beginning of the school year for the textbooks. The students got computer equipment as a donation from the Ministry of Human and Minority Rights. Also, the apartment lease was paid for four students, and the travelling expenses were paid for two students (EUR 4 200.00). The student scholarships are provided for the school year 2009-2010, too.

2. CULTURE AND INFORMING

The informing of the Roma population in Montenegro is realized through the programmes of national public broadcasting service. The realization of the contract concluded between the Ministry of Culture, Sports and Media and the National Broadcasting Service about co-financing radio-television programmes, among other things, refers to the programmes important for the informing in languages of the members of national and ethnic groups, that is: the Show about the Roma People (24 shows for the duration of 30 minutes) on National Radio and the Voice of the Roma People (5 shows for the duration of 30 minutes) on National Television. The shows are dedicated to the integration of the Roma population in Montenegro. The shows are prepared by the journalists of the Roma ethnic affiliation who finished the School for Journalists at the Media Institute. Three members of Roma people were employed as part-time workers until now, and one journalist has been working from recently. Otherwise, it is very difficult to find the journalists of the Roma ethnic affiliation with university education, and this is precisely the requirement prescribed by the internal regulations. Within the programme "By Ways of Life", the National Broadcasting Service gives once in a month half-hour show dedicated to the Roma issue. This programme is showed on the first channel on Friday, and the repeat is showed on Sunday. Also, the satellite channel regularly broadcasts this show. The afore-mentioned programme is neither broadcast in the Roma language nor subtitled.

As a contribution to improvement of informing in the Roma language, the radio station "Antena M" broadcasts regular weekly show with the name "The Roma People Speak – O Roma Vakeren". This show is prepared and realized by non-governmental organization the Democratic Roma Centre, with the support of the Ministry of Culture, Sports and Media and the international organizations.

The Ministry of Culture, Sports and Media, in accordance with the obligations arising from the media presentation of the Decade of the Roma People, defined by the Action Plan of the Decade, did the following:

- in 2005, TV commercial "The Decade of the Roma People 2005-2015" was sponsored;
- in cooperation with the relevant ministries in the area of protection of minorities, education, work, health and social policy as well as with the representatives of the Roma non-governmental organizations, there were organized seminars for the local public broadcasting services and for the commercial media about importance of the media in promotion and affirmation of the project "The Decade of the Roma People 2005-2015";
- some projects of the Roma non-governmental organizations were co-financed with the aim of raising the level of awareness, that is the education of the Roma as a contribution to the realization of the project "The Decade of the Roma People 2005-2015";
- the competition for financial journalist reward (to the amount of EUR 1 000.00) for the best research article on the topic of social integration of the Roma people in Montenegro, was realized for the last two years.

At the beginning of October 2008, TV station "Vijesti", began to broadcast the shows "The Roma People Speak". The half-hour show presents the culture and customs of the Roma, as well as the problems concerning social inclusion.

During 2008, TV station "MBC", – from Podgorica broadcasted 12 TV shows within the serial "Give a hand", in the duration of 40 minutes from the area of education, the protection of culture and tradition of RAE minority, through which this TV station wanted to get acquainted the majority of population with cultural and other characteristics of the Roma minority group and with all the problems this group faces at present in Montenegro. This serial is financed within the implementation of "The Strategy for Improvement of the Position of RAE Population in Montenegro 2008-2012", to the amount of EUR 10 500.00.

Within the appropriate projects, supported by the Ministry of Human and Minority Rights (EUR 8 000.00), the radio stations "Skala" from Kotor and "Mojkovac" from Mojkovac contributed to the popularization and protection of culture, tradition and customs of RAE population, but to a smaller degree.

Also, the print media make their own contribution to the informing about the issues of the RAE population. According to the analysis of the media, within the period from June to December 2008, three daily newspapers published 133 articles about RAE population.

The number of published articles and page number:

Months :	**The number of published articles in the newspapers:**			**Published at page numbers:**			
	"Pobjeda"	"D a n "	"Vijesti „	Page number	"Pobjeda"	"Dan"	"Vijesti"
June	4	4	5	to p. 5	1	-	1
July	6	11	8	from p. 6 to p. 10	16	11	7
A u g u s t	4	10	5	from p. 11 to p. 15	3	27	8
September	8	9	5	after p. 16	12	23	24
October	2	2	3				
November	5	15	7				
December	3	10	7				
Total number:	32	61	40				

In a specific but very effective way, the students of the Department of Pre-School Education from the Faculty of Philosophy from Niksic, were engaged in the protection of culture, tradition and customs of the RAE population in cooperation with the colleagues of the RAE population from the Faculty from Podgorica and the amateur actors from Podgorica and Niksic, and under the guidance of the author, screenwriter and the one who played the leading role, professor Sokolj Beganaj, these students played very well attended puppet show for the children and the play "Dnevnik", on 8 April – the World Day of the Roma People. The premiere was showed in the Cultular Information Center "Budo Tomović", and the plays were performed in Niksic and Herceg Novi. The Ministry of Human and Minority Rights gave the financial support (EUR 2 500.00) to the celebration of 8 April and to the theatre plays.

3. EMPLOYMENT

The Employment Agency of Montenegro is the holder of the activities concerning the creation and implementation of the Action Plan in the field of employment. The Employment Agency implements active policy of employment and it tries to influence the decrease of the number of the unemployed ones, through the implementation of such measures and development projects that include the opening of new workplaces.

In April 2007, the Government of Montenegro adopted the National Strategy for the period 2007-2010, by which the aims for the aforementioned period are defined. All aims, measures, and activities are defined in accordance with general features and guidelines of the European Union employment policy. One of the aims of the Strategy is the development of special programmes and specialized contractors with the groups that have considerable difficulties in finding the job, among which are the members of the Roma population, as well as the increase of their employment.

The Employment Agency created a few programmes and projects dedicated to the Roma population, such as:

- the literacy courses,
- the training for craft works according to the shortened programmes;
- the vocational training,
- the public works (at local and state level) based on social and useful, non-profit work;

- the project " Roma People Visible at Labour Market";
- the project "The Second Chance";
- the project "The Decrease of Social Vulnerability of the Domiciled RAE Population".

In cooperation with the municipalities, public institutions and non-governmental sector, 72 local public jobs were realized within 7 Montenegrin municipalities. There were included 848 persons from the register of the Employment Agency. The works were carried out for the duration of one to twelve months, and they referred to the fight against substance abuse, providing services for the children and the youth with difficulties, the stimulation of development of rural and coastal tourism, making the souvenirs, organizing library catalogues, cleaning of national and city parks and the rivers, the services of craft works, etc.

Within the project "Roma People Visible at Labour Market", there was implemented the survey on educational and professional status of the work capable Roma people who were in the register of the Employment Agency. According to the research within this project, 60% of the persons, who participated in the research, were interested to register at the Employment Agency, and at that moment there were 23% of the registered persons. In accordance with this research, the highest unemployment rate is at the age between 15 and 24 (59%), as well as among the persons who are over 55 years old (58%). About 60% of the domiciled Roma people have never worked, and the percentage of the unemployed women is 61%. About 56% of the persons of the Roma population, who are registered at the labour market, are not educated. The project was realized within the period of two months and it resulted in better informing about the Action Plan of the employment and the importance of registration at about 3 000 persons of RAE population, as well as the increased number of the registered persons with the Employment Agency.

Several groups of the Roma and Egyptians from Podgorica and Niksic were included in the project "The Second Chance", with the aim of functional acquiring literacy and vocational training, by which their chance for the employment and the opportunity for more permanent and more qualitative employment would be better, with some extra activities (driving and computer lessons). 90 persons at the age between 15 and 30 were selected (the percentage of the women was 40%). The selected persons were mostly illiterate or they finished at least three grades of the primary school. The persons who regularly attended the programme had a monthly scholarship and the opportunity to take free driving and computer lessons (elementary computer course). 61 persons of the Roma population from Podgorica and Niksic aged between 15 and 40 finished successfully the programme and they passed final exams. The training they finished refers to the occupations from the field of civil engineering, catering and personal services. The final test on mathematical and language literacy was realized on common initiative of the Examination Centre of Montenegro, the Education Office and the Vocational Education Centre.

The project "The Decrease of Social Vulnerability of the Domiciled RAE Population in Montenegro", realized on common initiative by the Employment Agency and UNDP, represents an attempt of improving the professional qualifications of the Roma people and at creating the chances for their better success at the labour market. The locations of the project were the Employment Agencies in Bar, Berane and Niksic. The target group of the project represented the members of the RAE population who were in the register of the Employment Agencys where the project was implemented, and who met the criteria anticipated by the project. The occupations for which the candidates were trained are of low professional level and they refer to semi-skilled jobs such as tailors, locksmiths, hairdressers, servers, potters, mechanics and cooks. After the training had finished, seven persons employed at the contractors (13% of the total number of trained persons).

Having regard to the necessities of the labour market, as well as to the capacities and interests of the RAE population in 2008, the establishment of training standards and programmes was financed for 5 occupations: chimney sweep assistant, car washer-greaser, tyre repairman, laundress and car-body painter assistant.

Regarding the support for the development of entrepreneurship, there was a great interest for going into one's own business. During the previous period, 6 grants amounted to EUR 6 000.00 were awarded: one in the municipality of Bar, three in the municipality of Niksic and two in the municipality of Berane. The users gained elementary knowledge of entrepreneurship and business,

and they got acquainted with all barriers and advantages of private business. 12 work places were opened through the realization of these ideas. There were financed the following project ideas: a locksmith workshop, the hairdresser's (2), the workshop for making the Roma ethnic costumes, the service for repairing car radiators, the service for repairing and maintenance of the road vehicles.

Regarding the improvement of the capacity and institutions that work with the RAE population, a few seminars were organized in the municipalities where the project was implemented. The seminars included the representatives from the Employment Agency, the Social Welfare Services, and the representatives of the RAE population from the local NGO. The seminar contained the lectures about characteristics of the RAE population and about the past experiences in the work with this population, the connection of the relevant institutions that work with the RAE, the exchange of experiences, information and methods, as well as the presentation of the main aims of "The Strategy for the Improvement of the RAE Population in Montenegro".

So far (between the years 2007 and 2008), the project had the following effects:

- 63 persons used some type of the Action Plan Employment (APE);
- 19 persons were employed (7 after the training was finished, and 12 through awarded grants) – that is 30% of the total number of the persons who participated in the project activities;
- the employed ones improved their knowledge concerning the work with the RAE population in the Employment Agencies and the Social Welfare Services;
- the quality of the social partnership was improved;
- RAE population became more informed about the opportunities the Employment Agencies offers.

During the year 2008, 160 persons of the RAE population from the territory of Montenegro were included in the programme "The Public Works".

Within the project "Providing of Agricultural Mechanization for the RAE Population" in Niksic, Berane and Pljevlja, realized by the "FORS Foundation Montenegro", and by the resources amounted to EUR 48 764.00 donated from the funds for the Strategy implementation, 10 families from Berane were employed, as well as 3 families from Pljevlja (13 cultivators with wagons for the collection and transport of secondary raw materials were provided), as well as for one family from Niksic (1 cultivator with the mower, 1 milking machine for the sheep, 1 rotary hoe as an attachment element of the cultivator, and 1 ploughshare as an attachment element for the user). Also, there were collected 63.9 tons of the waste and secondary raw materials by voluntary work.

Within the project "Let They Be Clean", realized by NGO "Dimnjacar", supported by the funds from the Strategy, the resources (EUR 4 835.00) for providing the equipment and vehicles were provided for 10 chimney sweeps of the RAE population, who were trained through the influence of the Employment Agency. 10 RAE families were provided the living conditions by this donation.

4. HEALTH AND HEALTH CARE

In order to achieve aims, envisaged by the strategic documents, concerning the field of health care of the RAE population in 2008, beside the relevant Ministry and National Health Services, there was present a great influence of non-governmental organizations and the Red Cross as well. The most important projects realized by the Ministry of Health during the previous year, are the following:

- The Roma Women's Health Improvement and Care,
- The Brochure – *Improve Your Health* – a Support for the Roma Women in Order to Improve Their Health,
- The Immunization of the Children.

