

**Government of Montenegro**

**Ministry of Interior and Public Administration**

## **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

### **24 Justice, freedom and security**

**Minister: Ivan Brajovic**

**Podgorica, December 2009**



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## **CHAPTERS OF THE ACQUIS – ABILITY TO ASSUME THE OBLIGATIONS OF MEMBERSHIP**

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## Chapter 24: Justice, freedom and security

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### Migration

#### 1. Please provide information on legislation or other rules governing migration in your country.

The legislation governing the migration in Montenegro is the following:

The Law on Foreigners (Official Gazette of Montenegro 82/08) ([Annex 172](#)). This Law regulates conditions for entry, movement and residence of foreigners on the territory of Montenegro.

The Law on Employment and Work of Foreigners (Official Gazette of Montenegro 22/08) ([Annex 173](#)). This Law regulates conditions under which a foreigner can exercise the right to work and employment in Montenegro.

The Law on Asylum (Official Gazette of the Republic of Montenegro 45/06) ([Annex 177](#)). This law regulates principles, conditions and procedures for granting asylum, recognising refugee status and granting subsidiary and temporary protection, as well as the reasons for cessation and revocation of refugee status and subsidiary and temporary protection in Montenegro.

The Law on Registers of Permanent and Temporary Residence (Official Gazette of Montenegro 13/08). This Law establishes and regulates the manner of keeping register of permanent residence and register of temporary residence of Montenegrin nationals and foreigners.

The Decree on visa regime (Official Gazette of Montenegro 18/09) ([Annex 179](#)). The Government of Montenegro hereby regulates visa regime and conditions of entry, residence and transit through the territory of Montenegro.

The Rulebook on procedures for granting temporary and permanent residence and issuing travel and other documents to foreigners (Official Gazette of Montenegro 58/09) ([Annex 185](#)). The Rulebook regulates in more detail the procedure for issuing approval of temporary residence, and extension of temporary residence, approval of permanent residence, and issuing travel documents to foreigners. The Rulebook also provides for: affixing cancellation of the residence up to 90 days, the residence on the basis of issued long stay visa (D visa), temporary residence and affixing prohibition of entry in the foreigner travel document. The content and procedures for keeping records are prescribed in the Rulebook.

The Rulebook on visas and visa forms (Official Gazette of Montenegro 64/09) ([Annex 184](#)).

The Rulebook regulates the following:

1. Procedures and conditions for issuing visas, the cases where approval from Police Directorate is needed for issuing visas, conditions for extension of visa validity, procedures for annulment of visa and shortening visa validity;
2. Visa application and extension forms, visa forms, manner of affixing visa in a foreigner travel document, and forms for affixing visa in a travel document;
3. Procedures of keeping records on issued, denied and annulled visas;
4. Processing and distribution of visa forms.

Bilateral readmission agreements:

Agreement between the European Community and the Republic of Montenegro on readmission of persons residing without authorisation, signed on 18 September 2007.

Agreement between the Government of Montenegro and the Government of Croatia on readmission of persons who either entered or reside illegally, signed on 24 September 2008.

Agreement between the Government of Montenegro and the Council of Ministers of Bosnia and Herzegovina on readmission of persons who either entered or reside illegally, signed on 1 December 2008.

Agreement between the Government of Montenegro and the Council of Ministers of the Republic of Albania on readmission of persons who either entered or reside illegally, signed on 6 November 2009.

Pursuant to the Decision on declaration of independence, Montenegro took over and implements the following bilateral readmission agreements signed and acceded to by the State Union of Serbia and Montenegro:

Agreement between the Government of the Federal Republic of Yugoslavia and the Government of the Kingdom of Denmark on readmission of persons who do not, or no longer fulfil the conditions for entry to, or residence on the territory of the other country, signed on 29 May 2002.

Readmission agreement between the Government of the Federal Republic of Yugoslavia and the Swiss Federal Council on return and admission of Yugoslav and Swiss nationals bound to leave their territories, signed on 3 July 1997.

Agreement between the Government of the Federal Republic of Yugoslavia and the Government of the Republic of Croatia on readmission of persons who entered to or reside illegally on the territory of the other country (Official Gazette of Serbia and Montenegro-International Treaties 9/2004).

Aimed at establishing preconditions for further development of statutory, regulatory and institutional framework for effective implementation of management and migration movements control policy, in compliance with *acquis communautaire*, the Strategy for Integrated Migration Management in Montenegro for period 2008-2013 was adopted on 11 September 2008.

## **2. Please describe your procedures for obtaining a residence permit, reasons for refusal, renewal or withdrawal of permits, and appeal procedures.**

A foreigner may stay on the territory of Montenegro with a valid travel document containing visa or residence approval.

A foreigner can exercise the right of residence up to 90 days on the basis of short stay visa (C visa). Pursuant to Article 19 of the Law on Foreigners, a short stay visa is issued for tourism, business or other travel purposes, for single or multiple entry in Montenegro, as well as for continuous stay, i.e. for total duration of a consecutive stay, not exceeding 90 days within a six - month period, from the date of first entry. A short stay visa for multiple entry is valid for up to one year, and that period may not be extended, except for humanitarian, professional or personal reasons, or *force majeure*. State administration body competent for foreign affairs may in exceptional circumstances, issue a short stay visa for multiple entry, valid for up to five years. Pursuant to Article 1 of the Decree on visa regime, a foreigner without visa may be approved residence up to 90 days, on the basis of a valid travel document. Pursuant to Article 2 of the Decree, a foreigner may be approved residence up to 30 days on the basis of a valid ID card or other document by which his/her identity and nationality can be established.

Pursuant to Article 20 of the Law on Foreigners, a foreigner can exercise the right of residence exceeding 90 days, but not longer than six - month within the period of one year, from the date of first entry on the basis of long stay visa (D visa). Long stay visa is issued for single or multiple entry.

Diplomatic and consular missions of Montenegro are in charge of issuing visas, in compliance with the Rulebook on visas and visa forms.

Pursuant to Article 32 of the Law on Foreigners, a foreigner residence up to 90 days can be cancelled provided that: he/she is not in possession of a valid travel document or other document for crossing the state border; he/she does not fulfil conditions for entry and residence provided for in the law; he/she is lacking means of subsistence for the time period of residence in Montenegro,

and for return to the country he/she arrived from, or for travel to a third country; he/she fails to pay a fine imposed in Montenegro; there is a reasonable doubt that he/she will not use the residence in Montenegro for the intended purpose. The Police Directorate issues the decision on cancellation of residence which implies the time limit by which a foreigner must leave the territory of Montenegro, and imposing of prohibition from entry in Montenegro for given time period. An appeal against the decision on cancellation of residence may be lodged to the Ministry of Interior and Public Administration within eight day from the date the decision was received.

Pursuant to Article 33 of the Law, a foreigner residence up to 90 days is terminated by: cancellation of residence; expiry of the visa validity; if his/her residence in Montenegro exceeded 90 days within a six – month period from the date of first entry; if he/she was returned to Montenegro pursuant to international treaty (readmission) due to illegal stay.

A foreigner intending to reside more than 90 days in Montenegro may be granted temporary residence for the purposes of: employment and work, pursuit of an economic or entrepreneurial activity; seasonal work; high school education or higher education studies; participation in international student exchange programs or other youth programs; specialisation, professional development and practical trainings; scientific-research work; medical treatment; family reunification; humanitarian reasons; other reasonable grounds provided for in the law or international treaty. A foreigner shall be granted temporary residence if he/she: has means of subsistence; has accommodation provided; has health insurance; fulfils the conditions for entry and movement within the territory of Montenegro; has submitted the evidence on justification of the temporary residence application. The approval of temporary residence in Montenegro is issued by the Ministry of Interior and Public Administration, subjected to prior consent given by the Police Directorate. A foreigner submits the temporary residence application for the first time to the diplomatic or consular mission of Montenegro, whereas those not required visa for entry in Montenegro submit such an application to the organisational unit of the Ministry of Interior and Public Administration in the place of residence.

In a case the temporary residence application is denied, foreigner may appeal the decision to the Ministry of Interior and Public Administration within eight days from the date of receiving the decision.

Temporary residence can be granted for one year time period. A temporary residence approval is affixed in a foreigner valid travel document.

A foreigner submits an application for extension of the temporary residence to the Ministry of Interior and Public Administration in the place of his/her residence, not later than 30 days prior to expiry of the approved temporary residence. The temporary residence of a foreigner can be cancelled, if it is subsequently determined that he/she: does not fulfil the conditions for stay and movement on the territory of Montenegro; is employed or works contrary to the law provisions regulating employment and work of foreigners; does not use the residence for intended purpose. When deciding upon cancellation of temporary residence, facts particularly taken into consideration are: duration of residence; personal, family, economic and other circumstances; the deadline given to a foreigner to leave Montenegro, not exceeding 30 days; duration of the prohibition from entry in Montenegro. The decision on cancellation of temporary residence is issued by the Police Directorate. An appeal against the decision on cancellation of temporary residence may be lodged to the Ministry of Interior and Public Administration within eight days from the date of receiving the decision.

A foreigner temporary residence is terminated in a case of: cancellation of his/her temporary residence; imposing protective measure of removal or security measure of expulsion; expiry of temporary residence; the reasons for temporary residence approval have ceased to exist; residing out of Montenegro more than 90 days during the approved temporary residence. Appeal against the decision on termination of temporary residence may be lodged to the Ministry of Interior and Public Administration, which decides upon the appeal.



**3. Do you have immigration rules providing for family reunification? If so, please outline these.**

Family reunification is regulated by the Law on Foreigners (Official Gazette of Montenegro 82/08).

Pursuant to Article 48 of the Law, a temporary residence with a view to family reunification may be granted to a foreigner, close family member of a Montenegrin national or a foreigner being granted permanent or temporary residence in Montenegro.

Close family includes: spouses, their underage children born in or outside marriage, underage children of one of the spouses, and adopted children. Exceptionally, other relative may be considered close family member, in a case of specific personal or humanitarian reasons for family reunification in Montenegro.

Temporary residence for the purpose of family reunification is granted for one year period, i.e. until expiry of the temporary residence approval of a foreigner with whom reunification is required. The temporary residence can be extended in a case of death of a Montenegrin national, as well as in a case of termination of a marriage that lasted for three years in Montenegro. A foreigner, close family member of a Montenegrin national, or a foreigner granted permanent residence, may be extended temporary residence by the time the conditions for acquiring the right of permanent residence are fulfilled.

**4. Do you have immigration rules for acquiring a long-term resident status? If so, please outline these.**

A foreigner permanent residence in Montenegro is regulated by the Law on Foreigners (Official Gazette of Montenegro 82/08).

Pursuant to Article 54 of the Law, a foreigner may be granted permanent residence provided that he/she resided in Montenegro for five years continuously, until submission of the application, based on the temporary residence approval. Exceptionally, a foreigner who resided less than five years continuously in Montenegro, may be granted permanent residence if required by humanitarian reasons, or the interest of Montenegro. A foreigner being granted temporary residence in Montenegro for high school or higher education studies, a half of the period the foreigner stayed in Montenegro shall be counted into the time required for granting permanent residence. Time period of the temporary residence approved for seasonal work and serving a prison sentence, shall not be counted into the time required for granting permanent residence. The Ministry of Interior and Public Administration issues permanent residence approvals, and the request for permanent residence should be submitted to the organisational unit of the Ministry of Interior and Public Administration in the place of his/her residence. Approval for permanent residence is affixed in the foreigner travel document. The Rulebook on procedures for granting temporary and permanent residence and issuing travel and other documents to foreigners regulates in more detail the procedure of issuing permanent residence approvals, as well as the approval and application forms.

A foreigner shall not be granted permanent residence if he/she: is not in possession of a valid travel document; is convicted in Montenegro by final and enforceable judgement for a criminal offence prosecuted *ex officio*, or is a subject of a procedure for such a criminal offence; does not have means of subsistence; does not have health insurance; has no accommodation provided, as well as for reasons of national security and public order. There is no right of appeal against the decision, however an administrative dispute may be initiated.