In cooperation with the health services or with the health workers, the different entities implemented a lot of projects, among which the most important ones are:

Project Title:	Performer:	Donor:
"The Raising of Level of Health Education at the Roma Population"	The Foundation for the Prevention of Drug Addiction – Niksic	The Commission for Monitoring of the Strategy Implementation (EUR 4 230.00)
"The Prevention of Contagious Diseases at the Roma Population in Niksic that are Passed in Unhygienic Living Conditions"	The Management Committee of the Red Cross – Niksic	The Commission for Monitoring of the Strategy Implementation (EUR 2 810.00)
"The Prevention of Contagious Diseases"	Visan MNE – Ltd.	The Commission for Monitoring of the Strategy Implementation (EUR 6 000.00)
"The Vaccination of the Children of the RAE Population, Aged Between 0 and 5"	SOS phone Niksic in Cooperation with Child Welfare Clinic in Niksic	The Ministry of Health, Labour and Social Welfare
"Reproductive Health"	The Centre for the Roma Initiatives Niksic	Coalition the Roma Circle of Montenegro
"Health Prevention of the RAE Population in the District Budo Tomovic"	NGO "Budo Tomovic" Niksic	Coalition the Roma Circle of Montenegro
"Health Care of the Members of the RAE Population"	NGO "Romsko srce" Niksic	The Ministry of Health, Labour and Social Welfare
"Against Drugs and Narcotics through Education" (the project implementation began at the end of 2008)	NGO "The Children Are Our Future" Podgorica	The Government of Montenegro – Commission for the Allocation of Funds from Games of Chance

5. SOCIAL AND CHILD PROTECTION

With the aim of collecting the relevant data about the number and types of exercised social welfare rights' of the families and individuals of the RAE population during 2008, the Office of the Coalition The Roma Circle contacted the Social Welfare Services of the municipalities where, among others, live the members of the RAE population and got the following data:

Municipality:	Social Protection Rights:				
	Welfare benefits for the families	Child allowance	Accommodation in a family or in an institution	The right to help and care provided by some other person	Disability allowance
Bar and Ulcinj	31 families	59 children	-	4 persons	1 person
Herceg Novi	11 families	20 children	-		
Niksic	56 families	65 children	2 persons and 3 children	9 persons	2 persons
Bijelo Polje	58 families	97 children	-	2 persons	-
Berane	49 families	33 children	-	1 person	-
Rozaje	4 families	12 children			
Pljevlja	5 families	15 children			

Also, according to the data, the majority of the families of the RAE population during the year 2008 were given financial aid amounted between EUR 100 and EUR 1 500.00 by the Ministry of Health, Labour and Social Welfare, and especially by the Prime Minister Cabinet. Since we do not have

the reliable data we state that in the municipality of Niksic 57 families were given such aid and in the municipality of Berane 68 families.

In order to achieve principal aims from "The Strategy for the Improvement of the Position of the RAE Population in Montenegro 2008-2012", several important projects were implemented, such as:

Organization	Project Title	Donor
NGO The Children - Enfants Berane	"The Adequate Social Protection, Greater Integration"	The Commission for Monitoring of the Strategy Implementation (EUR 3 100.00)
Refugee Care and Support Office of Montenegro	"The Support for the Childbearing Women and Newborn Children"	The Commission for Monitoring of the Strategy Implementation (EUR 15 000.00)
The National Nursery School "Djina Vrbica" Podgorica	"The Financial Aid for Breakfast for the Roma Children Who Attend the Nursery School"	The Commission for Monitoring of the Strategy Implementation (EUR 20 800.00)
The Public Institution The Social Welfare Service for the Municipalities Bar and Ulcinj and Refugee Care and Support Office of Montenegro	"The Child Allowance for the Children of the RAE Population from the Families of Displaced Persons from Kosovo"	The Commission for Monitoring of the Strategy Implementation (EUR 2 773.00)
The Multinational Women Association "Luc" Niksic	"Help Us, We Are the People, too!"	The Commission for Monitoring of the Strategy Implementation (EUR 5 223.00)
NGO Humanitarac Niksic	"Let us Help Them So That, For the Mere Existence, They Do Not Have to Search in the Dustbins"	The Funds Commission for NGOs of the Municipality of Niksic
NGO Humanitarac Niksic	"Help for the Most Vulnerable Families of the Refugees and Internally Displaced Persons from the Territory of the Municipality of Niksic"	The Parliament's Funds Commission for NGOs of Montenegro
International Organization for Migration - IOM	"The Programme of the Roma Humanitarian Aid, Through the Opening of the Appropriate Clubs in Bar, Podgorica and Niksic"	The Government of the Federal Republic of Germany

The child allowances are regulated for all the children of pre-school age and for the children of school age until they are 18 years old (who regularly attend the school), and who come from the RAE families who have the right to the Welfare Benefits for the Families or who suffer from mental and physical disorders in their development. During the year 2008, there were realized the following types of direct child protection:

- In the Child Holiday Resort Lovcen – in Becici and in the Solidarity Home of the Red Cross in Sutomore, there were provided free of charge seven-day holidays (together with the students of various nationalities) for 217 students of primary school age, who belong to the RAE families from the territory of Montenegro,
- There were provided presents for the New Year's Day for about 1 600 children, by various donors,
- There were provided presents for the New Year's Day for about 1 000 children of the RAE population, by Rotary Clubs,
- With the help of NGO The Young Roma People from Herceg Novi, there were provided presents for the New Year's Day for 255 children from the territories of Kotor and Herceg Novi, as well as there were provided 7 financial rewards for good success in the

school for the RAE students from Kotor. Also, the same organization provided school supplies for 70 Roma children from Herceg Novi, as well as the textbooks for the majority of them.

6. HOUSING CONDITIONS

Within the appropriate projects, in the year 2008 the housing problems for 56 families from the territory of Montenegro was solved in an adequate way:

1. “The Solving of the Housing Problems of the RAE in the District “Talum”, the Municipality of Berane” – 24 apartments were built for 27 families of internally displaced RAE population. The project was realized in the partnership with: the German Humanitarian Organization “Help”, the local self-government, UNHCR – the Office in Montenegro and the Refugee Care and Support Office of Montenegro. The moving into new apartments was done in mid-2008.

2. “Building of the Block of Flats for 10 Roma Families” that was realized in the partnership with: the municipality of Pljevlja, UNHCR, the German Humanitarian Organization “Help” and the Refugee Care and Support Office of Montenegro – the block consisting of 10 houses was built, which is 420 square metres in area. The total price of the investment was EUR 271 237.51. The building site and the infrastructure elements were provided by the municipality of Pljevlja (EUR 32 500.00), the Commission of the Ministry of Human and Minority Rights, and the remaining resources were provided by the Government of the Federal Republic of Germany by the means of the organization “HELP”. On 10 December 2008 Mr Peter Plate, the ambassador of the Federal Republic of Germany in Montenegro, handed the keys of completely furnished apartments to 10 RAE families with the total number of 42 members.

3. During the year 2008, the municipality of Podgorica, financed building of 9 apartments for the RAE families that were socially the most vulnerable, from its own resources. The apartments were given according to the appropriate procedure and the families moved in.

4. “Solving the Housing Problem for Two the Most Vulnerable RAE Families from the Territory of the Municipality of Niksic”, that was realized in partnership with the municipality of Niksic, the Association of the Roma people “Pocetak” and the Public Institution The Social Welfare Service of the Municipalities of Niksic, Savnik and Pluzine. There was planned to build 2 houses within this project, but the municipality of Niksic, in accordance with the Local Action Plan for the inclusion of the RAE, decided to finance the building of the third apartment from its own resources, beside providing the building site, making the project documentation and providing the infrastructure free of charge. The third apartment is intended for the famous sportsman. The total investment amounted to EUR 72 500.00. The Commission of the Ministry of Human and Minority Rights provided EUR 33 728.00, and the remaining resources were provided by the municipality of Niksic. The municipality of Niksic provided and prepared the adequate building sites for 6 families who repatriated from the territory of the countries of the Western Europe. Beside that, in mid-2008, for 4 houses which are moved in, the municipality provided 30% of the building materials: the building blocks, the pebbledash, the sand, the metal framework, the boards, etc.

5. “Dwelling as a Way to Better Integration” was realized by the Association of the Roma People – Bar and in amount to EUR 8 000.00 supported by the Commission of the Ministry of Human and Minority Rights and with the participation of the municipality of Bar, it was intended to build a house for the six-member family Nerda from Bar. This project has not yet been realized for the objective circumstances, but, beside the building site and the infrastructure elements, the building materials are provided. It is expected that the project realization will continue and that the housing problem of this family will be solved in an adequate way.

7.PARTICIPATION OF ROMA PEOPLE IN PUBLIC AND POLITICAL LIFE

Some impressive results were achieved regarding the plan for greater inclusion of the RAE population in political and public life, too. Within the resources, in the name of the Strategy Implementation, it is granted EUR 23 491.00 to the coalition The Roma Circle for the project that is aimed at increasing the capacity of the Roma NGOs and the monitoring of the policies towards the RAE population in Montenegro. The most important effects in this field are the following:

- one of the members of the municipal assembly of the local Parliament in Podgorica is the woman of the Roma ethnic affiliation;
- one of the members of the Commission for the Monitoring of the Implementation of the Strategy for the Improvement of the Position of the RAE Population in Montenegro is the representative of the coalition The Roma Circle;
- at the end of December 2007, with the support of RPP from Budapest, the Office of the Coalition The Roma Circle was opened in Podgorica, by which one of the basic preconditions for more active social communication of the RAE population in Montenegro was realised;
- in accordance with the provisions of the Law on Minority Rights and Freedoms and within the prescribed procedure The Roma National Council was formed on 15 March 2008. The Council consists of 17 members. During the previous year, the Council was provided with considerable resources for its functioning. The most important resources were provided from the following institutions: the Fund for Minorities, amounted to EUR 33 374.58, the Ministry for Protection of Human and Minority Rights and Freedoms, amounted to EUR 25 000.00, the Commission for the Allocation of Funds from Games of Chance, amounted to EUR 7 800.00 (for project purposes), and the Fund for Minorities, amounted to EUR 1 600.00 (for project purposes).
- NGO The Centre for the Roma Initiatives from Niksic, within the project, supported by OSI from Budapest, on 25 and 26 September 2008, organized very successfully First National Conference on the topic “The Roma Women in Montenegro 2005-2015”, which represents a great improvement concerning the beginning of the social inclusion of the RAE population women.
- Regarding the relationship of the local self-governments to the RAE population issues, major positive changes occurred in all areas. The majority of the local parliaments introduced the institute of “the empty chair” which was used by the representative of the Association of the Roma People “The Beginning” during the adoption of the Local Action Plan in the municipality of Niksic.
- One of the good examples is also the municipality of Herceg Novi that opened the office “The Roma Centre” for the work of NGO the Young Roma People in Herceg Novi. The office is adequately equipped, and the contract stipulates the financing of the basic expenses of the office: the rent and material expenses (the electricity, water, and phone). The contract is also signed for the year 2009. Two volunteers work in the office, and all members of NGO meet regularly.

137. Please provide a description of existing language legislation and language training programmes for minority languages. Is language legislation in line with the Council of Europe's recommendations?

For the existence and development of each of the minorities, it is of significant importance the presence of education system in the minority language or at least the opportunity for learning mother tongue as a separate subject. These rights were previously guaranteed by the Constitutions (ex-Federal Republic of Yugoslavia and ex-Republic of Montenegro), and the recently adopted Constitution of Montenegro repeats the provision of the Constitution from the year 1992 and guarantees the right “to establish education, cultural, and religious associations, with the

material aid of the state" (Article 79, item 4), which is to say that the material aid of the state is indisputable and expanded to the religious associations as well.

The Law on Minority Rights and Freedoms (Official Gazette of the Republic of Montenegro 31/06 of 12 May 2006 and 51/06 of 4 August 2006) devotes a lot of attention to this matter (Articles 13 to 20); where the standards, stated by the Articles 12 to 14 of the Framework Convention are met. In Montenegro, the educational policy is based on the principles of democracy, the respect for civil and human rights and the providing of equal possibilities for everyone. The imperative of the educational reform in Montenegro is to achieve qualitative education for everyone. In accordance with the current social and economic changes and the tendency towards globalization and towards the opening of borders, the role of the school is to prepare the young people for life in multicultural Europe and democratic society. Consequently, the reformed education system in Montenegro bases its starting points upon the key and relevant international documents of the United Nations, the Council of Europe, the Organisation for Security and Cooperation in Europe and the European Union. In the year 2001, Montenegro published "THE BOOK OF CHANGES", which represents the basic document consisting of the aims and guidelines the educational reform in Montenegro is based upon. A set of laws was adopted from the field of education afterwards, namely:

- General Law on Education
- Law on Pre-School Education
- Law on Primary Education
- Law on Gymnasium
- Law on Vocational Education
- Law on Adult Education
- Law on Higher Education
- Law on Education for the Children with Special Needs
- Law on Educational Inspection
- Law on Scientific and Research Activities

Law on Recognizing and Validation of the Certificates in Education was adopted in the Parliament of Montenegro on 26 December 2007. By this Law, the time for the validation of the certificates in education has been shortened, the expenses for the validation procedure have become low, the existing barriers in the validation procedure have been removed and it has been established the cooperation with the ENIC centres in the region that deal with this problems. Within the TEMPUS programme, the centre that exchanges the necessary information with the centres in the area is formed in Montenegro, too. It is very easy nowadays to check the curricula of some universities and compare them with the existing curricula in Montenegro. This is a great privilege for all the citizens who want to validate their certificates and for the members of the minorities as well.

General Law on Education provides for the access and equality to all citizens to receive education. The locations of the institutions in the territory of Montenegro provides equal accessibility to receiving the education for all the citizens (Article 8). The citizens of Montenegro are equal in exercising the right to education, regardless of national affiliation, race, gender, religion, social background or other personal attribute (Article 9).

For the purpose of this Law and special laws from the field of education, there are also prescribed, among others, the following aims of education: developing the awareness, needs and abilities for protection and improvement of human rights, the rule of law, the environment and social environment, multi-ethnicity and diversity; developing the awareness for national affiliation, culture, history and tradition; providing the primary education for all the citizens; education for the respect of national values of history and culture, as well as for the respect of cultural and other diversities of other nations; development of democratic principles, tolerance and cooperation (within the school and beyond it) and respect for the rights of the others; education for mutual tolerance, the respect for the diversities, cooperation with others, the respect for human rights and fundamental freedoms, thereby developing abilities for life in democratic society.

Law on Higher Education in Article 7 prescribes that in exercising the right to university education shall be prohibited any discrimination on grounds of: gender, race, marital status, colour, language, religion, political or any other conviction, national, ethnical or any other affiliation, belonging to the national community, property status, disability (invalidity) or other similar basis, position or circumstances. Also, for the purpose of the Rulebook on the contents, the type and supplement of the degree, the keeping of the students' university register, the records and the contents of the public documents that the university and university education institutions issue, and within the Article 6, paragraph 2, it is prescribed that "if the classes of some study programme are given in the national minority language, i.e. in some foreign language, the diploma will be printed in the language of the given classes."

Regarding the education of national minorities in Montenegro, it can be stated without any doubt that in the previous years Montenegro made a significant and positive breakthrough in that direction both regarding the adoption of new legislation that defines this field and in the access to solving this issue.

The education of minorities is a part of the entire sustainable state integral education system that respects the particularity of national minorities and it guarantees the possibility for education in their mother tongue with the protection of their national and cultural identity.

Within the new curricula designed in accordance with the educational reform, the courses in mother tongue, social sciences, history, music and art, included to a large extent the programmes that represent the language, art, history and culture of the minority people in Montenegro.

Within the Council for General Education, the professional Commission for the Education of National and Ethnic Groups has been appointed, the main task of which is to study closely and to give its opinion to the Council about new education programmes that are important for the protection of identity of the minorities in Montenegro.

For the realization of basic programmes in Albanian language, which have been implemented in primary, secondary and university education, the textbooks in Albanian language are provided for majority of the subjects. On the recommendation of the Commission for Education of National and Ethnic Groups, the competent Council approved the use of the textbooks from the region (Kosovo, Albania) for the subjects for which, because of the small circulation, the textbooks in Albanian are not printed.

Applying the principles of multiculturalism and ethnic tolerance in Montenegro the new reformed education programmes contain one significant innovation i.e. the openness to change. By these changes, it is provided that the school and local community can propose and design 15-20% of education programme in accordance with their needs and specific qualities.

The education of other minorities, first of all the Bosnians, Muslims and Croatians in Montenegro, is an integral part of the unique education system and it has been realized through the concept of common programmes, because the minorities' language is a part of the unique language system. Beside the integrated programmes into the regular subjects, the minorities have a further possibility of proposing and designing about 20% of the total contents of these programmes for new subjects, significant for their education. They will study these programmes, especially in accordance with their needs and interests.

By getting acquainted with the mother tongue and other languages that is by reading literary texts of national literature and the literature of other nations, there have been developed the sense of the students' cultural identity, the respect and tolerance towards other nations and their culture. The basic premise for learning of mother tongue is: INTEGRATION WITHOUT ASSIMILATION!

The new designed education programmes for the subject History in primary and secondary education represent the significant innovation within the education reform. These programmes show respect for historical facts and the contents with the elements of national enthusiasm as well as the insult to other nations are removed from the programmes.

From the aspect of diversity of mother tongue of national minorities in Montenegro, two minority national communities that is two minority nations can be identified: the Albanians and the Roma people.

Education in Albanian Mother Tongue:

Concerning the education in Albanian mother tongue in Montenegro, it can be stated that Montenegro to the greatest extent fulfilled and achieved national and international standards regarding the organization and holding classes in Albanian mother tongue.

In accordance with the Constitution and the Law, the schools that hold classes in Albanian language in Montenegro represent the part of the unique school system. In the areas where the members of the Albanian national community represent the majority part of the population the classes in Albanian mother tongue are organized by levels:

- pre-school education,
- primary education and
- secondary education.

Also, at the University of Montenegro, there has been organized the Teacher Training Study Programme in Albanian language for the purposes of education of teaching staff. The study programme is established in accordance with valid standards of the quality of national system within university education.

In pre-school institutions education in Albanian mother tongue is organized in the municipalities of Ulcinj and Podgorica;

In primary education lectures in Albanian language are organized and have been carried out in 5 municipalities: Ulcinj, Bar, Podgorica, Plav and Rozaje. During the school year 2003-04, this study programme attended 3 458 students or 4.7% of the students of total population in primary education in Montenegro,

In secondary education lectures in Albanian language have been organized in 3 municipalities: Ulcinj, Podgorica, and Plav. During the school year 2003-04, this study programme attended 1 062 students or 3.34% of the students of total population in secondary education in Montenegro.

It can be said that special attention to the education in Albanian mother tongue has been devoted in Montenegro and that this education represents a part of unique school system.

Education of the Roma People

Within the reform of education system the Ministry of Education and Science devotes special attention to the Roma integration in the formal education system with the aim to provide high-quality primary education and as a result of this to help to their full integration into Montenegrin society.

Regarding the education of the Roma minority and studying of the Roma mother tongue in Montenegro, it can be stated that there are significant problems concerning the integration of this minority into formal education system. The problems of the Roma education are the following:

- the lack of necessary teaching staff;
- the Roma language is not standardized and the Roma people in Montenegro speak various dialects that are very different;
- there aren’t necessary textbooks for lecturing in the Roma language.

According to the done researches in Montenegro and wider, the Roma people represent the poorest class of the population and their widespread illiteracy (over 50%) is one of the basic causes of their extreme poverty, what is considerably more than the illiteracy of the domiciled population in Montenegro (2.35% of illiterate persons according to the census in the year 2003).

As part of the overall support to the education of the Roma people and the decrease of their overall poverty, the Ministry of Education and Science took a series of considerable measures in order to increase the inclusion of the Roma children in formal education system, that is:

- in the last two years, the Ministry distributed free textbooks and school supplies to all Roma students who enrolled in the first grade of primary school;

- with the aim of creation the growing support of the society for the integration of the Roma children, the Ministry of Education and Science organized a big media campaign in primary schools under the slogan “ALL TOGETHER TO SCHOOL”;
- also, with the aim of providing necessary material support to the Roma children, there was organized the collecting of textbooks, clothes and shoes for the Roma students in all primary schools that the Roma children attended. The activity took place under the slogan »A Book and Clothes for a Friend«;
- six Roma students were enrolled at the Department of Pre-School Education at the Faculty of Philosophy in Niksic with the aim of providing the Roma teaching staff;
- the Roma teaching assistants have entered the education process in primary and nursery schools (the municipalities of Podgorica, Niksic and Berane included in the project the Roma Educational Initiative – REI);
- the Ministry established a special database in order to monitor the numerical data and the achievements of the Roma students;
- in some secondary schools in Montenegro Roma students were enrolled the by the principle of affirmative action.

The Ministry of Education and Science in coordination with the Education Office created a favourable milieu and conditions for integration and socialization of the Roma children through education of teaching and nursery staff in education institutions (nursery and primary schools). The administrations of school institutions, pedagogic and psychological service, as well as professional services of the Ministry and Education Office, monitor the integration of these children very carefully.

The significant number of the teaching staff, employed in the institutions which Roma children attend, went to the seminars of the projects “For Peace and Tolerance”, and ”Step by Step”, which contributed to better understanding of the needs of Roma population.

During the last years, thanks to the measures the Ministry implemented as well as to the help of international donors, the number of Roma students in primary education of Montenegro increased significantly. In the last 3 years, the number of Roma children in primary education increased at the rate of about 20% per annum.

138. In practical terms, can a person communicate with a regional office of the central government, or a main office of the central government, in any official language? What arrangements have been taken to ensure translation and interpretation?

In accordance with the Constitution of Montenegro any limitation to exercise of individual human rights and freedoms on grounds of gender, nationality, race, religion, language, ethnic or other origin, political or other conviction, property status or any other personal attribute shall be prohibited. In this respect everyone has the right to contact the state body or the competent organization in public authority, individually or in community with the others, in the official language and to get the response.
The Constitution prescribes Montenegrin as official language in Montenegro and Serbian, Bosnian, Albanian and Croatian languages as languages in the official use. Beside that, special provisions of the Constitution guarantee the rights and freedoms for the members of the minority nations and other minority and national communities that can be used individually or with the others. Among those rights there is also the right to use one’s own language and script, for private, public and official use.

According to the Law on State Administration, the state administration bodies have a duty to proceed legally and in due time according to the citizens’ requests that are submitted with the aim of exercising the rights and fulfilling the obligations. For the members of minority nations and other minority national communities the state administration bodies provide exercising the right to use

one's own language and script in official use, as well as to conduct proceedings in their own language in the regions where those nations represent significant part.

Law on the General Administrative Procedure prescribes the right of the parties and other participants in the proceedings who are not citizens of Montenegro to follow the course of the proceedings in their language with the help of the interpreter, as well as to receive summons and other documents in their own language and script.

From the aforementioned it can be concluded that the central authority has an established duty to communicate with everyone in official languages and the duty to give the responses regarding the rights of those who contact state bodies.

139. Is the right of translation of all proceedings and documents in criminal and civil judicial proceedings ensured in accordance with the relevant Council of Europe documents? If so, how is this done?

Criminal Code (Official Gazette of the Republic of Montenegro 71/03, 7/04, 47/06) prescribes that the criminal proceedings are conducted in the language which is in official use in the court. The parties, witnesses and other persons who participate in the proceedings have the right to use their language in the proceedings. If the proceedings are not conducted in the language of that person, there will be provided oral translation of everything that person or some other person says as well as of the identification documents and any other evidence. The party, witness and any other person who participate in the proceedings will be informed about the right to translation, but they can also waive that right if they know the language in which the proceedings are conducted. It will be noted in the record that the statement of the participants has been given. The translation is delegated to the interpreter. The summons, decisions and other documents the court should send in the language which is officially used in the court. If the minority language is officially used in the court, the members of that national minority who used that language in the proceedings will get court summons in their language. Those persons can demand the summons to be delivered to them in the language of the proceedings. To the accused one who is in the custody, who is serving the sentence or who conduct safety measures in some health institution, the translation of the summons will be delivered.

New Criminal Code (Official Gazette of Montenegro 57/09), which will start to apply one year after the day of its publication, prescribes that the official language of criminal proceedings is Montenegrin. In the areas where persons belonging to minority nations and minority national communities have significant share in the total population, their language is also the official language of the proceedings carried out before court, according to the law. Criminal proceedings are conducted in Montenegrin. Parties, witnesses and other persons participating in the proceedings have the right to use their language or the language they understand. If the proceedings are conducted in the language of one of those persons, the translation of statements, identification documents and other written evidence will be provided. The person will be informed about the right to translation, but he/she can waive that right if he/she knows the language in which the proceedings are conducted. It will be recorded that the information was given along with the statement of the participants in the proceedings. The translation is delegated to the interpreter. Actions, appeals and other petitions should be submitted to the court in Montenegrin. The person deprived of liberty can submit to the court petition in his/her language or in the language he/she understands. Summons, decisions and other documents the court should send in Montenegrin. If the minority language is officially used in the court, the members of that national minority who used that language in the proceedings will get court summons in their language. Those persons can demand the summons to be delivered to them in Montenegrin. To the accused one who is in the custody, who is serving the sentence or who conducts safety measures in some health institution, the translation of the summons will be delivered in language he/she uses in the proceedings.

Translation expenses incurred through the application of the provisions of Criminal Code on right of the parties, witnesses and other persons participating in the proceedings to use their language, should not be charged from persons who are obliged to compensate the expenses of the criminal

proceedings in accordance with this Code, but should be covered from the budgetary funds of the court.

The Civil Procedure Law (Official Gazette of the Republic of Montenegro 22/04, 76/06), prescribes that the legal proceedings should be conducted in the language that is officially used in the court. The parties and other participants in the proceedings have the right to use their language or the language they understand, while participating in the hearings and while settling other procedural matters before the court. If the proceedings are not conducted in the language of the party and/or other participants in the proceedings, there will be provided oral translation of all the documents or written evidence in their language or the language they understand. The interpreters do the translation. The court will pay for the expenses of translation in the language of national minorities, if the expenses result from applying of the provisions of the Constitution and this Law on the right of national minorities to use their own language.

Acting in a way that is contrary to the mentioned above represents grave violation of the provisions on criminal proceedings, the result of which should be revocation of the decision when deciding upon appeal.

140. Can citizens who speak an official language other than the majority language receive official personal documents in that language? What arrangements have been made in this respect?

All Montenegrin citizens are equal in exercising the rights and obligations for providing travel documents and identity documents.