A foreigner may be cancelled permanent residence: if he/she is convicted in Montenegro by final and enforceable judgement to effective imprisonment sentence exceeding six months for a criminal offence prosecuted *ex officio*; if required by reasons of national safety, public order or public health protection; if the reasons for annulment of the permanent residence are established; if he/she provided false identification data or concealed circumstances relevant for deciding upon granting permanent residence. When deciding upon cancellation of the permanent residence, the following

circumstances are taken into consideration: duration of the residence; personal, family, economic and other circumstances; time limit imposed on a foreigner to leave Montenegro, not exceeding 30 days; time period of prohibition from entry in Montenegro. The decision on cancellation of permanent residence is issued by the Ministry of Interior and Public Administration. Initiation of administrative dispute against the decision is possible. Permanent residence cancellation is affixed in a foreigner travel document.

A foreigner right of permanent residence is ceased if: he/she was imposed a protective measure of removal or security measure of expulsion; established he/she moved out from Montenegro, or continuously stays in other country for more than one year, without previously informing the Ministry of Interior and Public Administration; he/she has been cancelled permanent residence; he/she disclaimed permanent residence, on the date he/she stated disclamation; if he/she acquired Montenegrin citizenship. The decision on cessation of permanent residence is issued by the Ministry of Interior and Public Administration, and administrative dispute may be initiated against it.

## **5. Describe your system for admission for employment, study and research purposes.**

The Law on Foreigners (Official Gazette of Montenegro 82/08) regulates the issue of residence of foreigners on the territory of Montenegro for the purpose of: employment, high school and higher education studies, participation in international exchange programs, and scientific research.

General requirements for issuing the approval for temporary residence in Montenegro to a foreigner are that: he/she has the means of subsistence; he/she has been provided with accommodation; he/she has health insurance; there are no reasons for prohibiting entry of a foreigner in Montenegro (Article 8 of this Law); he/she provides evidence on justification of the temporary residence application.

A foreigner may be granted temporary residence for the purpose of employment and work, pursuing economic, entrepreneurial or other activities, provided that he/she is in possession of a work permit, in addition to the general requirements pursuant to the Law on Employment and Work of Foreigners. A work permit is a document on the basis of which a foreigner may find a job, i.e. be employed in Montenegro. A foreigner is granted temporary residence for the purpose of employment for the period specified in the work permit, i.e. for the period of one year. The right of temporary residence for the purpose of employment is provided for in Article 41 of the Law on Foreigners.

A foreigner may be granted temporary residence for the purpose of high school or higher education studies, provided that he/she fulfils general requirements and submits certificate of school or university attendance, as the evidence on justification of the application. The period of temporary residence for the purpose of completing studies may be extended up to two years after the expiry of the period prescribed for duration of the high school or higher education studies. The right of temporary residence for the purpose of studying is provided for in Article 43 of the Law.

A foreigner may be granted temporary residence for the purpose of participation in international students exchange programmes or other youth programmes, if he/she fulfils general requirements for issuing temporary residence approvals, and if he/she submits the following evidence on justification of the application: certificate issued by a state body or an institution competent for implementation of the ratified international treaties on students exchange, which proves participation of a foreigner in the international exchange; certificate issued by a competent body or an institution for financing of costs of high school or higher education studies, sustenance, accommodation, health insurance, and costs of return of a foreigner to the country whose national he/she is.

A foreigner may be granted temporary residence for the purpose of scientific research if he/she fulfils general requirements, and if he/she as the evidence on justification of the application for obtaining temporary residence, presents the contract concluded with the scientific institution in Montenegro. The right of temporary residence for the purpose of scientific research is laid down in Article 46 of the Law.

A foreigner being granted temporary residence may reside in Montenegro in compliance with the purpose of granted temporary residence.

The approval of temporary residence in Montenegro is issued by the Ministry of Interior and Public Administration, subject to prior consent by the Police Directorate. A foreigner submits the application for first temporary residence to the diplomatic or consular mission of Montenegro. A foreigner not required visa for entry in Montenegro, may submit the application for first temporary residence to the Ministry of Interior and Public Administration in the place of his/her residence. Attached to the application, a foreigner submits a valid travel document, as well as other evidence on justification of the temporary residence application reasons. An appeal against the decision on denial of the application for first temporary residence may be lodged to the Ministry of Interior and Public Administration, within eight days from the date of receiving the decision.

## **6. Describe your integration policy for third country nationals.**

Integration of foreigners is achieved by implementation of positive legislation prescribing conditions for exercise of foreigner rights and obligations in Montenegro, being applied by respective Ministries within their competences.

Article 44 of the Montenegrin Constitution provides for that a foreigner can seek asylum in Montenegro if he/she reasonably fears of persecution on account of his/her race, language, religion or association with a nation or a group, or for political opinion. A foreigner cannot be expelled from Montenegro to where due to his race, religion, language or association with a nation, he/she is threatened with death penalty, torture, inhuman treatment, expulsion, or serious violation of rights guaranteed by this Constitution. Article 61 of the Constitution provides for that a foreigner may be the holder of property rights in compliance with the law.

A foreigner being granted temporary residence in Montenegro pursuant to Article 35 of the Law on Foreigners (Official Gazette of Montenegro 82/08) is integrated in Montenegrin society through exercise of rights of: employment and work, pursuit of economic or entrepreneurial activity, seasonal work, high school or higher education studies, participation in international student exchange programmes and other youth programmes, specialisation, professional development and practical training, scientific research, medical treatment and family reunification.

A foreigner being granted permanent residence pursuant to Article 54 of the Law on Foreigners is integrated through the exercise of rights of: work and employment; education and professional development, recognition of diplomas and certificates; social aid, health and social insurance; tax relief; access to labour and services market; freedom of association, networking and membership in organisations representing the rights of workers or employers. A foreigner exercises the above-mentioned rights, in compliance with the legislation regulating the rights exercising.

The Strategy for Integrated Migration Management in Montenegro for period 2008-2013, establishes the principle that integration of third country nationals should be achieved as a bilateral process which implies intercultural dialog between foreigners and domicile population. In this respect, integration should contain the following elements: provision of information to immigrants on basic values of Montenegro and Montenegrin society; employment and education of immigrants aimed at enabling their active participation in the overall life in Montenegro; intercultural dialog and improvement of general knowledge about immigrants, their culture and tradition; participation of immigrants in creation of policy and integration measures, especially at the local level.

## **7. Provide immigration statistics for 2007, 2008 and, if available, 2009, including a citizenship breakdown and reasons for immigration.**

In 2007, the total number of processed applications for granting Montenegrin citizenship amounted 1 244; out of which 1 047 applications were resolved positively, whereas 197 were denied.

The following countries nationals' applications for acquiring Montenegrin citizenship were resolved positively:

Nationals of the Republic of Serbia.....	714
Nationals of Bosnia and Herzegovina.....	124
Nationals of the Republic of Croatia.....	45
Nationals of the Republic of Macedonia.....	13
Nationals of the Republic of Slovenia.....	4
Unknown nationality.....	142
Other states nationals.....	5

In 2008, the total number of processed applications for granting Montenegrin citizenship amounted 850; out of which 786 application were solved positively, whereas 64 were denied.

The following countries nationals' applications for acquiring Montenegrin citizenship were resolved positively:

Nationals of the Republic of Serbia.....	620
Nationals of Bosnia and Herzegovina.....	95
Nationals of the Republic of Croatia.....	13
Nationals of the Republic of Macedonia.....	3
Nationals of the Republic of Slovenia.....	3
Unknown nationality.....	43
Other states nationals.....	9

From 1 January to 10 August 2009, the total number of processed applications for granting Montenegrin citizenship amounted 2 451; out of which 2 235 applications were resolved positively and 216 were denied.

The following countries nationals' applications for acquiring Montenegrin citizenship were resolved positively:

Nationals of the Republic of Serbia.....	1894
Nationals of Bosnia and Herzegovina.....	218
Nationals of the Republic of Croatia.....	24
Nationals of the Republic of Macedonia.....	1
Nationals of the Republic of Slovenia.....	1
Unknown nationality.....	84
Other states nationals.....	13

Statistics on the number of granted permanent residence:

Citizenship	Year			
	2007	2008	2009	Total:
<b>Bosnia and Herzegovina</b>	23	22	6	51
<b>Serbia</b>	/	/	/	/
<b>Macedonia</b>	6	5	4	15
<b>Kosovo</b>	/	/	/	/
<b>Albania</b>	30	41	31	102
<b>Croatia</b>	7	8	3	18
<b>EU countries</b>	20	22	12	54
<b>Other countries</b>	43	37	21	101
<b>Total:</b>	129	135	77	341

Permanent residence is granted pursuant to Article 54 of the Law on Foreigners. (For more details see Chapter 24, Migrations, answer to the question 4).

Statistics on the number of granted temporary residences, involving both citizenship and reasons for their granting breakdown, is given in the table below.

Review of temporary residences granted to foreigners in Montenegro for 2007, 2008 and first nine months of 2009

Citizenship	Year	Employment and work	Season work	High school education or university	International exchange of pupils and students	Specialised and professional training	Scientific and research work	Medical treatment	Connecting families	Humanitarian reasons	Other justified reasons	Total
Bosnia and Herzegovina	2007	490	3	14	/	/	/	/	472	/	53	1032
	2008	682	/	35	/	/	/	/	577	/	54	1348
	2009	672	1738	2	/	1	/	/	331	/	5	2749
Serbia	2007	/	/	/	/	/	/	/	4	/	/	4
	2008	22	208	/	/	/	/	/	8	/	/	238
	2009	551	2360	1	/	/	/	/	147	/	19	3078
Macedonia	2007	126	/	1	/	/	/	/	101	/	17	245
	2008	204	/	7	/	/	/	/	102	/	47	360
	2009	577	812	/	/	/	/	/	41	/	9	1439
Kosovo	2007	/	/	/	/	/	/	/	10	/	/	10
	2008	/	/	/	/	/	/	/	/	/	/	/
	2009	11	155	/	/	/	/	/	4	/	/	170
Albania	2007	16	/	1	/	/	/	/	297	/	4	318
	2008	21	/	2	/	/	/	/	329	/	12	364
	2009	18	21	/	/	/	/	/	166	/	/	205
Croatia	2007	86	/	3	/	1	/	/	104	/	23	217
	2008	86	/	6	/	/	/	/	106	/	30	228
	2009	39	59	1	/	1	/	1	36	/	4	141
Slovenia	2007	29	/	2	/	/	/	1	19	/	4	55
	2008	28	/	/	/	/	/	1	18	/	9	56
	2009	19	3	//	/	/	/	/	13	/	2	37
Germany	2007	31	/	/	/	/	/	2	38	/	13	84
	2008	42	/	/	/	/	/	2	31	/	34	109
	2009	9	1	/	/	/	/	/	21	4	2	37
Italy	200	23	/	/	/	/	/	/	13	/	4	40

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	2008	14	/	//	/	/	/	/	13	/	14	41
	2009	14	/	/	/	/	/	/	2	/	3	19
Austria	2007	17	/	/	/	/	/	/	3	/	1	21
	2008	22	/	/	/	/	/	/	6	/	8	36
	2009	13	/	/	/	/	/	/	4	/	/	17
USA	2007	12	/	/	/	/	/	/	17	/	13	42
	2008	10	/	/	/	/	/	/	20	/	9	39
	2009	5	/	/	/	/	/	/	6	/	2	13
Turkey	2007	30	/	/	/	/	/	/	23	/	3	56
	2008	28	/	/	/	/	/	/	20	/	6	54
	2009	11	88	/	/	/	/	/	7	/	2	108
China	2007	303	/	/	/	/	/	/	84	/	8	395
	2008	296	/	/	/	/	/	/	71	/	6	373
	2009	143	/	/	/	/	/	/	21	/	/	164
Russia	2007	549	/	5	/	1	/	1	317	/	899	1772
	2008	676	/	8	/	/	/	5	394	/	116	199
	2009	821	52	7	/	/	/	8	266	/	48	202
Ukraine	2007	73	/	/	/	/	/	/	87	/	141	301
	2008	82	/	2	/	/	/	/	48	/	148	310
	2009	184	49	2	/	/	/	/	101	/	/	336
France	2007	16	/	/	/	/	/	/	7	/	3	26
	2008	20	/	/	/	/	/	/	9	/	2	31
	2009	4	/	/	/	/	/	/	5	/	/	9
Hungary	2007	17	/	/	/	/	/	/	2	/	2	21
	2008	8	/	/	/	/	/	/	1	/	2	11
	2009	9	7	/	/	/	/	/	/	/	/	16
Other	2007	286	1	5	/	/	/	/	211	1	123	627
	2008	276	/	7	/	/	/	/	192	1	115	591
	2009	144	35	/	/	/	/	2	73	/	7	261
Total	2007	2 104	4	31	/	2	/	4	1 809	1	1 311	5 266
	2008	2 517	208	67	/	/	/	8	1 975	1	1 612	6 388
	2009	3 244	5 380	13	/	2	/	11	1 244	4	103	1 000
<b>UKUPNO:</b>	<b>7 865</b>	<b>5 592</b>	<b>111</b>	<b>/</b>	<b>4</b>	<b>/</b>	<b>23</b>	<b>5 028</b>	<b>6</b>	<b>3 026</b>	<b>21 655</b>	

The most often reasons for migrations are employment and work, performing economic or entrepreneurial activity, season work and family reunification.