According to the provisions of the Law on Travel Documents (Official Gazette of Montenegro 21/08, 25/08) and the Law on the Identity Card (Official Gazette of Montenegro 12/07) there are no limitations in exercising the rights to regulating travel documents or the identity card, on grounds of national, religious, racial, gender or any other affiliation. On account of exercising the right to use the language and script, within the Article 15 of the Law on Travel Documents it is prescribed that the name and surname (in the travel documents' form) of the member of minority people or other minority national community should be written in the language and script of those minorities, upon their own requests. Also, upon the request of the applicant, the name and surname can be written in Cyrillic script.

Also, in exercising the right to use the language and script, the Article 7 of the Law on the Identity Card prescribes that, for the citizens who officially use Serbian, Bosnian, Albanian, or Croatian language, the contents of the identity cards' form should be written in Montenegrin language and in those languages as well, except for the name and surname which are written in the language and script of the applicant, if requested.

141. Have specific agreements been negotiated to ensure State funding for university level education in languages spoken by at least 20% of the population?

Such an agreement does not exist. The study programmes which are realized within university education institutions' in Montenegro are conducted in Montenegrin language.

At the University of Montenegro, the Teacher Training Study Programme in Albanian Language is conducted in the language of Albanian national minority, which represents 5.03% of the state population.

142. Are there any professional restrictions for minorities (de jure or de facto)?

The Constitution of Montenegro prohibits any direct or indirect discrimination and guarantees equal protection of rights and freedoms for everyone. The Constitution also prescribes adoption of the legislation and introducing special measures aimed at creation of the conditions for providing national, gender and overall equality and the protection of the persons who are discriminated on any grounds, as well as that those legislation and measures shall not be considered as discrimination (positive discrimination, affirmative action). These special measures are limited in time, that is the same could be applied not later than the aims, for which those measures are taken, could be achieved. Article 17 of the Constitution prescribes the equality before the law, regardless of any particularity or personal attribute. Constitution guarantees the right to equal protection of one's rights and freedoms (Article 19).

As significant constitutional innovations in the sphere of the protection of human rights and freedoms, introducing new constitutional categories should be stressed, namely: the Protector of Human Rights and Freedoms which is an independent and autonomous body that undertakes measures for the protection of human rights and freedoms.

The supreme legal act grants the Constitutional Court, along with the traditional role of conducting control whether laws are in compliance with the Constitution, the jurisdiction to decide not only on the accordance of the laws and other general acts with the Constitution, but also with the ratified international treaties and with the aim of providing high level of the protection of human rights and freedoms, the institute of the constitutional complaint has been introduced, as a legal remedy upon which the Constitutional Court shall decide. Everyone has a possibility to appear before the Constitutional Court in case of violation of human rights and freedoms, after the legal remedies before other state bodies have been exhausted.

Special attention should be paid to the constitutional provision that the international treaties and commonly accepted regulations of international law represent constituent part of international legal system and that those have priority over national legislation and should be directly applied in the case when certain relations are regulated in a different manner by those acts than by national legislation. The legal effect of the international treaties is verified by this provision considering them as a part of internal legal system with the supremacy over the national legislation.

Regarding such constitutional provisions, it can be concluded that in the case of discrimination in the field of employment, education, health protection, social security, professional engagement, the one who considers himself/herself as a victim of discrimination, can protect his/her right in the first place within administrative, criminal, and civil proceedings i.e. before the state administration bodies and courts, and after that in the proceedings before the Constitutional Court.

The Law on Labour prohibits any direct and indirect discrimination of the persons who seek employment, as well as of the employed ones, on grounds of gender, birth, language, race, religion, the colour of the skin, age, pregnancy, health i.e. disability, nationality, marital status, family obligations, sexual orientation, political or any other conviction, social background, property status, the membership in the political organizations and trade unions or any other personal attribute (Article 5). This Law regulated these discriminations in more detail. As a direct discrimination shall be considered any action caused by any of the basis by which the person who seeks employment, as well as the employee, puts in less favourable conditions in relation to the other persons in the same or similar situation. Within this Law, the direct discrimination exists in the case if some provision, criterion or practice put or would put in less favourable conditions the person who seeks employment, as well as the employed one, because of some attribute, status, orientation or conviction (Article 6). These types of discrimination are prohibited regarding the employment conditions and the choice of the candidates for performing particular job; working conditions and all the rights concerning the employment; education, professional development and competence; the advancement in service; the notice on termination of employment. Within the Article 10 on the Law on Labour, in the cases of discrimination the person who seeks employment,

as well as the employed one can start proceedings before the competent court, in accordance with the Law.

Actually, there is legal protection within the administrative and court procedure in the cases of discrimination if as potential victim of discrimination person who seeks employment or the employed one appears, who is discriminated on grounds of gender, birth, language, race, religion, the colour of the skin, age, pregnancy, health, disability, nationality, marital status, family obligations, sexual orientation, political or any other conviction, social background, property status, the membership in the political organizations and trade unions or any other personal attribute.

The victim of discrimination in the field of labour and social insurance can, in the first place, turn to The Ministry of Labour, under which scope of the work appears the Labour Inspection . Law on Inspection Control prescribes in Article 39 that after the inspection control the inspector shall bring the decision on the measures, actions and time limits for uncovering the irregularities. One can appeal against the decision of the inspector within the eight days from the day the written decision has been delivered. The minister decides upon the appeal. Against the decision of the Ministry upon the appeal, the injured party can start administrative proceedings before the Administrative Court.

The Commission for Appeals (appointed and dismissed by the Government at the suggestion of the Ministry competent for administrative affairs) decides upon the appeal against the decision on the rights and obligations in employment and on grounds of the employment of the civil servant or the state employee. Against the decision of the Commission for Appeals, the civil servant or the state employee can start administrative dispute within the fifteen days from the day the written decision has been delivered. The issued lawsuit does not postpone carrying out the decision of the Commission for Appeals, except in the case of the dispute on the basis of entering into employment. The dispute that arises regarding the employment and on grounds of the employment can be settled by arbitration, according to the general legislation on labour.

In the case if discrimination in the field of education, a student, parent, or guardian, who consider his/her right in the field of education as violated, can contact the Educational Inspection that exercises the supervision by means of educational inspectors. The educational inspector brings the decision on the measures, actions and time limits for uncovering the irregularities. One can appeal against the decision of the inspector within the eight days from the day the written decision has been delivered. The minister decides upon the appeal. Against the second instance decision, the injured party can start administrative dispute before the Administrative Court of Montenegro.

Consequently, the Law on Administrative Dispute (Official Gazette of the Republic of Montenegro 60/03) within the Article 3 prescribes that natural and legal person shall have the right to start the dispute, if the same person consider any right or interest (based on the Law) as violated, by administrative or any other act. The state body, organization, community or group of persons etc, that are not considered as legal persons, can start administrative dispute in the case if they can be the holders of the rights and obligations, upon which there have been decided in the administrative dispute. The public prosecutor or any other competent body can start administrative dispute in the case of violating the law by administrative or any other act, on behalf of the natural person, the legal person or any other party.

Besides protection of these persons in the administrative proceeding before the state bodies and in the administrative dispute before the Administrative Court of Montenegro, the person who consider himself/herself as discriminated on any grounds, has the right to criminal and legal protection, as well as the right to protection before the courts in the legal proceedings.

Criminal protection, relevant to these issues, is provided in the Criminal Code of Montenegro within the Title 15 – the criminal offences against the person and the citizen.

The criminal offence -the violation of the right to use the language and script", prescribed in the Article 158 of the Criminal Code is a special form of the violation of the equality that refers to the denying or limitation of the citizen to use his/her own language and script when exercising his/her right or when contacting the organs or the organizations, contrary to the legislation on the use of language and the script of the nations or the members of the minority national and

ethnic communities that live in Serbia and Montenegro. For this criminal offence sentence to fine or one year in prison is imposed.

Article 159 of the Criminal Code prescribes the criminal offence - the violation of the equality- for which the sentence of three years in prison to the offender is imposed, who denies or limits the rights of the person and the citizen (laid down by the Constitution, the laws or any other regulations, the general acts or by the ratified international treaties), on grounds of national or ethnic affiliation, race or religion, or because of the lack of that affiliation, the differences regarding political or any other affiliation, gender, language, education, social status, social background, property status or any other personal attribute, or if the person and the citizen are given the privileges or any favours on the basis of the aforementioned difference. If the person acting in official capacity commits this criminal offence while doing his/her service, that person will be sentenced from three months to five years in prison.

Within the Title 20 of the Criminal Code criminal offences against labour rights are prescribed ,Articles 224 to 232.

Within the Article 224 – the violation of the labour rights – it is prescribed that everyone who deliberately does not respect the laws or any other regulations, collective agreements and other general acts on the labour rights and on the special protection at work of the youth, women and disabled persons, and if the same person denies or limits the right of the other persons, that person will be sentenced to fine or two years in prison.

Article 225 prescribes the criminal offence - the violation of the equality in employment – that is the offender, who deliberately breaks the regulations or in any other unlawful way denies or limits the right of the citizen to free employment in the territory of Montenegro under the equal conditions, will be sentenced to fine or one year in prison.

Article 229 of the Criminal Code prescribes the criminal offence - the violation of the right to the social insurance - the offender, who deliberately does not respect the laws or any other regulations or general acts on the social insurance, and by doing this denies or limits the right of some person, will be sentenced to fine or two years in prison.

Article 231 of the Criminal Code prescribes the criminal offence - the violation of the right during temporary unemployment – the person who deliberately does not respect the laws or any other regulations or general acts on the rights of the citizens during temporary unemployment, and by doing this denies or limits the right of those persons, will be sentenced to fine or two years in prison.

Article 269 of the Criminal Code - the violation of the equality in business activity - prescribes that the person who, by misuse of his/her official position or competence, limits free or independent connecting of the business association or any other subject of business service in the economic territory of Montenegro, or denies and limits the right to do business service in a particular area, or if the business association or any other subject are discriminated in relation to other subjects of business service regarding the conditions of the economy, will be sentenced from three months to five years in prison. The person, who misuses his /her social position or influence with the aim of committing the aforementioned criminal offence, will be sentenced in the same way.

The misuse of the monopoly position that is criminalised within the Article 270 of the Criminal Code, prescribes that the responsible person in the business association or any other subject of business service that has the status of legal person or the entrepreneur, who by misuse of monopolistic or dominant position on the market or by concluding the monopolistic agreement, cause disorder on the market or put that subject in privileged position in relation to others, so that the same person makes profit for the subject or any other subject or causes damage to other subjects of business service, consumers or the favour users, will be sentenced from three months to five years in prison.

Consequently, de jure and de facto professional limitations for the minorities do not exist. But, the affirmative action does exist, as the principle that became a reality in Montenegro for a long time and that showed itself to be the effective means in the field of the protection and improvement of minority rights.

143. Is there a minority rights ombudsman or any other official body that protects the rights of minorities in your country? Please also indicate which Government department(s) is/are responsible for minority issues.

Constitution of 2007 prescribes that the Protector of Human Rights and Freedoms is the independent and autonomous body that undertakes measures for the protection of human rights and freedoms. The Protector carries out his/her duty on the basis of the Constitution, laws and ratified international agreements, regarding the principles of justice and righteousness as well.

The Protector of Human Rights and Freedoms (Ombudsman) is established by the Law on the Protector of Human Rights and Freedoms (Official Gazette of the Republic of Montenegro 41/2003 of 10 July 2003), as independent and autonomous body that protects human rights and freedoms which are guaranteed by the Constitution, law, ratified international treaties on human rights and commonly accepted regulations of international law when they are violated by the act, action or the inaction of the state bodies, local self-government bodies, public services and other holders of the public authorities. In October of the same year, the Parliament of the Republic of Montenegro appointed the first Protector of Human rights and Freedoms. According to the Law on the Protector, the Protector has at least one deputy, and the Parliament of Montenegro brings the decision on the number of the deputies, at the Protector's proposal. According to this Law, one of the deputies deals with the protection of minority rights. At present, the Protector of Human Rights and Freedoms has three deputies.

Within the process of harmonization of the legislation of Montenegro with the EU legislation as well as with the Constitution of Montenegro, and recognizing the need to include all areas regarding the protection of human rights and freedoms, we are in the process of adopting the Law on the Amendments to the Law on the Protector of Human Rights and Freedoms. The draft law provides that the Protector should have at least four deputies and that in the case of specialization of the protector for specific fields, a special attention should be paid to the protection of rights of the persons deprived of liberty, protection of rights of the members of the minorities and other minority and national communities, the protection of children rights, gender equality, the protection of rights of the disabled persons and the protection from discrimination. By this law the Protector will be appointed as the national mechanism for prevention of the torturing and other forms of inhuman or humiliating actions or punishments, as well as the national mechanism for protection from discrimination.

144. Are any "stateless" people living in Montenegro as a result of the dissolution of the SFRY and the State Union of Serbia and Montenegro?

The European system of acquiring nationality, as well as the system of the Federal People's Republic of Yugoslavia, Socialist Federal Republic of Yugoslavia, Federal Republic of Yugoslavia, etc. recognizes the following ways of acquiring nationality:

- by birth, on the basis of nationality of the child's parents at the moment of birth (the basic way of acquiring the nationality),
- by birth at the territory of the country of the child whose parents are not known, of unknown nationality or without nationality (this case rarely happens in practice),
- by admission of foreigner in the nationality, upon which decide the Ministry of Interior Administration,
- on the basis of the concluded and ratified international agreement and treaty.