**8. Please give a brief overview of your legislation with regard to combating illegal immigration and trafficking in human beings, in particular whether you have signed and ratified the Palermo Treaty on Organised Crime and its two Protocols on smuggling and trafficking in human beings.**

Recognising the importance of establishing efficient and comprehensive mechanism for the fight against illegal immigrations, trafficking in human beings and other forms of organized crime, Montenegrin system aims at strengthening legal awareness, professional sophistication and the efforts for implementation of the fight against these phenomena. One of the elements necessary for relevant action, is ratification and implementation of international instruments in the field of combating organised crime, as well as adoption of relevant legislation harmonised with international standards in this field.

Montenegro acceded to the United Nations Convention against Transnational Organised Crime (Palermo Convention) and its Additional Protocols - Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Sea and Air. The Convention and its Additional Protocols were ratified by the Federal Republic of Yugoslavia in 2001 (Official Gazette of the Federal Republic of Yugoslavia - International Treaties 6/01).

The priorities in suppressing illegal immigration are provided through adoption of the set of the following laws in the field of judiciary: Criminal Code (Official Gazette of the Republic of Montenegro, 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08) ([Annex 160](#)), Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03, 7/04, 47/06) ([Annex 161](#)), new Criminal Procedure Code (Official Gazette of Montenegro 57/09), Law on Witness Protection (Official Gazette of the Republic of Montenegro 65/04) ([Annex 178](#)), Law on Criminal Liability of Legal Persons (Official Gazette of the Republic of Montenegro 2/07 and 13/07) ([Annex 162](#)) and Law on Foreigners (Official Gazette of Montenegro 82/08).

The Criminal Code provides for a number of the following criminal offences regulating the issues of illegal immigration and trafficking in human beings: Pimping and Enabling Having Sexual Intercourse (Article 209); Mediation in Prostitution (Article 210); Illegal Crossing of the State Border and Smuggling of Persons (Article 405); Trafficking in Persons (Article 444); Trafficking in Children for Adoption (Article 445); Submission to Slavery and Transportations of Enslaved Persons (Article 446).

Pimping and enabling having sexual intercourse (Article 209) and mediation in prostitution (Article 210) are provided for as criminal offences within the scope of offences against honour and reputation.

Pimping and enabling having sexual intercourse (Article 209) is criminal offence which implies procuring a minor for statutory rape, an act equal, or some other sexual act. Another form of this offence is providing for indecent assault against a minor. In both cases, it is considered that the offence is done by the procuring itself, or by enabling having sexual intercourse, an act equal, or indecent assault, therefore it is not necessary that actual sexual intercourse was done. Penalty prescribed for this offence is from three months to five years imprisonment.

Mediation in prostitution (Article 210) is criminal offence which implies instigating or inciting other person to prostitution, or participating in transferring of a person to another one for the purpose of prostitution, or promoting or advertising prostitution by means of media or other similar means. A fine or an imprisonment sentence not exceeding one year is prescribed for commission of this offence. Qualified (more serious) form of this criminal offence is in a case of mediation in prostitution of a minor, for which imposed imprisonment sentence is from one to ten years.

Within the scope of offences against public peace and order, illegal immigration is sanctioned through the criminal offence of illegal crossing of the state border and smuggling of persons (Article 405). This offence implies illegal crossing of the state border and enabling another person to cross the border illegally. Qualified forms of this offence are also defined - when committed: by several persons in an organised way; by abuse of official position; in a way threatening life and health of persons whose illegal border crossing, stay or transit is enabled; or if a number of people is being smuggled. A sentence prescribed for this offence is imprisonment up to ten years. The Law also provides for seizure of means intended for use or used for commission of this offence.

Within the scope of criminal offences against humanity and other rights guaranteed under international law, two following separate trafficking in human beings related criminal offences are provided for: Trafficking in Persons (Article 444) and Trafficking in Children for Adoption (Article 445).

Pursuant to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, amending UN Convention against Transnational Organized Crime, Criminal Code provides for the criminal offence of trafficking in persons (Article 444).

This criminal offence may involve: recruiting, transport, transfer, handing over, selling, buying, mediation in sale, concealing or keeping another person for the purpose of forced labour, submission to servitude, commission of criminal activity, prostitution or begging, pornographic purpose use, taking away a part of a body for transplantation or for use in armed conflicts. More serious forms of this offence are: the one committed against a minor; if grievous bodily harm was caused to a person by committing this offence; if a person is dealing with commission of this offence (in terms of continuous activity), or it was committed in an organised way by several persons. Imprisonment sentence for this offence is from one to twelve years; if committed offence caused death of one or more persons, the offender shall be punished by an imprisonment sentence for a minimum term of ten years.

The Criminal Code provides for as a separate criminal offence one form of trafficking in human beings - trafficking in children for adoption (Article 455). This offence includes adoption of a person who has not reached the age of fourteen, or mediation in such adoption. More serious form of this offence is if the perpetrator is dealing with trafficking in children for the purpose of adoption (continuously), or if the offence is committed in an organised way by several persons. In such a case, the imprisonment sentence is for a minimum term of three years.

Prohibition of slavery position and trafficking in enslaved persons is laid down in many international instruments, such as: 1948 the Universal Declaration of the Human Rights, 1966 International Covenant on Civil and Political Rights, the United Nations Convention against Transnational Organized Crime (Palermo Convention) with its Additional Protocols. The Criminal Code of Montenegro provides for the criminal offence of submission to slavery and transport of enslaved persons (Article 446), which refer to making and keeping another person in slavery position, inciting another person to sell his/her own freedom or freedom of persons he/she is supporting or caring for, as well as transportation of persons in the position of slavery or other similar position from one country to another. An imprisonment sentence of six months up to ten years is imposed for commission of this offence. More serious form of this offence is if it is committed against a minor, hence the imprisonment sentence being from five up to fifteen years.

In compliance with the Palermo Convention, Article 268 of Criminal Code of Montenegro provides for the offence of money laundering, for which imposed imprisonment sentence is from six months to twelve years, aimed at preventing attempts to conceal, through financial activities, the manner the proceeds were obtained, of those deriving from any criminal offence, including the criminal offence of smuggling of persons, illegal immigration, trafficking in human beings, etc.

Criminal Code, Criminal Procedure Code, the Law on Witness Protection, the Law on Criminal Liability of Legal Persons, the Law on Prevention of Money Laundering and Financing of Terrorism and the Customs Law, represent legal framework laying down provisions for functioning of institutions and incrimination in criminal legislation for the fight against illegal immigration and trafficking in human beings.



The Criminal Procedure Code lays down legal bases for more efficient prosecution and processing of criminal offences related to illegal immigration and trafficking in human beings, it provides for the possibility of use of special investigative methods and means (secret surveillance measures), as well as judicial protection of a witness and witness collaborator. New Criminal Procedure Code adopted in July 2009, provides for a reform of criminal procedure to a great extent, especially in regard to extended confiscation and seizure of proceeds, and international cooperation with the purpose of confiscation (Article 12).

Law on Witness Protection provides for conditions and procedures for provision of out-of-court protection and assistance to a witness, when other measures are not sufficient, and when reasonable fear exists that testifying for the purpose of bringing evidence about the criminal offence, in connection to which the protection may be provided under this Law, would expose the witness to severe threat to life, health, physical integrity, freedom or property.

Law on Criminal Liability of Legal Persons provides for the possibility of seizure of items used for or intended for commission of the criminal offence, or resulted from the commission of the criminal offence, if being owned by a legal person. The Law also provides for conditions for mandatory seizure of items, and conditions for seizure of certain items in individual cases.

Protection of foreigners for humanitarian reasons is provided for in the Law on Foreigners. A foreigner suspected to be the victim of human trafficking, as well as a minor foreigner being abandoned or the victim of organized crime, may be granted temporary residence for a period of three months up to one year, with the possibility of extension under the reasons for protections, though he/she does not fulfil the legal conditions for granting the residence.

A foreigner being granted temporary residence for humanitarian reasons may not be forcibly removed due to illegal entry or stay in Montenegro (Article 51 of the Law on Foreigners). A foreigner, whose testimony could put his /her life, health, physical integrity or freedom in danger, is granted protection and exercise of rights pursuant to the Law on Witness Protection provisions.

**9. Specify the authorities and agencies involved in combating transit migration, human smuggling and trafficking in human beings. Describe their working methods and national co-ordination structures.**

The following state bodies and organisations are involved in combating transit migration, human smuggling and trafficking in human beings:

Office for Fight against Trafficking in Human Beings; Police Directorate - Criminal Police Department (Section for Fighting Organised Crime and Corruption); Border Police Department; Supreme Public Prosecutor's Office; Supreme Court; Ministry of Labour and Social Welfare; Ministry of Interior and Public Administration; Ministry of Education and Science; Ministry of Justice (see the answer to question 129).

The Police Directorate is in charge of undertaking preventive and repressive measures and actions, aimed at identification and apprehension of perpetrators in this field, as well as protection of the potential victims of trafficking in human beings.

Criminal Police Department - Section for Fighting Organized Crime and Corruption is in charge of detections of perpetrators of the criminal offences of illegal crossing of the state border and human smuggling. Pursuant to the Law on State Border Surveillance, Law on Foreigners and Law on Registers of Permanent and Temporary Residence, the Border Police Department is in charge of suppressing illegal immigration cases without the organised crime elements.

The Police Directorate participates together with other signatories of the Memorandum, in training events aimed at preventing and detecting perpetrators of trafficking in human beings. Within its competences, the Police Directorate renders support to potential victims in the process of integration, reintegration and investigation with regard to the countries of origin, transit and final destination countries. In addition, the Police Directorate has set up mechanisms securing the police officers being available round-the-clock to provide support.

When being informed about the presence, or upon identification of a potential victim of human trafficking, Police Directorate provides for the following measures and actions, by complying with the law and Memorandum: providing a potential victim with the possibility to be cared of in the shelter for the victims of human trafficking ran by Montenegrin Women's Lobby, Safe Woman's House and Centre Plus, if the victim decides to go to a shelter; immediately informs the shelter staff about it, and escorts the victim to the shelter; informs the competent Social Welfare Centre, if a victim is a minor; Police Directorate provides a person supposed to be a potential victim of human trafficking with the full information on the services rendering assistance to the victims, in a language he/she understands, in order to enable the victim to make decision in his/her best interest, regardless of his/her readiness to testify or not; respects the privacy and identity of a potential victim of trafficking in human beings; provides a potential victim of trafficking in human beings with the human rights of victims based professional treatment; secures creation of the necessary conditions under which a victim is able of giving statement, by minimising further trauma, and; within its competences, it provides appropriate measures for protection of the potential victim of trafficking in human beings, persons closest to him/her, and the shelter staff, prior, during and after the activities undertaken during a crime scene investigation, gathering statements given by the citizens, witness interviews, up to the moment the victim is taken back to the shelter.