The first two ways of acquiring nationality mean that the nationality is acquired at the moment of birth – de jure, without bringing decision because the mere application for the register of births is considered as the application for the register of nationality that the local self-government bodies keep. The remaining two ways of acquiring nationality mean that they are decided upon the request by bringing decision.

Regarding the former existence of federal and republic nationality, as well as the fact that a person could have only one republic nationality, the federal regulations on the nationality contained the collision norms that settle the question of the conflict of republic laws on the nationality concerning acquiring nationality by birth.

For example, Law on Nationality of the Socialist Federal Republic of Yugoslavia (Official Gazette of Socialist Federal Republic of Yugoslavia 58/76), prescribes the following:

- the republic nationality of the child is defined by the law of the republic which nationality have both parents at the moment of his/her birth (Article 22, paragraph 1)
- the child whose parents have different republic nationality at the moment of his/her birth, acquires the nationality in accordance with the law of the republic where the child is born, provided that one parent has that republic's nationality, and the parents can define by agreement that the child acquires the republic nationality in accordance with the law of the republic of the second parent (Article 22, paragraph 2)
- the child whose parents have different republic nationality at the moment of his/her birth, and who is born at the territory of the republic which nationality the parents don't have, acquires the republic nationality according to the law of the republic the child is born in, if the parents by agreement do not define that the child acquires the republic nationality according to the law of the republic nationality of one parent (Article 22, paragraph 3).

Law on Yugoslav Nationality has similar provisions (Official Gazette of Federal Republic of Yugoslavia 33/96) in Chapter V –Settling the Conflict of the Republic Laws on Nationality (Article 27).

The system of registering the nationality acquired by birth (of the Republic and also of the Federal nationality Federal People's Republic of Yugoslavia, Socialist Federal Republic of Yugoslavia, Federal Republic of Yugoslavia etc.) varied depending on certain periods:

- he first register of the citizens in ex common state was established in the year 1948-49 by so-called "domiciliary status", what basically implied that he/she is the citizen of the republic (and also of the federal republic) he/she lived in at the time when the register occurred (from that time until now, the municipal administration bodies keep the register about the citizens),
- later, the register of births for the newborn children who acquired the nationality by birth (according to the their parents' nationality) was done in the records of the citizens of the municipality where, by rule, one parent i.e. the father of the child was registered,
- from the year 1974-75, the register of births for the newborn children was done in the municipality where the child was born.

For those persons who acquired the nationality by admission, upon which the competent ministries of internal affairs brought decisions, the register of the national status was, by rule, done by the place of residence (in the period of existence of Federal Republic of Yugoslavia, from January 1997 to February 2003), and by the decision on the admission in the Yugoslav nationality and at the same time in the nationality of the Republic of Serbia or the Republic of Montenegro, which brought the Federal Ministry of Interior. The register of the nationality was done in the Book of the Yugoslav citizens, which was kept by ex-Federal Ministry of Interior, and which the Ministry of Interior of the Republic of Serbia took, after this body had been dismissed.

In accordance with the aforementioned, during the existence of any type of the common state, every person who legally acquired federal nationality, acquired one republic nationality as well, and for those persons who didn't enter the register of nationality because of some defaults, all laws on

nationality until so far prescribed the possibility of establishing the nationality and subsequent register in the registers of nationality, in transitional provisions.

Law on Montenegrin Nationality (Official Gazette of Montenegro 13/08), in transitional provisions, above all, defines the legal continuity of Montenegrin nationality that necessarily results from the state and legal continuity of Montenegro. For this reason, a solution is proposed that every person who acquired Montenegrin nationality in accordance with the legislation so far, should be considered the Montenegrin citizen if the same person has entered the register of nationality in Montenegro (Article 39 of the Law).

If the person that acquired Montenegrin nationality in accordance with the legislation has not entered the register of nationality of Montenegro kept by the regulations so far, the competent body will define the nationality of the same person at his request (Article 40 of the Law). Although, there hasn't been established the obligation of application of the European Convention in the part that refers to the succession of the states, there was present the need to enable the acquiring of Montenegrin nationality under the better conditions than were the conditions for the foreigners (there was neither demanded 10 years of legal residence nor the knowledge of Montenegrin language, but the certificate for dismissal from the nationality of another state was demanded) for the persons that on the day of proclaiming Montenegro as independent state i.e. on 3 June 2006, had the residence in Montenegro registered, and the same persons had the nationalities of some of the republics of ex- Socialist Federal Republic of Yugoslavia. The deadline for submitting the applications on this basis, as well as the deadline for submitting the applications for establishing Montenegrin nationality of those persons who has not yet entered the registers of Montenegro, is limited to one year from the day of the beginning of application of this Law (Article 41, paragraph 2 of the Law). The Law began to apply on 5 May 2008.

After the expiry date of the deadline, the person can be admitted in the nationality according to the Article 41, that is, for the same person Montenegrin nationality can be established according to the Article 40 only in the case if the person remains without the nationality and if submits the application in the period within three years from the day this Law began to apply.

Consequently, by the dissolution of Socialist Federal Republic of Yugoslavia and the state community of Serbia and Montenegro, the loss of the existing nationality never happen as well as the creation of stateless status at those persons that stayed legally in Montenegro and that had one of the republic nationalities of ex- Socialist Federal Republic of Yugoslavia regardless of the nationality they had before the independence of Montenegro.One question could be posed: will these persons submit the application for Montenegrin nationality and fulfil the prescribed conditions for the application (one of the conditions is the dismissal from the nationality of another state) or they will decide to continue to live in Montenegro and to regulate their further status in accordance with the Law on Foreigners.

- Measures against racism and xenophobia

145. What is the legislative and institutional framework for measures against racism and xenophobia?

Constitution of Montenegro provides wide corpus of human rights and freedoms for the purpose of, among other things, suppression of all forms of discrimination. Basic provisions of the Constitution of Montenegro stipulates that Montenegro shall guarantee and protect rights and freedoms, that rights and freedoms shall be inviolable and that every person shall respect rights and freedoms of others. It shall be prohibited to encourage or induce hatred or intolerance on any grounds and any direct or indirect discrimination on any grounds shall be also prohibited. A major part of the Constitution related to human rights and freedoms also regulates that rights and freedoms shall be exercised on the basis of the Constitution and ratified international agreements and that everyone shall be equal before the law, regardless of any specific feature or personal characteristic; everyone shall be entitled to equal protection of their rights and freedoms; everyone shall be

guaranteed the right to freedom of movement and residence, as well as the right to leave Montenegro; movement and residence of foreign nationals shall be regulated by law; a foreign national who reasonably fears exile due to his race, language, religion, nationality or political opinion can seek asylum in Montenegro; a foreign national can not be extradited from Montenegro to a place where due to his race, religion, language or nationality he could be sentenced to death penalty, torture, inhuman humiliation, extradited or serious violation of rights guaranteed by the Constitution; a foreign national can be extradited solely on the basis of decision of a competent authority and in a procedure prescribed by law; everyone shall be guaranteed the right to freedom of thought, conscience and religion, as well as a right to change religion or belief and a freedom to, individually or collectively, publicly or privately, exercise religion or belief through prayers, sermons, customs or rites; no one shall have to declare their religion and other believes; any activity of political and other organizations aiming at, among other things, violation of guaranteed rights and freedoms or inciting national, racial, religious and any other hatred or intolerance shall be prohibited; a foreign national may be a subject of property right in compliance with law.

The members of minority nations and other national minorities shall have rights and freedoms which may be used individually or collectively: to express, protect, develop and publicly demonstrate national, ethnic, cultural and religious identity; to choose, use and publicly display national symbols and celebrate national holidays; to use their own language and alphabet in private, public and official use; to attend school on their own language and alphabet in public institutions and that educational programs include history and culture of members of minority nations and other national minorities; in the areas where members of minority nations and other national minorities constitute a significant part of the population, the local government bodies, state and judicial authorities shall also conduct proceedings in the language of minority nations and other national minorities; to establish educational, cultural and religious organizations with the financial assistance from the state; to write and use their names and surnames in their own language and alphabet in official identification documents; to have traditional local names, names of streets and settlements, as well as topographical signs, written in the language of minority nations and other national minorities in areas where they constitute a significant part of the population; to be authentically represented in the Parliament of Montenegro and assemblies of local self-government units where they represent a significant part of the population, according to the principle of affirmative action; to be proportionally represented in public services, state administration bodies and local self-government bodies; to be informed in their own language; to establish and maintain contacts with citizens and associations outside Montenegro with whom they share same national and ethnic origin, cultural and historical heritage, as well as religious believes; to establish councils for protection and improvement of special rights. Forced assimilation of members of minority nations and other national minorities shall be prohibited. The state shall protect members of minority nations and other national minorities from all forms of forced assimilation.

Law on Rights and Freedoms of Minority Nations closely regulates a set of rights of minority nations and mechanisms for protection of those rights, preservation of national identity of minority nations or protection from their assimilation, as well as facilitating an efficient participation of minority nations in public life.

Asylum Law regulates conditions and procedures for giving asylum, as well as for recognition of status of refugees and approval of additional and temporary protection, decision-making authorities, rights and protection, as well as reasons for termination and abolition of refugee status and additional protection.

It is important to emphasize that the Law on Personal Names guarantees the right of individuals to register their name in their own language in public registers and documents.

Apart from the laws which protect the rights of minority nations and national minorities in other fields such as: education, media, information, culture, local self-government, etc, Montenegro has accepted significant international documents in this field as well, among others, the Council of Europe's Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

In Montenegro, the Ministry for Human and Minority Rights is the competent authority for all the issues related to protection of rights of minority nations and national minorities and improvement of their position. A permanent working body has been established in the Parliament of Montenegro – the Committee on Human Rights and Freedoms which examines issues, especially normative proposals, related to the field of human and minority rights. In 2008, the Parliament adopted a decision and established the Fund for Minorities in order to support activities significant for preservation and development of national or ethical identity of minority nations and other national minorities and their members in the field of national, ethnical, cultural, language and religious identity.

The Protector of Human Rights and Freedoms (Ombudsman) of Montenegro is an autonomous and independent body which undertakes measures for protection of human rights and freedoms and has the authority to examine and consider individual complaints regarding racial discrimination.

With the aim to protect all the aforementioned human rights and freedoms guaranteed by the Constitution, the Criminal Code, within the Chapter on criminal offences against rights and freedoms of people and citizens, prescribes a set of criminal offences.

In the narrow sense, racism and xenophobia mean any spreading of ideas based on racial superiority and hatred, any incitement to racial discrimination, as well as racial violence, and they are sanctioned in the Criminal Code by the following criminal offences:

Incitement of national, racial and religious hatred (Article 370) – Basic form of this offence is creation and incitement of national, racial or religious hatred, while graver forms of this offence occur when the offence is committed by coercing, abusing, endangering one's safety, defaming national, ethnic or religious symbols, damaging properties of others, desecrating monuments, memorials or graves. The review of the Criminal Code shall provide punishments for persons who publicly approve, negate or significantly diminish criminal offences such as genocide, crime against humanity and war crimes.

Racial and other forms of discrimination (Article 443) – This Article prescribes punishments for a person who, on the basis of differentiation of race, skin colour, nationality, ethnic or some other personal characteristic, violates fundamental human rights and freedoms guaranteed by generally accepted rules of international right, persecutes organizations or individuals who advocate human equality, spreads the ideas on superiority of one race over another or promotes racial hatred or incites to racial discrimination.

Procedural laws have consistently implemented constitutional provisions which guarantee prohibition of discrimination – a person must be immediately informed, in his mother tongue, on the reasons for deprivation of his liberty and also that he is not obliged to make any statements; a person has a right to an attorney of his own choice and a right to demand that his family is informed on his deprivation of liberty; a person has a right to use his mother tongue during the procedure, right of defence, right to a legal remedy, right that a judicial decision cannot be based on an evidence provided by violating human rights and fundamental freedoms guaranteed by the Constitution and endorsed international agreements, etc.

This would in short represent a normative framework for racism and xenophobia from constitutional and criminal aspect. Considering that this issue encroaches upon almost all the areas of social life, we would also like to mention the following:

The Law on Gender Equality, which was adopted in 2007, represents the first anti-discriminatory law in Montenegro and the most significant mechanism for eliminating gender-based discrimination and establishing gender equality. The Law defines and regulates the method for ensuring and exercising the rights based on gender equality, as well as creation of equal opportunities for participation of men and women in all areas of social life.

The equality in the areas such as employment and labour has been regulated by the Law on Employment and the Labour Law. In accordance with the provisions of the Law on Employment, unemployed persons have equal rights to employment, regardless of their sex. The Labour Law prohibits direct and indirect discrimination of persons searching for a job, as well as employed persons, based on their sex. Discrimination, within the meaning of this Law, is prohibited in relation

to employment conditions and short-list of candidates for performing a certain job, work conditions and employment rights, education, training and improving, promotions and dismissals.