The Police Directorate informs the competent public prosecutor about all above-mentioned measures and actions. Police Directorate cooperates with other state authorities competent for immigration in exchanging information, aimed at securing a potential victim of trafficking in human beings a legal temporary residence, in accordance with the Instructions on conditions and regulation of foreign nationals residence - potential victims of trafficking in human beings, passed on 7 July 2005 by the Ministry of Interior and Public Administration. Upon the request of the Memorandum signatories, Police Directorate initiates the procedure for addressing residential status, or personal documents of foreign citizens pursuant to the above - mentioned Instructions. Police Directorate undertakes preventive measures pursuant to the Government of Montenegro Strategy on the fight against trafficking in human beings. Police Directorate also draws up plans for conducting the following operational activities: regular controls of cafe bars, restaurants, aimed at obtaining information, intelligence and making assessments to identify trafficking in human beings for the purpose of sexual exploitation, mediation in prostitution and other criminal offences prosecuted *ex officio*; control of entry of foreign nationals in Montenegro, their exit from the country, movements and temporary residence, as well as employment and work of foreigners, aimed at collecting and assessing information to identify whether their staying and movement might indicate illegal crossing of the state border, human smuggling and trafficking in human beings for the purpose of labour exploitation, in regard to their working engagement; control of street begging, aimed at collecting information to identify whether it is voluntary, which is a breaching of the Law on Public Peace and Order, or forced begging, as a form of trafficking in human beings related crime. In all those cases, information obtained through regular operational activities and controls at the local level, is checked and evaluated against elements of a criminal offence of trafficking in human beings or other offences, subject to prior consultations with the competent public prosecutor.

Within the Border Police Department, Section for Foreigners and Suppression of Illegal Migration is established, primarily in charge of collecting and analysing data on migration flows, and among other things, conducting and coordinating the following activities: control of movement and stay of all categories of foreigners; control of pursuing certain activities of foreigners; control of foreigners being granted special status; control of foreigners being granted permanent residence; directly monitors and addresses the issues of movement and residence of foreigners, and proposes appropriate measures; participates in planning and conducting of operational - tactical measures and actions relating to the categories of foreigners interesting from the security point of view; cooperation with border policing inspectors, border police, criminal police inspectors and with the police in general, regarding all foreigners related aspects during their stay in our country; participation in planning of the activities on enhanced control of foreigners, aimed at detecting illegal activities of foreigners and their illegal residence; proposing measures for protection of interests of foreigners during their residence in our country; undertaking measures against foreigners breaching positive legislation; keeping foreigners related records; cooperating with the

state and other bodies and organisations; escorting and deporting foreigners to the Reception Centre for foreigners, or to a border crossing point respectively; undertaking measures for the purpose of implementation of readmission agreements; registering foreigner temporary and permanent residence, and residence cancellation; issuing certificate on registered temporary and permanent residence of a foreigner; issuing visas to foreigners and keeping records; giving approvals to diplomatic and consular missions to issue visas to foreigners, and keeping related records; and other activities and tasks within the scope of its competences.

Positions of senior police officers for foreigners in charge of the control of movement and residence of foreigners, as well as for suppression of illegal immigration in Montenegro are provided within the border police branches.

Other three Border Police Department Sections are also in charge of suppression of illegal immigration (Intelligence Section, Section for State Border Surveillance and Section for the Border Crossing Checks).

Inter-agency cooperation against this form of crime is developed between the Criminal Police Department, Ministry of Interior and Public Administration, Prosecutor's Office, etc. Cooperation at the international level is developed through INTERPOL NCB Podgorica, liaison officers, Division for International Police Cooperation and European Integration, SECI Centre.

Pursuant to the Memorandum, cooperation aimed at combating trafficking in human beings is developed through efficient prosecution of the following criminal offences: trafficking in human beings pursuant to Article 444 of the Criminal Code; trafficking in children for adoption from Article 445 of the Criminal Code; submission to slavery and transportation of enslaved persons from Article 446 of the Criminal Code, and; mediation in prostitution from Article 210 of the Criminal Code.

**10. Please describe the international cooperation in place in this field (regional fora, bilateral agreements, cooperation with EU).**

In compliance with its commitments regarding efficient suppression of illegal immigration, Montenegro actively participates in the work of the following regional fora on prevention of illegal immigration:

MARRI - (Migration, Asylum, Refugees Regional Initiative)

The aim of MARRI is strengthening the efficiency of institutions and capacities for control of migration and establishing asylum regime in the Southeast Europe, in compliance with EU standards and in accordance with the model used by countries within the PHARE Programme. On 2 October 2006, Montenegro became a full member of MARRI, thus having its representative as a central contact point for consultations, dialog, training, capacity building, exchange of information and other regional activities. Montenegro has presidency over the MARRI since 29 May 2009.

The Southeast European Cooperation Process (SEECP)

Political framework of the process of cooperation includes the issues of security and stability, development of cooperation in the field of economy and environment protection, promotion of humanitarian, social and cultural cooperation, as well as in the field of justice, fight against organised crime, terrorism, trafficking in drugs, weapons and human beings. Within the process, Montenegro regularly participates in the Ministerial conferences in the field of justice and home affairs organised within SEECP process. Montenegro also became a SEECP member country at the Summit held in Zagreb, Croatia from 10 - 11 May 2007.

Southeast European Cooperative Initiative (SECI)

The initiative was launched as an idea to develop more intensive cooperation between the member countries, within the aspect of their integration into European Union structures, resulting in development of regional cooperation in the field of combating terrorism and organised crime. To

this end, Regional Centre for combating trans-border crime (SECI Centre) was established in Bucharest, Romania. In June 2008, Montenegro became a full member of SECI Centre.

#### The Stability Pact Task Force on Trafficking in Human Beings (SPTF)

Fourth Ministerial Regional Forum was held in Sofia, Bulgaria in 2003, within the Stability Pact Task Force on Trafficking in Human Beings (SPTF), represented also by the delegation of the Ministry of Interior of the Republic of Montenegro. Statement on Commitments on Victim/Witness Protection and Trafficking in Children was signed at the Conference. The delegation of the Ministry of Interior of the Republic of Montenegro participated in the Regional Ministerial Conference held in Tirana, Albania in 2002, where the Statement on protection of victims of trafficking in human beings through amendment to the existing legislation or adoption of the new one was signed.

#### International Organisation for Migration (IOM)

Competent state bodies of Montenegro develop continuous cooperation with the International Organisation for Migration (IOM) in implementation of the National Strategy for Combating Trafficking in Human Beings. The Ministry of Justice and IOM published the Manual for training of prosecutors and judges, aimed at facilitating all phases of prosecution of trafficking in human beings cases.

#### The Organisation for Security and Co-operation in Europe (OSCE)

Since 2003, the Ministry of Interior and Public Administration develops active cooperation with the OSCE, pursuant to Memorandum of Cooperation signed by the OSCE and Montenegro.

Montenegro develops continuous cooperation with other countries in the field of combating trafficking in human beings. The list of signed bilateral cooperation agreements is provided within the answers 13b and 139 of this Chapter.

Montenegro actively participates in all projects aimed at strengthening and developing international cooperation in combating trafficking in human beings, with the countries of the Southeast Europe, in particular. In this regard, two projects initiated by the International Centre for Migration Policy Development (ICMPD) are especially important.

The first project titled Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe is being implemented in Montenegro since 2006 and is implemented within three phases.

The Programme first phase included assessment of the level of support being provided to the victims of trafficking in human beings; appointment of the Steering Committee for implementation of the programme comprised of the national coordinators from all the countries where the programme is implemented (Montenegro, Serbia, Bosnia and Herzegovina, Croatia, Albania, Bulgaria, Romania, Moldova and Kosovo), the ICMPD partner representatives within the Programme, representatives of MARRI Centre, ACTA Network and the Ministry of Interior of Bulgaria; liaison officer for cooperation between Montenegro and ICMPD was appointed; National team for implementation of the Project was established; the needs analyses of the victims of human trafficking within the procedure of providing support and protection were made, based on which the guidelines for development of Transnational Referral System were set up, as standard operating procedures at the transnational level.

Two national workshops were organised within the second phase of the Project. Participants from the governmental institutions, NGO sector and international organisations exchanged their opinions on TRM guidelines, aimed at harmonising TRM guidelines with national legislation and existing mechanisms. The workshop was organized by ICMPD in close cooperation with the National Coordinator Office for Fight against Trafficking in Human Beings and the OSCE, preceded by signing Memorandum of Cooperation and its Annexes. The second national workshop was organised as a follow up to assess the results from the previous one, aimed at implementation of the final phase of harmonisation of TRM guidelines with the national mechanisms. Conclusions and recommendations, adopted at the workshops were incorporated in the final draft of Transnational Referral Mechanisms. The second phase of the TRM project was finalised by holding the second regional seminar in Sarajevo, Bosnia and Herzegovina, where the participating countries presented national results achieved in the implementation and exchange of experience.

Within the third, so called pilot or testing phase, the TRM Guidelines were applied in concrete cases. However, this phase was applied in Montenegro by use of simulated cases. Training events were organised for representatives of the police, health care institutions, social welfare centres, public prosecution office, NGOs; the lecturers at the training events were the National Implementation Team members.

Signing Memorandum of Cooperation by the countries participating in the Project will be taken in consideration at the National Coordinators Meeting, scheduled for October 2009 in Vienna, Austria.

Within the second ICMPD Project, two databases were created: the database on the victims of human trafficking, and the database on perpetrators of trafficking in human beings.

National Coordinator Office for Fight against Trafficking in Human Beings, enhances and develops cooperation through participation in the work of the following regional conferences and seminars, and other events:

- Vienna Forum, organized within Global Initiative to Fight Human Trafficking (UN.GIFT), from 13 to 15 February 2008, gathering together representatives from 116 countries.
- The Fourth Regional Conference on Suppressing Trafficking in Human Beings, organised by CARE International, in cooperation with the local partner organisations in Sarajevo, BiH, from 24 to 28 March 2008.
- Roundtable on Suppressing Trafficking in Human Beings - repatriation and reintegration of victims, held in Zagreb, Croatia on 9 April 2008, organized by the Department for Human Rights of the Government of Croatia, and the Ministry of Foreign Affairs and European Integration.
- Seminar on Programme to Support the Development of TRM for Trafficked Persons in South-Eastern Europe, held in Rome, Italy, from 19 to 22 May 2008 within the two-year Project initiated by International Centre for Migration Policy Development.
- International Conference entitled Successful Conducting of Criminal Proceedings against Perpetrators of Trafficking in Human Beings - Challenges and Good Practices, held in Helsinki, Finland, from 10 to 11 September 2008.
- Regional Meeting on Fight against Trafficking in Human Beings and Money Laundering, organized by the OSCE in Lamaca, Cyprus, from 18 to 19 September 2008.
- Technical Seminar on National Reporters and Proper Mechanisms in Fight against Trafficking in Human Beings, organised by the OSCE in Vienna, Austria, from 23 to 24 September 2008.
- The Third World Congress against Sexual Exploitation of Children and Adolescents, organised by UNICEF, held in Rio de Janeiro, Brazil, from 25 to 28 November 2008.
- Final Conference entitled Guiding Principles on Memoranda of Understanding between Key Stakeholders and Law Enforcement Agencies on Counter-Trafficking Cooperation, organised by IOM and UN.GIFT, in Vienna, Austria, on 30 March 2009.
- International Conference, held in Budva, Montenegro in May 2009, on exchange of TRM for trafficked victims related experience, organised by ICMPD.
- Regional Seminar on Programme to Support the Development of Transnational Referral Mechanisms for Trafficked Persons in South-East Europe, held in Ohrid, Macedonia, from 1 to 4 June 2009.

**11. Please provide information on methods of data collection on third country nationals refused entry and of apprehensions of third country nationals found to be illegally present on national territory. (In answering this question it is recommended to use the information to be submitted to EUROSTAT for the joint annual questionnaire on migration).**

Border Police Department is centralised organisational unit of the Police Directorate, involving seven border police branches, in charge of surveillance and checks of the crossing of the state

border. Maritime Border Police Branch in charge of blue border surveillance is also within the Department structure.

Pursuant to the competences provided for in the legislation, Border Police Department established the methodology of reporting and collecting data on border situation; Department, among other things, keeps records on persons prohibited from entry in Montenegro, pursuant to Article 8 of the Law on Foreigners (Official Gazette of Montenegro 82/08).

Article 8 of the Law on Foreigners provides for prohibition from entry of a foreigner if: 1) he/she does not fulfil conditions laid down in Article 10 (a foreigner may enter, move or reside in Montenegro, with a valid travel document containing visa or a residence approval, unless otherwise provided by this law or international treaty); 2) he/she does not have sufficient means of subsistence during the stay in Montenegro, for return to the country of origin, or for travel to a third country; 3) he/she is transiting, not fulfilling the conditions for entry into a third country; 4) he/she is imposed a protective measure of removal, security measure of expulsion, or if he/she has been cancelled residence; 5) it is required for reasons of national security, public order or public health; 6) he/she is registered as an international offender in relevant records. Prohibition from entry is affixed into a foreigner valid travel document.

Pursuant to Article 97 of the Law on Foreigners, the Police Directorate, among other things, keeps records on: foreigners being cancelled residence; foreigners prohibited from entering or exiting Montenegro; visas issued at the border crossing points; denied visa applications; annulled and shortened visas; reported and lost foreigner identification documents; travel documents being temporary seized.

Therefore, border police organisational units at the regional level keep daily records on denied entries in Montenegro, foreigners whose residence is cancelled, and those illegally staying in Montenegro, which is in writing reported to the Border Police Department. In addition, monthly, semi-annual and annual reports being submitted, involve data on nationals being denied entering, and those whose residence is cancelled, with the supporting reasons.

In 2007, 1 363 foreigners were denied entry; 2 055 foreigners were denied entry in 2008. In the first seven months of 2009, 1 322 foreigners were denied entry.

Nationals	Number of denied entries in 2007	Nationals	Number of denied entries in 2008
1. Serbia (and Kosovo)	411	1. Albania	393
2. Albania	289	2. Serbia	374
3. Bosnia and Herzegovina	225	3. Bosnia and Herzegovina	368
4. Turkey	162	4. Kosovo	213
5. Croatia	19	5. Turkey	164
6. China	18	6. Germany	48
7. Kazakhstan	13	7. Macedonia	29
8. Brazil	12	8. Croatia	24
9. USA	11	9. Brazil	21
10. Romania	7	10. Nigeria	12

Total number of denied entries	<b>1363</b>	Total number of denied entries	<b>2055</b>
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Pursuant to Article 61 of the Law on Foreigners, illegal residence is considered to be the following: a foreigner residing without visa, residence approval or other legal basis.

Basic method for collecting data used by the Police Directorate regarding illegal immigrants, includes intelligence collected by the border police officers, police officers for foreigners and all other police officers, labour inspectors, other state bodies and institutions, citizens, etc.

All data on actions taken by the officers in regard to foreigners are entered in the records on measures taken in regard to foreigners, and are on the same day communicated in writing to the Ministry of Foreign Affairs of Montenegro, through the Section for Foreigners and Suppression of Illegal Immigration - Border Police Department. Records are kept in regard to citizenship, type of misdemeanour, type of measure taken against a foreigner, etc., which is used for statistics purposes and analytical addressing of the issue.

**12. Provide statistics on the number of apprehended third-country nationals found to be illegally present in your country in 2007, 2008 and, if available, 2009. Please indicate which nationalities were most frequently represented, which routes and methods were used, and recent trends as well as how many of those apprehended were effectively removed from the country.**

In 2007, 53 third country nationals were detained, on the grounds of illegal residence in our country, in 2008, 365, and 247 in the first seven months of 2009. The majority of them were nationals of the Republic of Albania, Republic of Kosovo, Republic of Turkey, Republic of Macedonia and Republic of Tunisia.

The processed cases and collected intelligence at the national and international level indicated the following migration routes:

- From the Republic of Kosovo through the territory of Montenegro, Bosnia and Herzegovina, Republic of Croatia and Republic of Slovenia, to the Republic of Italy and other EU countries;
- From the Republic of Kosovo through the territory of Montenegro and Republic of Croatia, to the Republic of Italy and other EU countries;
- From the Republic of Kosovo through the territory and territorial waters of Montenegro to the Republic of Italy;
- From the Republic of Albania through the territory of Montenegro, Bosnia and Herzegovina, Republic of Croatia and Republic of Slovenia, to the Republic of Italy and other EU countries;
- From the Republic of Albania through the territory of Montenegro and Republic of Croatia, to the Republic of Italy and other EU countries;
- From the Republic of Albania through territorial waters of Montenegro, to the Republic of Italy;
- From the Republic of Turkey to Montenegro by air, and further on to Bosnia and Herzegovina, Republic of Croatia and Republic of Slovenia, to the Republic of Italy and other EU countries by land;
- From the Republic of Turkey to Montenegro by air and further on to the Republic of Croatia and Republic of Slovenia and other EU countries by land;
- From the Republic of Turkey to Montenegro by air and further on to the Republic of Serbia, Republic of Croatia, Republic of Slovenia and other EU countries by land;
- From the Republic of Turkey through the Republic of Macedonia, Republic of Albania, Montenegro, Bosnia and Herzegovina, Republic of Croatia and Republic of Slovenia, to other EU countries;

- From the Republic of Turkey through the Republic of Macedonia, Republic of Kosovo, Montenegro, Bosnia and Herzegovina, Republic of Croatia and Republic of Slovenia, to other EU countries;
- From the Republic of Turkey through the Republic of Macedonia, Republic of Albania, Montenegro, Republic of Croatia and Republic of Slovenia, to other EU countries;
- From the Republic of Turkey through the Republic of Macedonia, Republic of Kosovo, Montenegro, Republic of Croatia and Republic of Slovenia, to other EU countries;
- From the Republic of Turkey through the Republic of Macedonia, Republic of Albania, Montenegro, Republic of Serbia, Republic of Croatia and Republic of Slovenia, to other EU countries;
- From the Republic of Turkey through the Republic of Macedonia, Republic of Kosovo, Montenegro, Republic of Serbia, Republic of Croatia and Republic of Slovenia, to other EU countries.

Obtained intelligence indicates that illegal immigrants originating from the Republic of Turkey use the possibility of visa free regime for entry and transit through the territory of Montenegro and further on towards EU countries. In 2007, 162 nationals of the Republic of Turkey were denied entry in Montenegro, whereas in 2008, 164 of them.

### **13. Specify your return policy, including:**

The return policy of foreigners is based on ratified international readmission (return and admission) agreements of persons without residence permit, and the Law on Foreigners (Official Gazette of Montenegro 82/08).

Residence of a foreigner who is not in possession of visa, residence permit or other legal grounds, is considered to be illegal residence. Return of foreigners residing illegally on the territory of Montenegro, to the countries readmission agreements were concluded with, is carried out pursuant to those agreements, and in the manner provided therein. There were no cases of removal of foreigners residing illegally in Montenegro pursuant to the readmission agreements, registered in 2007, 2008, and in the first seven months of 2009.

When a foreigner residing illegally in Montenegro cannot be returned pursuant to readmission agreements, the return is carried out pursuant to the Law on Foreigners. Pursuant to the Law, a foreigner residing illegally, or being imposed security measure of expulsion, protective measure of removal from the territory of Montenegro, or being cancelled residence in Montenegro, must leave the territory immediately, or within established time limit. The time limit within which a foreigner must leave the territory is established in a decision issued by the police and, if needed, a border crossing point is specified too, as well as the obligation to inform a border police officer accordingly. An appeal against the decision may be lodged to the Ministry of Interior and Public Administration, within three days from the date the decision was received, and the Ministry of Interior and Public Administration shall decide upon the appeal within eight days from its reception. The appeal does not postpone enforcement of the decision. In cases of misdemeanour liability for misdemeanours provided for by this Law, a foreigner may be imposed protective measure of removal. When deciding upon imposing protective measure of removal, the following is taken into consideration: duration of residence, personal, family, economic and other circumstances, the time limit within a foreigner has to leave Montenegro, not exceeding 30 days, as well as the period of prohibition from entry in Montenegro. A foreigner who fails to leave Montenegro within prescribed period, is removed forcibly by the police.

A foreigner cannot be forcibly removed to a country where his/her life or freedom might be threatened on the account of his race, religion or nationality, special social or political affiliation, or where he/she would be exposed to torture, inhuman and degrading treatment, and punishment.

Aimed at securing forced removal, a foreigner may exceptionally be temporarily kept in police custody, pursuant to the law regulating police matters, but not longer than 12 hours. Pursuant to Article 67 of the Law, freedom of movement of a foreigner who cannot be immediately forcibly



removed, or whose identity is not established, shall be restricted by accommodating him/her in the Reception Centre for Foreigners, or in other appropriate accommodation for the persons with special needs. Accommodation in the Reception Centre is allowed for 90 days, and it can be extended for another 90 days, if the procedure of establishing identity or obtaining data is ongoing, if required for security reasons, or if a foreigner purposely distorts forced removal. As Montenegro still does not have in place Reception Centre for Foreigners, and the activities on its construction are in progress, accommodation of foreigners residing illegally in Montenegro is provided in cooperation with non-governmental organizations. A foreigner who is not provided with accommodation or means of subsistence, and may not be forcibly removed, can be imposed compulsory residence in a specified location.

During forcible removal, special needs of foreigners, especially minors, those partially or completely incapable for work, children separated from parents or custodian, disabled persons, elderly persons, pregnant women, single parents with underage children, as well as those exposed to torture, rape or other serious forms of psychological, physical or sexual violence, are taken into consideration. The Police Directorate is obliged to treat those persons in compliance with international treaties and legislation providing for the position of persons with special needs.

The costs of forcible removal are covered by a foreigner. If a foreigner does not have funds to cover the costs, they are reimbursed by: a natural or legal person, committed to reimburse the costs of residence of a foreigner; a carrier who transported to a border crossing point a foreigner not fulfilling the conditions for entry, movement or residence on the territory of Montenegro; an employer who hired a foreigner contrary to the provisions of the law regulating work and employment of foreigners. Costs that cannot be reimbursed in the above-mentioned manner are covered from the Budget of Montenegro.

**a) Number of return decisions and carried out removals and destination of returns in 2007, 2008 and, if available, 2009;**

Pursuant to readmission agreements, no cases of removal of foreigners residing illegally in Montenegro were registered in 2007, 2008 and in the first seven months of 2009.

The Police Directorate issued: in 2007, 466 decisions on cancellation of residence (Albania 217, Macedonia 189, Bosnia and Herzegovina 26, Turkey 11, Ukraine 5, Russia 5, Georgia 5, Romania 3, Bulgaria 2, Tunisia 2 and Latvia 1); in 2008, 289 decisions on cancellation of residence (Albania 122, Macedonia 115, Bosnia and Herzegovina 10, Turkey 15, Ukraine 6, Romania 4, Moldova 4, Tunisia 3, Croatia 3, Kosovo 2, Georgia 1, Bulgaria 1, France 1, Germany 1 and Lithuania 1); for the first seven months of 2009, 227 decisions on cancellation of residence (Albania 91, Macedonia 29, Bosnia and Herzegovina 8, Turkey 15, Serbia 10, Ukraine 3, Romania 2, Croatia 1, Kosovo 64, Bulgaria 1, Germany 1, Greece 1 and Switzerland 1). All foreigners who being cancelled residence left Montenegro within imposed time limit to leave the country.

**b) Readmission agreements (and other working arrangement facilitating return)**

So far, Montenegro concluded readmission agreements with the European Community, the Republic of Croatia and Bosnia and Herzegovina and the Republic of Albania. The Agreement with the EC entered into force, and has been implemented since 1 January 2008; implementation of domestic legal procedures, necessary for agreements with the Republic of Croatia, Bosnia and Herzegovina and Republic of Albania to enter into force is in progress.