The Law on Health Care stipulates equality of citizens in order to exercise a right to social care, regardless of nationality, race, sex, age, language, education, social background, basic status and any other personal characteristic.

The Law on Prohibition of Discrimination is in the drafting process.

146. What is the practical experience with its implementation in Montenegro?

In the period from 2004 to 2009, there were four cases before courts in Montenegro due to criminal offence of provoking national, racial and religious hatred, discord and intolerance from Article 370 of the Criminal Code, while there were no criminal offences of racial and other forms of discrimination from Article 443 of the Criminal Code.

In the first case, two persons were accused, women of 46 and 25 years of age, both of Montenegrin ethnic affiliation, while victims were two persons (a man and a woman), of Muslim ethnic affiliation, both nationals of Montenegro. Final and enforceable acquitting judgment was rendered.

In the second case, one person was accused, a man of 68 years of age, of Serbian ethnic affiliation, national of Montenegro, while the victims were two persons, men of 62 and 56 years of age, Albanian ethnic affiliation, nationals of Montenegro. A suspended sentence was imposed and the case files are at the moment before the second instance court as to pass the decision upon the appeal of the public prosecutor and the accused.

In the third case, one person was accused, a man of 22 years of age, Serbian ethnic affiliation, national of Montenegro, while the victims were unidentified group of persons of Albanian ethnic affiliation. A seven months sentence of imprisonment was passed.

In the fourth case, two persons were accused, a man and a woman, Serbian ethnic affiliation, nationals of Serbia, while the victim was one person of Montenegrin ethnic affiliation. The procedure before a first instance court is ongoing.

These are the data from the Supreme Court.

147. Are there any specific policies, programmes, strategies, etc. tackling racism and xenophobia?

The Government of Montenegro adopted many strategies and action plans in various fields significant for combating discrimination and fighting racism and xenophobia.

Among the most important are the following: the Strategy of Minority Policy (2008-2012); the Strategy for the Improvement of Position of RAE Population in Montenegro (2008-2012); the National Action Plan for “Decade of Roma Inclusion 2005-2015” in Montenegro; the Plan of Activities for Achieving Gender Equality in Montenegro (2008-2012); the Development and Poverty Reduction Strategy (2003-2007); the National Plan of Action for Youth (2007-2011); the National Plan of Action for Children (2004-2010); the National Program to Prevent Unacceptable Behaviour of Children and Youth in Montenegro (2004-2006); the Strategy for Permanent Solution of the Problems of Refugees and Internally Displaced Persons in Montenegro (2005-2008); the Strategy on Poverty Reduction and Social Exclusion (2007-2011); the Strategy on Development of a System for Social and Child Protection in Montenegro (2008-2012); the Strategy for Integration of Persons with Disabilities in Montenegro (2008-2016); the Action Plan of the Strategy for Integration of Persons with Disabilities in Montenegro (2008-2009); the Strategy of Inclusive Education in Montenegro (2008-2012); the Strategy for the Reform of Judiciary (2007-2012) and the Action Plan for Implementation of the Strategy for the Reform of Judiciary, etc.

Taking into account that the majority of the aforementioned strategies are related to the issue of fight against racism and xenophobia only to a certain extent, we are now giving a wider review of those strategies adopted by the Government that are closely related to the question:

The Strategy of Minority Policy 2008-2012 - In compliance with the comparative law international standards, this Strategy defines measures for implementation of the Law on Minority Rights and Freedoms and improvement of overall life conditions of minority nations and other national minorities, which state bodies must gradually implement during the implementation of the document. In this sense, the Strategy represents a set of concrete measures and activities of legal, political, economic, social, cultural, informative, educational and every other character in the next ten-year period, as well as definition of holders, terms and financial costs of, first of all, departments within the Government of Montenegro, aiming at overall improvement of position and status of minority nations and other national minorities and their better social integration. The Strategy creates prerequisites for implementation of a policy for protection and promotion of rights of minority nations in Montenegro, which assumes concrete implementation of international legal standards and constitutional and legislative standards based on them, which are related to human and minority rights. In addition, the Strategy assumes coordinated, associated and synchronized efforts and activities, in financial and every other respect, between the Government of Montenegro international community and organized civil sector in Montenegro (especially various non-governmental organizations dealing with protection and promotion of human and minority rights).

The Strategy for the Improvement of Position of RAE Population in Montenegro (2008-2012) - This Strategy represents a set of concrete measures and activities of legal, political, economic, social, spatial and communal, educational, cultural and informative, health and every other necessary character in the next four-year period, as well as definition of holders, terms and financial costs. Apart from basic objectives and intentions which this document aims to achieve with its implementation, the Strategy also defines the areas of action, priority tasks, implementation methods, duration of the strategy, evaluation mechanisms, etc. The priority areas are: making a database of RAE population, solving a status of RAE population (registration of members of RAE population and solving a problem of identification documents), education, preservation of culture and tradition, employment and employment rights, health and health care, social and child care, improving housing conditions and participating in public and political life. In every area a special emphasize is given to gender equality.

The Strategy for Permanent Solution of the Problems of Refugees and Internally Displaced Persons in Montenegro (2005-2008) - This National strategy, depending on economical possibilities of Montenegro and considering international standards and principles, aims at creating optimal solutions for refugees and internally displaced persons in Montenegro.

The institution authorized for direct implementation of the policy of providing for refugees and protecting their rights is the Refugee Care and Support Office which is competent for overall problem area of displaced persons. In addition, in compliance with the Asylum Law, the Office is competent for affairs and problems of persons who seek asylum, who have the refugee status and have been approved additional or temporary protection. The care includes assistance in exercise of rights to accommodation, education, legal assistance, health care, social care, freedom of confession, access to humanitarian and non-governmental organizations, humanitarian aid, joining with family, integration in society, etc.

148. Please provide statistics on hate, racist and xenophobic crimes as regards both victims and perpetrators, if available.

Statistical data given in the answer to the question No.146 of this Chapter show that in the period from 2004 to 2009 there were four cases of criminal offences of provoking national, racial and religious hatred, discord and intolerance referred to in Article 370 of the Criminal Code.

In the first case, two persons were accused, women of 46 and 25 years of age, both of Montenegrin ethnic affiliation, while victims were two persons (a man and a woman), of Muslim

ethnic affiliation, both nationals of Montenegro. Final and enforceable acquitting judgment was rendered.

In the second case, one person was accused, a man of 68 years of age, of Serbian ethnic affiliation, national of Montenegro, while the victims were two persons, men of 62 and 56 years of age, Albanian ethnic affiliation, nationals of Montenegro. A suspended sentence was imposed and the case files are in the procedure before the second instance court as to pass the decision upon the appeal of the public prosecutor and the accused.

In the third case, one person was accused, a man of 22 years of age, of Serbian ethnic affiliation, national of Montenegro, while the victims were unidentified group of persons of Albanian ethnic affiliation. A seven months sentence of imprisonment was passed.

In the fourth case, two persons were accused, a man and a woman, of Serbian ethnic affiliation, nationals of Serbia, while the victim was one person of Montenegrin ethnic affiliation. The procedure before a first instance court is ongoing.

- The EU Fundamental Rights Agency

149. What steps (legislative, institutional and other) is Montenegro undertaking/planning to take in order to be able to participate as an observer in the Agency's work?

Montenegro is planning to take necessary steps to become member of European Union Agency for Fundamental Rights in the period ahead, according to the determined procedure.

- Protection of personal data

150. Personal data protection: Provide information on any legislation or other rules governing this area, and the adherence of such rules to relevant international conventions. What is done in order to ensure efficient protection of personal data?

Montenegrin constitution guarantees protection of personal data, and prohibits the use of personal data beyond the purpose for which they are collected, and guarantees the right of any person to be notified about the data that has been collected on himself and the right to judicial protection in case of misuse.

Protection of personal data is provided by the Law on Personal Data Protection (Official Gazette of Montenegro 79/08). The Parliament of Montenegro at its session held on 13 July 2009 adopted Law amending the Law on Personal Data Protection. The amendments of the Law are related to duration of mandate of the president and the members of the Agency Council. Mandate of the president and the members of Agency Council lasts five years with the possibility of one more election, and they report for their work to the Parliament of Montenegro.

The Law on Personal Data Protection to greatest possible extent is harmonized with: the Convention for the Protection of Human Rights and Fundamental Freedoms, the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, the Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), the Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive

2002/58/EC, and the Convention of the Council of the European Union on Protection of Persons Related to Automatic Personal Data Processing (ETS No 108).

The Government of Montenegro adopted the Strategy on Personal Data Protection in July 2008, and the Action Plan for Application of the Strategy, with which they planned the first amendment of the Law for the purpose of its further harmonization with the Directives 95/46/EC and 2002/58EC and the Data Retention Directive in June 2010.

Special laws with which, inter alia, protection of personal data is regulated are: Law on Travel Documents (Official Gazette of Montenegro 21/08), Law on Registers of Permanent and Temporary Residence (Official Gazette of Montenegro 13/08), Law on Identity Card (Official Gazette of Montenegro 12/08), Law on Central Register of Population (Official Gazette of Montenegro 49/08), Law on Register (of births, deaths and marriages) (Official Gazette of Montenegro 47/08), Law on Montenegrin Citizenship (Official Gazette of Montenegro 13/08), Law on Foreigners (Official Gazette of Montenegro 82/08), Law on Civil Servants and State Employees (Official Gazette of Montenegro 27/04, 31/05), Law on Asylum (Official Gazette of Montenegro 45/06), Law on Police (Official Gazette of Montenegro 28/05), Law on Ratification of the Convention on Police Cooperation in South-East Europe (Official Gazette of Montenegro 1/08), Law on Supervision of the State Border (Official Gazette of Montenegro 72/05), Law on Witness Protection (Official Gazette of Montenegro 65/04), Law on Traffic Safety on Roads (Official Gazette of Montenegro 72/05 and 27/06), Law on Weapons (Official Gazette of Montenegro 49/04 and 49/08), Law on Protection and Salvation (Official Gazette of Montenegro 13/07), Law on Explosive Materials (Official Gazette of Montenegro 49/08), Criminal Procedure Code (Official Gazette of Montenegro 57/09). Beside the above mentioned laws all other laws that were adopted and are related to dealing with personal data, contain provisions on protection of personal data most often with reference to application of the Law on Personal Data Protection.

151. Does existing legislation foresee sanctions in case of infringement of its provisions?

The Law on Personal Data Protection contains penal provisions with which it prescribes penalties for the offence for the body, legal person, entrepreneur, responsible person in legal person, responsible person in state and other bodies, and natural person that has been designated as a manager for the collection of personal data, processor or user of personal data if one violates the provisions of this law.

Special regulations which regulate the area of protection of data prescribe offence penalties for the body or legal and natural person if one violates the provisions of this law.

Criminal Code prescribes as a criminal act against freedom and the right of human and citizen, inter alia, a criminal act of unauthorized collection of personal data.

152. How does existing legislation reconcile the right to privacy and personal data protection with the rules governing freedom of expression?

The Constitution of Montenegro guarantees that any person has the right to freedom of expression through speech, in writing, in picture or in any other way. The right to freedom of expression can be restricted only with another person’s right to dignity, reputation and honor or if a public moral or security of Montenegro is endangered.

Law on Personal Data Protection provides protection of personal data to any person, regardless of citizenship, permanent residence, race, color of skin, sex, language, religion, political and other conviction, nationality, social background, property status, education, social status or any other personal characteristic.

The Law on Free Access to Information prescribes that any domestic or foreign legal and natural person has the right to access information held by state authorities. The access to information is

guaranteed at the level of principles and standards contained in international documents on human rights and freedoms. The access to information is restricted, inter alia, with the information which has been included with a special law on classified data.

The Law on Media prescribes that media are free and that Montenegro provides and guarantees freedom of informing at the level of standards contained in international documents on human rights and freedoms. If media publish program content which endangers interest of the data subject protected by law or which offends the honor and integrity of an individual, if untrue allegations on one's life are released or transferred, the interested party has the right to a proceeding before the competent court, which means that the media cannot under the notion of "freedom of expression" release data which within the meaning of the Personal Data Protection Law, as well as special laws regulating the area of personal data protection are considered protected data.

We believe that the Law on Personal Data Protection and the Law on Media have succeeded to ensure the right to person`s privacy, as regards their protected data, and by doing so they have not put at risk freedom of information at the level of standards contained in international documents on human rights and freedoms.

153. Does existing data protection legislation provide for the possibility of limitations to certain data protection principles and data subject's rights for important public interest grounds? If yes, please specify.

Law on Personal Data Protection does not apply to personal data processing for the needs of defence, national and public safety both in the pre-trial and criminal proceeding, unless otherwise provided by separate law. The right of person whose data are being processed can be restricted only when this is necessary for the purpose of conducting pre-trial and criminal proceedings and only during the period of those proceedings.

The personal data are processed without consent of the person concerned if this is necessary for the purpose of performing affairs of public interest or when performing public authorities which fall within the scope of work, i.e. competence of the manager of the collection of personal data or users of personal data, environmental protection or health of person that is not able to give consent personally.

Personal data are transmitted from the territory of Montenegro without previously obtained consent of the supervising body when the transfer of personal data is necessary for the purpose of achieving public interest or achievement or protection of legal interests of persons to whom data refer to.

154. How does existing legislation cover cross-border transfers of personal data? Does data protection legislation contain the principle that transborder data flows may only take place if the country of destination has a certain standard of data protection (adequacy)?

Personal data which are being processed can be transmitted from the territory of Montenegro into another state or given for use to international organization, which applies all adequate measures of personal data protection prescribed by law, based on previously obtained consent of the supervising body.

Adequacy of the measures of protection is estimated based on concrete circumstances in which the procedure of transfer of personal data or the procedure of collection of those data is being conducted, while separately taking into consideration: the nature of personal data, purpose and duration of the proposed procedure or procedure of processing, state of origin and final destination state, law prescribed rules which are in effect in the state to which the data are being transferred to and the rules of profession and safety measures which have to be obeyed in that country.

The consent of supervising body is necessary for taking out of personal data for the purpose of entrusting certain affairs of processing. The consent of the competent body is not obligatory when the data are being taken out to member states of the European Union and European Economic Area or the states which are on the list of the European Union, which have an adequate degree of protection of data on personality.

155. Is there a Supervisory Authority responsible for monitoring the application of Data Protection provisions? If so, please provide information on the legal and practical measures taken to ensure its complete independence, and on the organisation of the Supervisory Authority, including the number of its staff, notably of inspectors.

For performing affairs of the supervising body the Law on Personal Data Protection provides foundation of Personal Data Protection Agency, which in performing affairs in its domain is independent. The Council of the Agency and the director are stipulated as the bodies of the Agency. The Council of the Agency has a chairman and two members, appointed by the Parliament of Montenegro.

Agency performs supervision in accordance with the law through employed persons within that body, who have the authorization for performing supervising affairs i.e. through supervisors.

The parliamentary procedure for the election of a chairman and two members of the Council of the Agency is in progress. Following their election, the procedure for the election of inspectors will be carried out.

156. Does the Supervisory Authority have investigative powers, such as powers of access to data forming the subject of processing operations and powers to collect all the information necessary for the performance of its supervisory duties? Does the Supervisory Authority hear claims by any person in regard to the processing of personal data?

The supervisor has the right to access personal data contained in collections of personal data, regardless of the fact if the records on those collections are kept in the Register, as well as the right to access acts and other documentation related to personal data processing and to means of electronic personal data processing. The supervisor has the right of access to personal data when performing affairs falling within his/her competence regardless of the degree of data secrecy.

The manager of the collection of personal data, user or the person processing personal data are obliged to enable the access to collections, acts, and other documentation as well as to means of electronic processing and at the request of the supervisor to deliver the requested acts and other documentation. The supervisor creates a record on executed supervision and submits it to the manager of the collection of personal data 15 days from the day when the supervision was conducted. When the supervision is done at the request of the person that considers that his/her right has been violated supervisor is obliged to conduct the procedure and create a record immediately or no later than 8 days from the day when the request was submitted, and to deliver it to the claimant and the manager of the collection of personal data.

Any person for one's own data can submit an initiative for opening of procedure of supervision related to personal data processing.

Provisions of the Law on Inspection Control apply to the procedure and method of execution of supervision, obligations and authorizations of supervisor and other issues significant for performing supervision.

According to this Law, supervisor performs supervision with immediate inspection at the subject of supervision. Supervisor is authorized to undertake administrative measures and acts when with preventive functions the purpose and the goal of supervision cannot be provided. Duties and authorities of the supervisor in eliminating irregularities are: to point out to established irregularities

and determine the deadline for their elimination, to order undertaking of certain measures and actions during the deadline which it determines.

157. Does the Supervisory Authority have effective powers of intervention such as the following:

Personal Data Protection Agency: gives opinion related to application of the Personal Data Protection Law; gives consent related to establishment of the collection of personal data; gives opinion in case when there is doubt whether certain set of personal data is considered as a collection as this law implies.

Personal Data Protection Agency performs supervision, in accordance with this Law, through employed persons within that body, who have the authorization for performing supervising affairs i.e. through supervisors.

Provisions of the Law on Inspection Control are applied to obligations and authorizations of supervisor. In accordance with the provisions of this law, supervisor performs supervision, as an officer with special authorizations and responsibilities.

In performing inspection control supervisor is especially obliged to: consider the initiative for opening of procedure of supervision and notify the claimant of the initiative; to notify the responsible person of the subject of supervision about the beginning of performance of supervising inspection, to identify oneself to the subject of the supervision; to indicate to the subject of supervision the right which one can use during the procedure of performance of supervision, and to create records about the performed supervision. While performing inspection control supervisor has the authority to: inspect entire documentation; determine the identity of the subject of supervision, order undertaking of suitable measures and actions in order to ensure performance of supervision. Supervisor is obliged to identify oneself to the subject of supervision. Supervisor creates the record at the scene.

Supervisor can be a person that, besides general conditions prescribed by law, fulfills following conditions: has university degree; has five years of working experience; has passed civil service exam; has not been convicted of a criminal offence which makes one unfit for performance of service in state body; against whom criminal proceedings are not underway.

Supervisor is liable for violation of legal duty in accordance with the regulations on civil servants. Criminal Code prescribes as a criminal act against freedom and rights of human and citizen, inter alia, a criminal act of unauthorized collection of personal data. The provision of this law prescribes: If a person in an official capacity in performing service obtains data on an individual which are collected, processed and used based on this law without authorization, informs another person or uses them for the purpose for which they are not intended shall be imprisoned for up to three years.

a) delivering opinions before data processing operations are carried out?

b) ordering the blocking, erasure or destruction of data?

In performing the supervision the Agency is authorized to give decision ordering the remittance of all irregularities in personal data processing in defined time frame, temporarily forbidding personal data processing which are being processed contrary to provisions of this law, ordering erasing of personal data collected without legal grounds, forbidding taking out of personal data from Montenegro or giving for use personal data to users of personal data contrary to provisions of this law, forbidding entrusting of affairs of personal data processing when the processor of personal

data does not fulfill conditions related to protection of personal data, or entrusting of these above mentioned affairs has been conducted contrary to provisions of this law.

c) imposing a temporary or definitive ban on processing?

In performing the supervision the Agency is authorized to give decision ordering the remittance of all irregularities in personal data processing in defined time frame, temporarily forbidding personal data processing which are being processed contrary to provisions of this law, ordering erasing of personal data collected without legal grounds, forbidding taking out of personal data from Montenegro or giving for use personal data to users of personal data contrary to provisions of this law, forbidding entrusting of affairs of personal data processing when the processor of personal data does not fulfill conditions related to protection of personal data, or entrusting of these above mentioned affairs has been conducted contrary to provisions of this law.

d) imposing sanctions on controllers?

In performing the supervision the Agency is authorized to give decision ordering the remittance of all irregularities in personal data processing in defined time frame, temporarily forbidding personal data processing which are being processed contrary to provisions of this law, ordering erasing of personal data collected without legal grounds, forbidding taking out of personal data from Montenegro or giving for use personal data to users of personal data contrary to provisions of this law, forbidding entrusting of affairs of personal data processing when the processor of personal data does not fulfill conditions related to protection of personal data, or entrusting of these above mentioned affairs has been conducted contrary to provisions of this law.

158. Does the Supervisory Authority have powers to engage in legal proceedings in case of violation of data protection provisions?

Person that deems that rights prescribed by the Law on Personal Data Protection have been violated can submit a request for protection of rights to Personal Data Protection Agency. Personal Data Protection Agency is obliged to rule upon request with a decision, in the period of 60 days from the day when the request was submitted. The supervisor has the right to access personal data contained in collections of personal data, regardless of the fact if the records on those collections are kept in the Register, as well as the right to access to acts and other documentation related to personal data processing and to means of electronic personal data processing. The supervisor has the right of access to personal data when performing affairs falling within his/her competence regardless of the degree of data secrecy. The manager of the collection of personal data, user or the person processing personal data are obliged to enable the access to collections, acts, and other documentation as well as to means of electronic processing and at the request of the supervisor to deliver the requested acts and other documentation. The supervisor creates a record on executed supervision and submits it to the manager of the collection of personal data 15 days from the day when the supervision was conducted. When the supervision is done at the request of the person that considers that his right has been violated supervisor is obliged to conduct the procedure and create a record immediately or no later than 8 days from the day when the request was submitted, and to deliver it to the claimant and the manager of the collection of personal data.

A person who deems that the rights prescribed by this law have been violated and the manager of the collection of personal data, can submit to Personal Data Protection Agency objection to the record on executed supervision. If Personal Data Protection Agency establishes that the objection of the manager of the collection of personal data to the record with which the illegalities and

irregularities have been stated during personal data processing is ungrounded one shall impose with a decision the following measures: one shall order the elimination of irregularities in personal data processing in a defined time frame; temporarily forbid personal data processing which are being processed contrary to provisions of this law; order erasing of personal data collected without legal grounds; forbid taking out of personal data from Montenegro or giving for use personal data to users of personal data when the processor does not fulfill the conditions related to personal data protection or when entrusting of the affairs has been conducted contrary to the Law on Personal Data Protection.

The Agency has also the right to submit at the same time a request for initiation of misdemeanour proceeding.

159. Does the Supervisory Authority have powers to bring to the attention of judicial authorities the violations of data protection provisions? Can the decisions taken by the Supervisory Authority which give rise to complaints be appealed against through the courts?

Administrative dispute can be conducted against the decision of Personal Data Protection Agency imposing above mentioned measures, when exercising supervision.

In administrative dispute court rules on, inter alia, legitimacy of particular legal act when determined so by law. Particular legal act, in concrete case, is the decision of Personal Data Protection Agency. Administrative dispute is resolved by the Administrative Court and Supreme Court of Montenegro. Administrative Court of Montenegro applying the Law on Administrative Dispute can rule in the following way: if a person abandons an complaint it adopts a decision on discontinuance of proceeding; with a decision it can dismiss a complaint as untimely, it can adopt a complaint, revoke a decision and return the matter to the Personal Data Protection Agency for a renewed procedure and decision making, it can decide on merits or dismiss a complaint as ungrounded. Party that took part in the administrative dispute, Public Prosecutor or other state body can submit a request for extraordinary judicial decision review against the decision of the Administrative Court of Montenegro. Supreme Court of Montenegro decides upon the request for extraordinary judicial decision review. Considering the fact that against the decision of the Personal Data Protection Agency one can conduct administrative dispute it means that the decisions of the Personal Data Protection Agency can be challenged. Decisions adopted in administrative dispute are mandatory.

If Personal Data Protection Agency establishes that the objection of the manager of the collection of personal data to the record with which the illegitimacies and irregularities have been stated during personal data processing is ungrounded one shall impose with a decision the following measures: one shall order the removal of irregularities in personal data processing in a defined time frame; temporarily forbid personal data processing which are being processed contrary to provisions of this law; order erasing of personal data collected without legal grounds; forbid taking out of personal data from Montenegro or giving for use personal data to users of personal data contrary to provisions of this law, forbid entrusting of affairs of personal data processing when the processor of personal data does not fulfill conditions related to protection of personal data, or entrusting of these above mentioned affairs has been conducted contrary to provisions of this law.

160. Does data protection legislation provide for the notification of processing operations to the Supervisory Authority?.

Manager of the collection of personal data is obliged to notify the supervising body before establishment of the collection of personal data and to obtain consent of the supervising body for the record of data which contains: the name of the collection of personal data; legal ground for personal data processing; personal name; i.e. the name of the manager of the collection, his/her

registered office i.e. permanent or temporary residence and address; purpose of personal data processing; category of persons; types of personal data contained in the collection of personal data; mode of collection and safeguarding of personal data; time frame of safeguarding and use of personal data; personal name i.e. name of the user of the collection of personal data, his/her registered office i.e. permanent or temporary residence and address; records on taking out of personal data from Montenegro with the indication of the state into which the data are being transferred, i.e. international organization or other foreign user of personal data, purpose of taking out of established by the confirmed international treaty and the law, i.e. determined by the written consent of a person; internal rules of processing and safeguarding of personal data of the manager of collection, which enable previous analysis of adequacy of measures for the purpose of providing safety of processing.

161. What is done in order to ensure efficient data protection in the field of police and justice cooperation?

The police and other state administration authorities have access to data which are kept in the collection of personal data and which relate to personal documents, crossing of the state border and penal register only to the such extent as is required for the performance of tasks and powers falling within their respective competences, in accordance with the following separate laws: Law on Travel Documents, Law on Personal Identity Card, Code of Criminal Procedure and Law on Supervision of State Border.