The initiatives for negotiations on harmonisation and conclusion of readmission agreements were referred to the Republic of Serbia, Republic of Macedonia, Russian Federation and Republic of Turkey, but still no confirmation on acceptance of the initiative are received. Negotiations are completed concerning the conclusion of the Agreement between Montenegro and Swiss Confederation on the readmission (return and admission) of persons without the residence permit.

The text of the Agreement is completely harmonised and ready to be signed, and it is expected that it will be signed very soon. There are ongoing negotiations with the Republic of Albania, initiated by Montenegro. The majority of issues were agreed upon, and it is expected for the agreement to be harmonised and signed by the end of year. The initiatives for conclusion of readmission agreements were received from the Norway; the Republic of Moldova and Iceland. There are ongoing activities on preparation of the negotiating positions, and the respond to the initiative.

Aimed at facilitating implementation of the Readmission (return and admission) Agreement of persons residing without residence permit that has been concluded between Montenegro and the European Community, Protocol on Implementation was signed with the Republic of Slovenia and negotiations are completed regarding the conclusion of the Protocol between the Government of Montenegro and the Government of the Federal Republic of Germany on the implementation of the Agreement between the Republic of Montenegro and the European Community on readmission (return and admission) of persons without the residence permit. The text of the Protocol is fully harmonised and ready to be signed. Montenegro initiated conclusion of Implementation Protocols with the Republic of Austria, the Republic of Bulgaria, United Kingdom, Republic of Hungary, Republic of Italy, Czech Republic, Republic of Estonia, Republic of Malta, Kingdom of the Netherlands, Slovak Republic, Kingdom of Spain, Grand Duchy of Luxembourg, and Kingdom of Belgium. The above-mentioned countries confirmed the initiative, and some concrete suggestions were shared aimed at harmonising the text of the agreements.

We expect positive response on initiative to conclude Implementation Protocol from: the French Republic, Hellenic Republic, Romania, Republic of Poland, Republic of Cyprus, Republic of Finland, Republic of Latvia, Republic of Lithuania, Portuguese Republic and Kingdom of Sweden.

Pursuant to the Decision on Declaration of Independence of the Republic of Montenegro, bilateral readmission agreements concluded by the State Union of Serbia and Montenegro are taken over and are being implemented. Out of the readmission agreements which are taken over, it should be pointed out that the agreement concluded between the Government of the Federal Republic of Yugoslavia and the Government of the Kingdom of Denmark of persons who do not, or no longer fulfil the conditions for entry to, or residence on the territory of the other country (Official Gazette of the Federal Republic of Yugoslavia - International Treaties 12/2002), and the agreement between the Government of the Federal Republic of Yugoslavia and the Swiss Federal Council of Yugoslav and Swiss nationals bound to leave their territories (Official Gazette of Serbia and Montenegro - International Treaties 3/2004), are being implemented.

### **c) Authorities competent to deal with readmission applications**

Ministry of Interior and Public Administration – Section for Foreigners, Migrations, Visas and Readmission, is competent for processing readmission applications. The police – Border Police Department, is competent for processing the applications for transit of persons and admission under shortened procedure.

## **Asylum**

### **14. Please provide information on legislation or other rules governing your asylum policy.**

The Asylum policy in Montenegro is governed by the Law on Asylum and the secondary legislation.

Law on Asylum (Official Gazette of the Republic of Montenegro 45/06) entered into force on 25 July 2006, and it has been implemented since 25 January 2007.

The fundamental principles of the Law are the following: principle of subsidiary protection; principle of prohibition of return and expulsion (non-refoulement); non-discrimination principle; confidentiality and data protection; family reunification; non-punishment for unlawful entry or residence; protection of persons with special needs; respect of gender; obligation to respect legal order; legal protection; obligation to cooperate with UNHCR and others.

Secondary legislation:

Decision on layout and content of forms and procedure of issuing documents to asylum seeker, a person being granted refugee status, a person being granted subsidiary protection, and a person being granted temporary protection (Official Gazette of Montenegro 13/09);

Decree on content and procedure of records keeping in the field of asylum (Official Gazette of Montenegro 09/08) ([Annex 180](#));

Decree on financial aid to a person seeking asylum, being granted refugee status, and subsidiary protection (Official Gazette of Montenegro 56/08) ([Annex 181](#));

Rulebook on asylum applications forms and record forms of orally submitted asylum application (Official Gazette of Montenegro 04/07);

Rulebook on procedure for taking photo, fingerprints, signatures and other data from asylum seeker (Official Gazette of Montenegro 04/07).

Secondary legislation regulates a manner of issuing and layout of the documents being issued to asylum seekers, or persons being granted some other form of protection, manner of keeping records of first instance body in the asylum procedure, right to social welfare, as well as the amount of allowance being paid off, the procedure and manner of submission of applications, and establishing identity of asylum seekers.

## **15. Describe your asylum procedure at first and second instances:**

Law on Asylum provides for the principles, conditions and procedure for granting asylum, recognising refugee status, and approval of subsidiary and temporary protection, bodies competent for making decisions, rights and obligations of asylum seekers, of those being recognised refugee status and approved subsidiary or temporary protection, as well as the reasons for cessation and revocation of refugee status and subsidiary protection, and cessation of temporary protection.

Provisions of the Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03) are applied in the asylum procedure, unless otherwise provided by the Law on Asylum.

### **a) normal and accelerated (if any)**

An asylum application is submitted to the Asylum Office within the Ministry of Interior and Public Administration.

The Law on Asylum provides for that the competent body (Refugee Care and Support Office) provides accommodation, if needed, to asylum seeker in the Reception Centre for Asylum Seekers, or some other facility for collective accommodation. A person who has financial means, or being in a position to secure accommodation and sustenance in another way, may be accommodated outside the Centre, or other facility for collective accommodation.

First instance body issues decision on asylum application within a period not exceeding 90 days, from the date of submission of application. The form of decisions to be issued in the procedure upon asylum application is laid down in the Law on General Administrative Procedure. Decisions are made in written and individually, grounded on facts, evidence, as well as information on a country of origin, and include instruction on the right of appeal. Positive decisions (decision on

recognising refugee status or approval of subsidiary protection) include rights provided for in the Law on Asylum. Decisions are translated in a language which a person seeking asylum has indicated to understand, and are delivered to asylum seeker and his/her legal representative.

Types of decision pursuant to the Law on Asylum:

- Decision on approval of application and recognising refugee status or granting subsidiary protection;
- Decision on rejecting the asylum application;
- Decision on termination of procedure.

An appeal may be lodged against a decision of first instance body. An appeal is lodged to the State Asylum Appeals Commission, within 15 days from the date the first instance decision was delivered, and decision upon appeal is issued within 60 days from the date of submission of appeal.

Pursuant to the Law on Asylum, asylum seeker is provided with certain rights and obligations during the procedure. Rights of an asylum seeker are the following: residence and freedom of movement; identification document confirming his/her identity, legal status, residence and other rights provided for in the law; laissez passer for a foreigner for travelling abroad, pursuant to the regulations on residence of foreigners; free elementary and high school education in public schools; provision of accommodation, if needed, and appropriate living standard; health care, in compliance with separate legislation; family unification; legal aid; work within the Centre or other collective accommodation facility; social welfare; freedom of religion; access to the United Nations High Commissioner for Refugees and non-governmental organizations for obtaining legal aid within the asylum procedure; humanitarian aid.

Obligations of asylum seeker are the following: residence in the Centre or other collective accommodation facility, unless being provided with accommodation and sustenance in another way; cooperation with the bodies competent for implementation of this law, handing over of identification and all other documents in his/her possession, enabling a personal search and a search of luggage and vehicle, providing data on property and income, and other data that may be used as evidence in the procedure; to be available and to respond to summons from the Office and the competent body; to report to the competent body change in finances and property, that could affect eligibility for the right to social welfare, accommodation, sustenance, health care and other rights; to report change of a place of residence and whereabouts to the Office, within three days from the date of change, provided that he/she has provided accommodation himself/herself; not to leave Montenegro without permission, while the asylum procedure is pending; to undergo a medical examination and other measures aimed at preventing the spread of infectious diseases, pursuant to the health care related legislation; to respect the Centre house rules, or of another collective accommodation facility; to abide by the decision on temporary restriction of movement.

Accelerated procedure is applied when asylum application is manifestly unfounded. Pursuant to Article 41 of the Law on Asylum, an asylum application is manifestly unfounded, if the person has no valid grounds for the application on account due to fear of persecution in a country of origin, or if an application is based on deliberate fraud or abuse of the asylum procedure.

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

1. The application is based on economic reasons or better living conditions;
2. The application is entirely lacking information indicating the exposure to fear of persecution in the country of origin, or his/her statement does not contain any circumstances or details of personal persecution;
3. The application obviously lacks credibility, and the person statement is inconsistent, contradictory or realistically impossible;
4. It may be generally considered that no fear of persecution can exist due to the overall political circumstances, legal situation or implementation of the laws in the country of origin or third country, unless he/she can prove that the country is not safe for him/her;

5. The person was previously banned from entering Montenegro, pursuant to the law, and reasons for prohibition have not changed.

An asylum application shall be considered to be based on deliberate fraud or abuse of the procedure, if:

1. The application is based on a false identity or forged documents, unless he/she provides justified reasons for that;
2. The asylum seeker, after submitting the asylum application, deliberately gives untruthful statements, orally or in writing, which are relevant for granting refugee status;
3. The asylum seeker deliberately destroys, damages, hides documents or evidence relevant for the application, or he/she has used another travel document, other document or ticket, with the intention of creating a false identity or impede processing of applications;
4. The asylum seeker deliberately conceals that he/she had already submitted an asylum application in other country, especially if he/she had used a false identity;
5. He/she files the application with the intent to avoid expulsion from Montenegro, even though there were sufficient opportunities to file the asylum application earlier;
6. The asylum seeker has manifestly failed to comply with relevant obligations relating to the asylum procedure provided for in this law;
7. The asylum seeker has concealed that his/her application for asylum in Montenegro, or another country, after being processed in a procedure that incorporated appropriate procedural guarantees laid down in international documents was rejected, and the circumstances on which the application was based have not changed;
8. The asylum seeker has been granted asylum in other country, and he/she continues to enjoy the protection of that country.

In cases when determined that application is manifestly unfounded, it is rejected by the decision. The decision is issued within 15 days from the date of the submission of application. An appeal may be lodged against the decision of first instance body within eight days from the date of its receipt. Second instance body issues decision on the appeal within 15 days from the date the appeal has been lodged.

#### **b) number and types of appeals;**

From 1 August 2007 to 1 August 2009, there were 19 appeals lodged against the first instance body decisions. The second-instance body rejected 13 appeals as ungrounded, and 6 appeals were accepted and returned for renewed procedure to the first-instance body. Out of that number, the first instance body discontinued one procedure by the decision, and for the remaining five, the procedure is pending decision.

Pursuant to Article 17 of the Law on Asylum, an appeal may be lodged against all decisions of the first instance body in charge of running the procedure.

An appeal is lodged within 15 days from the date the first instance decision was submitted, except in cases of manifestly unfounded asylum applications, and decision on discontinuation of procedure, hence the appeal is lodged within eight days.

#### **c) which bodies are competent and how are they composed;**

The Ministry, i.e. the Asylum Office as a separate organisational unit, conducts the first instance procedure, it receives applications and makes decisions on applications, conducts the procedure

and issues decisions on cessation and revocation of asylum, and it performs other tasks pursuant to this law.

The procedure upon appeals lodged against decisions of the first instance body, is conducted by the State Asylum Appeals Commission, which is set up by the Decision of the Government of Montenegro (Official Gazette of Montenegro 10/07), and it is composed of a president, vice-president and three members. The president and vice-president are judges of the Administrative Court of Montenegro, while members of the Commission are the court expert assistants, appointed by the Government for a four-year term.

**d) assessment of the average duration of the procedures;**

Based on the records kept by the Asylum Office, from the moment a person submits an asylum application, until the moment of adoption of a second instance decision and it becomes final, average duration of the procedure is 90 days.

**e) identification of services involved and number of staff dedicated to asylum procedures;**

Asylum related tasks within the competences of Ministry of Interior and Public Administration, are conducted by the Asylum Office staff. The Asylum Office was set up in 2007, within the Ministry of Interior and Public Administration, precisely within the Department for Administrative Internal Affairs.

Pursuant to the Ministry of Interior and Public Administration's Rulebook on internal organisation and job descriptions, six positions are provided: head of the office, three officers for conducting the procedure, an officer for collection of data on countries of origin and an administrator. At the moment, four positions are occupied: head of the Office, two officers in charge of the procedure and an administrator. Positions of one officer for conducting the procedure, and of one officer for collection of data on countries of origin are vacant. Officers conducting the procedure perform also the duty of collection of data on countries of origin.

**f) methodology for country of origin information.**

Pursuant to the Law on Asylum, information and data on the situation in a country of origin of an asylum seeker, or a person being granted asylum, can be obtained and requested from various sources, including UNHCR Human Rights Watch, Amnesty International, Helsinki Committee. In addition, the Asylum Office gathers some information on countries of origin through the Ministry of Foreign Affairs.

While gathering and using information on countries of origin, the Asylum Office staff is guided by the following principles: relevancy of information in regard to a motive for asylum; objectivity; source reliability; accuracy; information being updated and transparency.

**16. Do you apply the following concepts (if yes, how?):**

**a) safe third country;**

The Law on Asylum does not recognise concepts of safe third country and safe country of origin. The Law only defines country of origin as a country or countries whose citizenship a foreigner has, or where a stateless person had permanent residence.

**b) safe country of origin;**

The Law on Asylum does not recognise the concept of safe country of origin. The Law only defines country of origin as a country or countries whose citizenship a foreigner has, or where a stateless person had permanent residence.

**c) manifestly unfounded claims.**

For answer to the question on manifestly unfounded claims, see the answer to the question **15 a.**

**17. Describe the procedural guarantees for asylum applicants:**

**a) information, interview, right to counsel and representation, interpretation/translation;**

**Information**

An asylum seeker is provided with relevant assistance and informed in writing on the conditions and procedure for granting asylum, rights and obligations, and how to get in contact with persons providing legal aid, UNHCR and other organisations in charge of protection of refugees rights, and in a language he or she can be reasonably expected to understand.

**Interview**

After submitting asylum application, an asylum seeker is enabled as soon as possible to present the facts and circumstances relevant for decision making. The Asylum Office staff informs in writing an asylum seeker (in a language he/she understands), authorised legal representative (if a person has one), UNHCR representative and interpreter, on date, time and place where the statement will be given by the asylum seeker. If the asylum seeker does not show up at the scheduled interview, he/she is invited for the second time. If he/she does not appear following the repeated summon, without previously providing justified reason, the decision on discontinuation of the procedure is issued. Asylum seeker has the right of appeal against the decision within eight days from the date of submission of the decision.

Aimed at making decision upon asylum application, an officer running the procedure, conducts one or several interviews with an asylum seeker. An officer running the procedure is obliged to warn the asylum seeker of his/her obligation to cooperate throughout the procedure, to enable access to all evidence he/she possesses, to submit documents and provide and explain the facts and circumstances relevant for decision making. An officer running the procedure is also obliged to ensure that lack of knowledge and experience do not undermine the rights of asylum seeker.

The interview is conducted under conditions which secure the confidentiality of the procedure following the principle of “public exclusion”, and data confidentiality and protection. Counsellor, authorised legal representative or guardian of minor or an adult incapable of working, a representative of UNHCR and an interpreter may be present during giving the statement. The record on every interview are taken, involving data on an asylum seeker, as well as information on an application, in a way presented by the asylum seeker, which is read out to the asylum seeker and signed by the persons taking part in the procedure. Giving a statement may be audio recorded, of which the asylum seeker must be informed.

### **Right to Counsel and Representation**

Pursuant to the Law on Asylum, an asylum seeker has the right on legal aid. A person can engage a counsel, or can choose free legal aid.

The Asylum Office staff informs in writing the asylum seeker, in a language he/she indicated to understand, in order to be thoroughly informed on the way of exercising the rights and the organisation providing legal aid. Asylum seekers can exercise right to legal aid, through assistance provided in regard to submission of asylum application, during the interview, exercising rights provided for in the Law on Asylum, as well as in making written submissions, including the appeal. In Montenegro, a non-governmental organisation deals with provision of legal aid asylum seekers. Pursuant to the Law on Asylum, during the procedure they are informed in writing, on date and time a person is summoned to give a statement, and the first instance and second instance decisions are delivered directly to the asylum seekers or their counsels. The Asylum Office staff informs the counsellor on a place where the person is accommodated, in order to have the possibility to communicate with their parties throughout the procedure.

### **Interpretation and Translation**

Pursuant to the Law on Asylum, if an asylum seeker does not understand the language being in official use in Montenegro, he/she follows the course of the procedure and takes part in his/her own language, or in a language he/she indicated to understand, through an interpreter provided by the Asylum Office. An asylum seeker may engage his or her own interpreter. Evidence submitted along with the asylum application written in a language and script not being in official use in Montenegro, have to be translated, if relevant for making decision. Asylum seekers are provided with the possibility to submit asylum application, give statement on facts and circumstances relevant for making decision, information on conditions and procedure for granting asylum, rights and obligations and communication with UNHCR in a language they understand. Also, the same language is used in all written communication with them: summons for submission of asylum application (if persons have not addressed directly to the Office, but some other body), summon for an interview, information on free legal aid, first instance decision, second instance decision, etc.

### **b) independence of review and appeal procedures;**

Pursuant to Article 17 of the Law on Asylum, an appeal can be lodged against all decisions of the first instance body conducting the procedure.

An appeal is lodged within 15 days from the date the first instance decision was submitted, except in cases of manifestly unfounded asylum applications, and decision on discontinuation of procedure, hence the appeal is lodged within eight days.

Provisions of the Law on General Administrative Procedure are applied in the appeal procedure of the first and second instance bodies, reasons for refuting decision with an appeal, and in other procedures not regulated by the Law on Asylum.

The second instance body – the State Asylum Appeal Commission, makes a decision by a majority of votes out of total number of the members. The second instance body submits its decision to the first-instance body in several copies, which is obliged to deliver to the parties within eight days from the date of receipt of the documents. Decision is submitted to an applicant in a language in which he/she has taken part in the procedure.



An administrative dispute may not be lodged against a decision of the second instance body. An appeal has suspensory effect, meaning it postpones the execution of the first-instance decision, until the decision becomes final.

**c) measures for unaccompanied minors.**

After establishing his/her identity, and the fact that a minor is unaccompanied, he/she is provided with a guardian. Asylum application for an unaccompanied minor is resolved on a priority basis, and the first-instance decision is made within 30 days from the date of the application submission.

The State Asylum Appeal Commission makes decisions upon the appeal lodged against the decision on rejection of asylum application for unaccompanied minor within 15 days from the date the appeal was lodged.

In the procedure, care is being taken regarding accommodation, psychological and physical condition, and the best interest of a minor, and measure are undertaken for tracing family members.

**18. What concept of protection do you apply?**

**a) How do you apply the 5 grounds in article 1A and the exclusion clauses of Article 1F of the 1951 Convention?**

Pursuant to Article 2 of the Law on Asylum, the refugee status will be granted to a foreigner if, after filing asylum application, it has been established that fear of persecution for reasons of race, religion, association with a nation or particular social group, or political opinion in his/her country of origin is justified, and due to the fear he/she is unable or unwilling to avail himself/herself of the protection of the country of origin.

Article 36 of the Law on Asylum, prescribes that the refugee status will not be granted to a foreigner reasonably suspected to have:

- Committed a crime against peace, a war crime or a crime against humanity, within the meaning of international instruments containing provisions on such crimes;
- Committed a serious crime under international law, outside Montenegro and prior to arrival in Montenegro;
- Found guilty of an act contrary to the objectives and principles of the United Nations.

**b) Are non-state agents of persecution included in your understanding of the refugee definition of Article 1A GC?**

Non-state agents of persecution are not included in the definition of a refugee provided for in Article 1A of the Convention. However, pursuant to Article 40 of the Law on Asylum, an asylum application is rejected provided that it is established that the persecution is limited to a part of the country whose citizen he/she is, or in which a stateless person has permanent residence, unless if based on all the circumstances, it cannot be expected that the person will receive protection in another part of the country.

**c) Do you have in place subsidiary protection(s)?**

If first-instance body, after the procedure upon asylum application is being enforced, establishes that the conditions for granting refugee status have not been fulfilled, it is obliged to establish whether the conditions for granting other form of protection under this law have been fulfilled. Articles 53 to 56 of the Law on Asylum regulate subsidiary protection. Subsidiary protection, as an supplementary protection, is granted to a foreigner who has not fulfil conditions for granting refugee status, but who would, if returned to the country of origin or other country, be subjected to torture or inhuman or degrading treatment or punishment, or his/her life, safety or freedom would be threatened on account of general dimension violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances seriously threatening life, safety or freedom.

Subsidiary protection lasts for one year, and it can be extended for six months, as long as the reasons it has been granted for exist.

**d) Do you have in place a temporary protection system to deal with mass influx of displaced persons?**

Articles 57 to 62 of the Law on Asylum, provide for temporary protection. Temporary protection is an urgent and exceptional measure of providing protection to foreigners in the case of a mass, sudden or expected influx from a country where their life, safety or freedom is threatened on account of general dimension violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances seriously threatening life, safety or freedom, where because of the mass influx there is no possibility to conduct individual procedures for determination of a refugee status.

The Government adopts decision on the need to grant temporary protection and on a number of persons who are to be granted temporary protection.

Temporary protection lasts for one year, and it may be extended for six months, up to one year at most. The Government periodically re-examines the existence of circumstances under which the temporary protection has been granted, and individual decisions related to temporary protection are adopted in compliance with the Government decision and the principles laid down by the Law on Asylum, outside the regulated procedure for individual asylum application.

**19. Have you identified the services competent for the application of provisions for determining the State responsible for the examination of an asylum application and for recording and processing the fingerprints of asylum seekers in this connection (with a view to possible future implementation of the Dublin II and Eurodac-regulations)?**

The Law on Asylum does not provide for provisions defining a service competent for the application of provisions for determining the state responsible for the examination of an asylum application. However, taking into consideration that, in the following period (by 2011), the Law on Asylum will be further harmonised with the EU relevant legislation, it will be an opportunity to institutionalise the above mentioned affairs according to the needs of Montenegro ( by establishing an appropriate service or Asylum Office staff, with the appropriate training programs for performing these affairs).

Concerning recording and processing of fingerprints, the Law on Asylum imposes an obligation on an asylum seeker to take his/her photo, fingerprints, signature, and other data required for checking or establishing his/her identity. The Rulebook on procedure of taking photo, fingerprints, signature and other data from an asylum seeker includes, among other things, forms for taking fingerprints. All ten fingerprints (flat and rolled fingerprints) are taken from an asylum seeker which

are scanned and entered in a database, and if necessary are forwarded to the competent services for the purpose of checking identity. These activities are currently conducted by the Asylum Office staff.

## **20. Describe your registration and identification (including IT)**

Decree on content and keeping records in the field of asylum, provides for that the record on asylum seekers should include the following: sequence number, name of a non-competent body, place and date of expressed intention to seek asylum, and date of informing the Asylum Office about the intention of seeking asylum (if asylum was not sought directly at the Asylum Office); date of the admission in the Reception centre for asylum seekers or other collective accommodation facility, or accommodation provided by the asylum seeker himself/herself; gender of the officer in charge, and gender of the interpreter and the language used in the procedure; data on asylum seeker (name and surname, date and place of birth, citizenship, education, occupation, data on parents, etc.); data on the country of origin; data on family members accompanying asylum seeker; data on family members not accompanying asylum seeker; data on documents and other papers in possession of the asylum seeker; data on the place of entry and the country from which the person entered Montenegro; data on previous submissions of applications; data on place and address of residence in Montenegro; data on issued identity document and laissez passer; fingerprints; photo and signature; data on temporary restriction of movement; if concerned, data on unaccompanied minor or person with special needs; data on approval or rejection of application, or discontinuation of the procedure; the appeal outcome, etc.