The Criminal Code provides that data from the penal register may be given only to a court, public prosecutor and a law enforcement agency in relation to criminal proceedings which are conducted against a person with previous criminal record, to an authority responsible for the enforcement of criminal sanctions and an authority which participates in the procedure which has as its object the granting of amnesty, pardon, rehabilitation or termination of legal consequences of conviction, as well as to guardianship authorities, where so required for the performance of the tasks falling within their competence. Data from the penal register may be given to a state body, business organisation, other organisation or an entrepreneur, at their request, if legal consequences of conviction or security measure are still in effect, subject to the existence of justified interests stemming from law. No person has the right to request a citizen to submit proof of prior convictions or lack thereof. If they request so, citizens may be issued data on their convictions or lack thereof only in the case they require such data for the purpose of exercising their rights abroad.

D. EU citizens' rights

Right to vote and stand as a candidate in municipal elections

162. Which legal measures would be necessary to allow EU citizens to vote and stand as a candidate in the municipal elections in your country?

In order to fully harmonize the legislation of Montenegro with the European standards, it is necessary to harmonize the provisions of the Constitution, laws and other regulations, which regulate the exercise of right to vote of citizens of Montenegro, with the acquis communautaire and especially with the Council Directive 94/80/EC of 19 December 1994 which lays down a detailed

procedure for exercising the right to vote and to stand as a candidate in municipal elections[4] for EU citizens residing in a Member State of which they are not nationals.

For this purpose, the following interventions in the law regulations of Montenegro shall be necessary:

- to amend the Constitution of Montenegro (Article 45) so as to make equal the EU citizens with nationals of Montenegro regarding the exercise of the right to vote and to be elected if they meet prescribed residential condition, but taking into consideration that the said amendment should specify that this equality is limited to the election of members of municipal assemblies, i.e. *to the elections for the European parliament (see question 163).*
- to amend the Law on Election of Members of Municipal Assemblies, in compliance with the amendments to the Constitution, in order to enable the EU citizens, who have permanent residence on the territory of Montenegro, in compliance with the Law on Foreign Nationals, for at least 24 months prior to elections or on the territory of municipality at least 12 months prior to elections and who meet all other legal conditions, to vote and to be elected for members of municipal assemblies. Exceptionally, it is possible to make stricter residential conditions for EU citizens for the period of maximum 4 years regarding active right to vote (duration of one mandate of a municipal assembly member) or 8 years regarding passive right to vote (duration of two mandates of a municipal assembly member) if their share in the population of a given municipality exceeds 20% of the total number of citizens.
- in addition, the Law on Election of Councillors and Members of the Parliament have to be amended regarding all other provisions which will enable EU citizens to exercise the right to vote under the same conditions as the nationals of Montenegro (the procedure to stand as a candidate, submission of party electoral lists, membership in bodies for implementation of elections, etc.) including the right to make objection or complaint against acts of municipal electoral commission, state electoral commission and complaints to the Constitutional Court. However, it is necessary to prescribe that a competent municipal electoral commission can refuse a request of EU national with the residence in Montenegro for submitting a party electoral list or exercising his passive right to vote, especially if he, in the procedure of submission of a party electoral list, failed to submit a certified statement or attestation that by individual criminal law or civil law decision he has not been deprived of the right to stand as a candidate in the Member State of which he is a national. In this view, Montenegro has a right to undertake any necessary measures in order to prevent a person, who is deprived of the right to be elected, in compliance with law of his home Member State, to exercise this right solely on the basis of his residence in another Member State, in this case it would be Montenegro when it becomes EU Member State.
- to harmonize secondary legislation of bodies for implementation of elections (rulebooks, rules of procedure, instructions, etc), as well as bodies deciding in first and second instance on protection of the right to vote, with the aforementioned amendments of the Law on Election of Members of Municipal Assemblies regarding equal rights to vote for EU citizens and nationals of Montenegro. These acts should prescribe that when submitting party electoral lists for members of municipal assemblies, candidates from EU Member States have to submit the same attestation and certificates as candidates from Montenegro. Apart from this, EU citizens could be requested to submit formally certified statement specifying their nationality and address in the electoral territory of Montenegro.
- Considering that making EU citizens equal with the nationals of Montenegro in terms of the right to vote in municipal elections is solely related to the election of members of municipal assembly and not to the municipal elections for executive authorities, it is not necessary to harmonize the Law on the Election of Presidents of Municipality with the aforementioned Directive.

[4] Pursuant to this Directive, the term “municipal elections” refers only to the elections for the representative body of the municipality and not for the executive body.

- to amend the Law on Electoral Roll in a way which enables EU citizens to, under equal conditions as the citizens of Montenegro, automatically and sufficiently in advance of the elections, be registered in the electoral roll of the municipality in which they have residence or removed from the electoral roll if they no longer meet the required conditions; to exercise the rights acquired from registering in the electoral roll including also the right to a legal remedy against the decision of the competent body authorized for electoral roll. Additionally, the Law on Electoral Roll, or internal act of the competent body authorized for electoral roll can prescribe that when registering, EU citizens have to produce a valid identity document and certified statement specifying their nationality and address in the electoral territory of Montenegro.
- to broaden the application of provisions of the Law on Conflict of Interests or the Law on Local Self-Government, which regulate both prohibition of performing incompatible functions and cases of conflict of interests of members of municipal assemblies, to EU citizens, who are elected as members of municipal assemblies in Montenegro. In this regard, it will also be possible to introduce regulations in these laws according to which a member of municipal assemblies should not combine performance of his function with performance of any other function in EU Member States, including his home country, which is according to the Montenegrin legislation incompatible with the function performed by a member of municipal assemblies.
- In compliance with their internal rules and secondary legislation, the municipal electoral commissions will have to inform electorates and candidates for members of municipal assembly who are EU citizens and who obtained rights to vote in Montenegro, in due time and in an appropriate manner, about conditions and detailed procedures for exercising the right to vote and to stand as candidates at municipal elections.
- In the process of harmonization of legislation with the aforementioned Directive, all bodies must exclusively refer to this Directive in laws, secondary legislation and administrative directives, whether in the procedure of adoption of regulations (explanatory memorandum) or on the occasion of their publication in the Official Gazette.

Since all these activities, especially the amendment to the Constitution require a lot of time and imply a whole set of interconnected activities, it is necessary to start implementing them two years before the accession at latest, in the final stage of negotiation process, i.e. two years before the entry into force of the Agreement on Accession of Montenegro to the EU.

163. Which legal measures would be necessary to allow EU citizens to vote and stand as a candidate in elections to the European Parliament in your country?

In order to fully harmonize Montenegrin legislation with the European Regulation which sets standards for elections for the European Parliament, and especially with the Council Directive 93/109/EC of 6 December 1993 which lays down a detailed procedure for the exercise of right to vote and to stand as a candidate in elections to the European Parliament for EU citizens residing in a Member State of which they are not nationals, it is, first of all, necessary to harmonize provisions of the Constitution which regulate the right to vote and then to adopt a special Law on Election of Members for the European Parliament, where in certain chapters (such as implementation of elections, funds for the campaign, etc) the provisions of existing electoral legislation can be applied accordingly.

For this purpose, the following interventions in the legislation of Montenegro shall be necessary:

- to amend the Constitution of Montenegro (Article 45) as to make equal EU citizens with nationals of Montenegro regarding the exercise of the right to vote and to be elected, if they meet prescribed residential condition, but taking into consideration that the said amendment have to specify that this equality is limited to the election of members of the European Parliament, i.e. to *the elections for the members of municipal assemblies (see question 162.).* The Constitution can prescribe that the procedure and method for election of members from Montenegro to the European Parliament will be regulated by special law.

- to adopt the Law on Election of Members from Montenegro to the European Parliament, on the basis of the said amendments of the Constitution, which will incorporate the said European regulations regarding procedure and method of elections. The law will regulate, *inter alia*, that EU citizens, who have permanent residence on the territory of Montenegro, in compliance with the Law on Foreigners, can elect members for the European Parliament under the same conditions as citizens of Montenegro, if they submit a request for entry in the electoral roll, in compliance with the Law on Electoral Roll, to the competent body authorized for electoral roll. *With regard to electoral roll and rights and obligations of EU citizens, who vote at the elections for the European Parliament, the amendments of the Law on Electoral Roll should be made in accordance with the question 162.*
- The Law shall also prescribe that EU citizen, who is a national of another EU Member State and has permanent residence in Montenegro, in compliance with the Law on Foreigners, can be elected to the European Parliament, if he meets all the conditions for exercising the right to stand as candidate as prescribed by this Law and under the condition that in Montenegro and in his home Member State by final and enforceable judgment he has not been deprived of his working permit or that by individual criminal law or civil law decision he has not been deprived of the right to stand as a candidate. During the period of submission of lists of candidates, the state electoral commission can require formal certified statement of the candidate - EU citizen, which proves the non-existence of these and other prohibitions.
- Legislator can, if he considers it appropriate, introduce restrictions regarding the equality of a right to vote of EU citizens and nationals of Montenegro, by increasing the residential conditions to 5 years for voters from EU Member States (one mandate of the European Parliament) or 10 years for candidates from EU Member States (two mandates of the European Parliament), if their share in the population of a given municipality is 20% or more of the total number of citizens. However, these restrictions are not applied if citizens of other EU Member States have lost a right to vote in their home Member State only because they decided to take up residence in Montenegro or because they were removed from the electoral roll due to the duration of such residence outside their home Member State.
- In addition, the Law on Election of Members from Montenegro to the European Parliament must provide that EU citizens who exercise a right to vote in Montenegro to the European Parliament cannot vote twice in the same elections in their home Member State or some other Member State. As a result of this, the state electoral commission has the obligation to notify other EU Member States, in a manner prescribed by its internal rules and acts, those nationals of theirs who are standing as candidates for the elections in Montenegro to the European Parliament.
- With respect to the use of legal remedies against decisions of competent bodies for implementation of elections, this Law should prescribe that in case a candidate is refused, the said national of other EU Member State shall be entitled to file objection or complaint under the same conditions as the state of residence - Montenegro prescribes for its nationals.
- To all issues that are not strictly regulated by this special Law on Election of Members from Montenegro to the European Parliament, the existing electoral legislation can be accordingly applied.
- In this sense, for example, by applying the Law on Election of Councillors and Members of the Parliament, in the part regarding competent bodies for implementation of elections, it is possible to delegate state electoral commission and municipal electoral commissions to implement elections for the European Parliament as well, and especially to regulate legitimacy of electoral lists comprising candidates from other EU Member States.
- In the process of harmonizing regulations with the said Directive, all competent bodies must make explicit reference to this Directive in laws, secondary legislation or administrative directions, whether in the procedure of adoption of regulations (explanatory memorandum) or on the occasion of their publication in the Official Gazette.

As with question 162, these activities are planned to start at latest two years before the entry into force of the Accession Agreement in the final stage of accession negotiations.

Right to move and reside freely

164. What documents EU citizens and members of their families need in order to enter Montenegro?

The Decree on visa regime (Official Gazette of Montenegro 18/09) provides that nationals of EU member states are allowed to enter, transit or stay in the territory of Montenegro up to 90 days with a valid passport and without a visa.

In addition, nationals of EU member states may enter, transit or stay in the territory of Montenegro up to 30 days with a valid identification document or other document which may be used to verify the holder's identity and nationality.

165. What documents must EU citizens not exercising an economic activity produce and what fee are they charged for a residence permit?

The Decree on visa regime (Official Gazette of Montenegro 18/09) provides that nationals of EU member states are allowed to enter, transit or stay in the territory of Montenegro up to 90 days with a valid passport and without a visa. In addition, nationals of EU member states may enter, transit or stay in the territory of Montenegro up to 30 days with a valid identification document or other document which may be used to verify the holder's identity and nationality.

The Law on Administrative Fees (Official Gazette of the Republic of Montenegro 55/03 and 81/05 and Official Gazette of Montenegro 22/08, 77/08 and 3/09) provides that nationals of EU members states are not required to pay for a temporary residence permit and that the fee for a permanent residence permit is EUR 200 (two hundred). The Law on Administrative Fees also provides that nationals of EU member states who are married to Montenegrin nationals or whose family members are married to Montenegrin nationals pay 20% of the above noted fee for a permanent residence permit.

166. What are the reasons to refuse entry or residence to EU citizens?

The reasons for refusing the entrance or residence are prescribed by the Articles 8 and 10 of the Law on Foreigners (Official Gazette of Montenegro 82/08)

EU citizens shall not be allowed to enter or reside in Montenegro:

- if they do not possess a valid travel document or valid identification document confirming their identity and nationality;
- if they do not have sufficient funds to support themselves during their stay in Montenegro or to return to the state from which they came from or to travel to some other country;
- if they are from a transition country and do not meet conditions for entry to some other (third) country;
- if a measure for removal and security measure of exile are in force, or if their residence have been canceled;
- if so required by reasons of public security, public order or public health;
- if they are recorded as international felons in appropriate registers.

Diplomatic and consular protection

167. Which measures (legal, institutional and others) would be necessary to allow EU citizens to benefit from protection of diplomatic and consular representations of Montenegro (including the establishment of an emergency travel document?

Montenegro would need to conclude an agreement for the provision of diplomatic protection and consular services to EU citizens with the EU member state concerned. On the basis of such type of agreement, diplomatic and consular missions of Montenegro could be authorized to provide diplomatic protection and consular services to EU citizens, including the issuance of emergency travel documents.