Intention for submission of asylum application can be stated by a foreigner at the border crossing point, after which he/she is allowed to enter Montenegro and is provided with accommodation.

If a foreigner is seeking asylum at a state body, local self-government body or other body non-competent, the one concerned is obliged to record such application and notify immediately the Asylum Office accordingly.

An asylum seeker is provided with the possibility to submit asylum application within the shortest time possible, and he/she is being given a certificate on submitted application.

An asylum application is submitted in writing or orally to the Asylum Office. Application and record forms are laid down in the Rulebook on forms of asylum applications and record on orally submitted asylum application. The forms include data on asylum seeker; data on asylum seeker family members; data on the country of origin; on the countries of residence/transit; on reasons for leaving the country of origin; on reasons he/she cannot or does not want to return, etc.

## **21. Describe your system of reception conditions for asylum applicants.**

Pursuant to Article 21 of the Law on Asylum, the activities relating to the care of asylum seekers, persons being granted refugee status, subsidiary and temporary protection, are conducted by the state administration body competent for the care of refugees – the Refugee Care and Support Office. The care of persons includes assistance in exercising rights to: accommodation, education, health care, social welfare, employment, legal aid, freedom of religion, access to humanitarian and non-governmental organisations, humanitarian assistance, family reunification, social inclusion and other rights.

Article 24 of the Law on Asylum provides for that the intention to submit asylum application may be declared by a foreigner at a border crossing point, after which he/she is allowed to enter Montenegro, and is provided with accommodation.

Article 25 of the Law on Asylum provides for that the competent body provides accommodation to asylum seekers in the Reception centre for asylum seekers or collective accommodation facility of the competent body. Special accommodation and care is provided for persons with special needs.

Person in a possession of financial means or person having possibility to provide accommodation and sustaining on some other way, may be accommodated out the Centre or the collective accommodation other facility, but is not entitled to social welfare. UNHCR, Montenegrin Red Cross and other organisations dealing with the protection of refugees may organise education or other programmes, and may provide legal and other assistance in the Centre, upon the approval of the competent body.

Article 26 of the Law on Asylum provides for that an asylum seeker, after being accommodated in the Centre, is photographed, fingerprinted, and his/her signature is taken and, if necessary, other data for the purpose of checking and establishing identity, which is laid down by the Ministry of Interior and Public Administration.

An asylum seeker is entitled to accommodation till completion of the asylum procedure, or until the voluntary departure. A person being granted refugee status or subsidiary protection, has also the right of accommodation, for a period no longer than six months from the date the decision became final.

Construction of the Reception centre for asylum seekers has started in 2007, and is planned to be continued in September 2009. Projected capacity of the Centre is to accommodate 65 users. Facilities B and C are planned by the project. Total gross area of the facility B is 1 094.80 m<sup>2</sup>, and of the facility C 253.14 m<sup>2</sup>. The facility B involves a male bedroom, female, family, disabled and ill persons, living rooms, an outpatient care service, and a playroom for children, as well as the administration rooms. The facility C comprises of a kitchen, dining room and laundry room. The construction work, except for the craftwork, has been completed on the facility B. Construction of the facility C will start in 2010.

Funds for infrastructure, completion of the facility B and spatial planning around the facility are provided by the Government from the Budget in the amount of EUR 420,000.00 euros, which is estimated to represent 50 percent of the funds needed to finalise the Centre construction. Construction of the Facility C and purchase of equipment for the Facility B and Facility C will be funded from the European Union pre-accession funds (IPA 2009) in the amount of EUR 450,000.00.

As the Refugee Care and Support Office, being the competent body, does not have available facility for collective accommodation of the persons referred to in the Law on Asylum, their accommodation is provided by renting facilities in Podgorica. The Refugee Care and Support Office concluded two contracts on renting two facilities for accommodation of asylum seekers. One facility rented under one contract is rented for unspecified time period, and the another one is rented until the end of 2009 under the other contract, with the possibility of extension, if necessary. Both facilities are currently functional, and asylum seekers are accommodated there.

## **22. Describe the framework for cooperation with UNHCR and NGOs.**

The framework for cooperation with UNHCR is laid down in the Law on Asylum:

Pursuant to Article 8 of the Law on Asylum UNHCR is being granted free access to asylum seekers, their files, information and statistics.

Pursuant to Article 18 the first-instance and second-instance bodies cooperate with UNHCR in all stages of the asylum procedure, and share statistics on asylum seekers, or persons being granted asylum, as well as on the implementation of the Convention Relating to the Status of Refugees and other international instruments on refugees, as well as the legislation being applied or is to be adopted.

Pursuant to Article 23 a representative of UNHCR will be enabled, in all stages of the procedure, to communicate with asylum seekers and collect information on the course of the procedure.

Pursuant to Article 25 upon the approval given by the competent body, UNHCR, Red Cross and other organisations dealing with the protection of refugees, may organise education and other programmes, and provide legal and other assistance in the reception centre for asylum seekers.

Pursuant to Article 31 a person whose movement is restricted has the right of communication with UNHCR.

Pursuant to Article 34 a representative of UNHCR may be present while an asylum seeker gives statement.

In addition, starting from 2003, memoranda of cooperation are signed between the Ministry of Interior and Public Administration and UNHCR, under which many activities on establishing and strengthening the asylum system in Montenegro have been conducted through many sub-projects.

Representatives of UNHCR participated in drafting the Law on Asylum and secondary legislation. Cooperation is developed with the NGO Legal Centre, which provides free legal aid to asylum seekers and refugees.

### **23. Describe your integration policy for refugees.**

The Law on Asylum (Official Gazette of the Republic of Montenegro 45/06) provides for the procedure for acquiring refugee status, as well as for its cessation and revocation.

A person being granted refugee status is entitled to the right to:

- 1) residence;
- 2) travel document and identity card confirming his/her identity, legal status, the right of residence and other rights provided for in this law;
- 3) freedom of movement and choice of a place of residence;
- 4) free access to courts and legal assistance;
- 5) freedom of religion;
- 6) free elementary and high school education in public schools, and higher education studies in public institutions founded by the state, under conditions provided for foreigners;
- 7) employment;
- 8) social welfare;
- 9) family reunification;
- 10) accommodation, if needed, not longer than six months from the date of granting refugee status;
- 11) health care, until acquiring a capacity of insured person, in compliance with relevant legislation;
- 12) acquiring movable and immovable property, under the conditions provided for in the law, with exemption from reciprocity after three years of residing in Montenegro;
- 13) assistance in inclusion in society.

A refugee exercises the right to employment under the same conditions as those provided for the foreigners being granted permanent residence. A refugee exercises the right to employment based on personal work permit, which is issued for unspecified time period. Personal work permit enables free access to the labour market, irrespective of the situation and relations in the market.

A measure restricting the employment of foreigners is not applied on a refugee, provided that he/she:

- resides at least three years in Montenegro;
- is married to a Montenegrin national;
- one of his/her children has Montenegrin citizenship.

The right to disability insurance, health care, pension insurance and other employment related rights, refugees exercise under the same conditions as Montenegrin nationals.

A refugee exercises the right to social welfare in compliance with relevant legislation on social welfare, but for at most one year from the date the decision on granting refugee status became final. Pursuant to the Decree on financial aid to a person seeking asylum, being granted refugee status and subsidiary protection (Official Gazette of Montenegro 56/08), refugees obtain financial aid as a form of social welfare. This aid is provided as monthly financial aid or single financial aid. Monthly financial aid is provided for a refugee whose right on accommodation has been terminated, pursuant to the Law on Asylum, and provided that he/she does not have financial means or property.

Financial aid being provided is the following:

- for an individual	EUR 55
- for a two-member family	EUR 66
- for a three-member family	EUR 79.20
- for a four-member family	EUR 93.50
- for a five or more members family	EUR 104.50

The amount of a monthly financial aid may be determined by the body competent for social welfare, and of a higher amount with prior opinion given by the state administration body competent for financial affairs.

Single financial aid is obtained by refugees:

- in a case of special circumstances, affecting their material and health condition;
- in a case of covering a funeral related costs.

The amount of this kind of aid is determined by the body competent for social welfare.

Depending on economic and other capacities of the country, conditions for exercising rights to inclusion in social, economic and cultural life are created through organisation of Montenegrin language courses, provision of information on the system of government, history and culture, organisation of seminars, etc.

Within the Montenegro economic and other capacities, efforts are made to the greatest possible extent to enable integration and naturalisation of refugees, as well as to adjust the level of costs within the procedure of exercising those rights, aimed at smooth submission of application and exercising of the above-mentioned rights.

Pursuant to the Law on Asylum, the bodies competent for making decisions and exercising rights of persons being granted refugee status are the following:

- in the field of labour and social welfare – the Ministry of Labour and Social Welfare and the state administration bodies, organisations, and institutions under its competence;
- in the field of health care – the Ministry of Health and bodies, organisations and health care institutions under its competence;
- in the field of education – the Ministry of Education and Science and bodies, organisations and education institutions under its competence.

**24. Describe the system put in place to collect data and statistics on asylum and refugee movements in your country and provide the following data (reference period: 2001-2004): number of asylum seekers, number of refugee and other protection status recognised, main citizenships/origins of asylum seekers, for each year. (In answering this question it is recommended to use the information to be submitted to EUROSTAT for the joint annual questionnaire on migration).**

The Ministry of Interior and Public Administration establishes, keeps, updates and uses records on: asylum seekers, persons being granted refugee status and subsidiary or temporary protection,

rights they exercise, documents being issued pursuant to the Law on Asylum, and temporarily seized documents.

Taking into consideration that the Asylum Office within the Ministry of Interior and Public Administration was set up in 2007, the statistics refer to 2007, 2008 and 2009 (31 July 2009 inclusive).

	Number of asylum seekers	Refugee status	Subsidiary protection	Decisions on applications		
				Discontinued procedure	Rejected applications	In procedure
2007	3	1			2	
2008	7		1	3	3	
2009	13			1	7	5
Total	23	1	1	4	12	5

Source: Ministry of Interior and Public Administration – Asylum Office

Country	2007	2008	2009
Macedonia	1		4
Albania	1	3	
Serbia	1	1	3
Kosovo			5
Georgia		1	
Belarus		1	
Afghanistan		1	
Russian Federation			1
Total	3	7	13

Source: Ministry of Interior and Public Administration – Asylum Office

## Visa policy

**25. Please provide information on legislation or other rules governing your visa policy.**

The Law on Foreigners (Official Gazette of Montenegro 82/08) prescribes conditions for entry, movement and stay of foreigners on the territory of Montenegro.

The Law on Administrative Fees (Official Gazette of the Republic of Montenegro 55/03, 81/05, 2/06, and Official Gazette of Montenegro 22/08, 77/08 and 3/09), among other things, regulates the administrative fees collected by foreign diplomatic and consular missions of Montenegro, including the fees for issuing visas.

The Law on Employment and Work of Foreigners (Official Gazette of Montenegro 22/08) regulates conditions for employment and work of foreigners in Montenegro.

The Law on Travel Documents (Official Gazette of Montenegro 21/08 and 25/08) regulates travel documents for the travel of Montenegrin nationals to other countries, the procedure for issuing and cessation of validity of travel documents, as well as other issues relevant for the use of travel documents. The Law provides for the issuing of biometric (first generation) passports for Montenegrin nationals.

The Law on Identity Card (Official Gazette of Montenegro 12/07) prescribes that in certain cases identity card is to be used for crossing the state border under conditions provided for in international treaty.

The Decree on Visa Regime (Official Gazette of Montenegro 18/09), adopted by the Government of Montenegro on 26 February 2009, provides for the list of countries whose nationals are not required visa for entry and stay in Montenegro.

The Rulebook on procedures for granting temporary and permanent residence and issuing travel and other documents to foreigners (Official Gazette of Montenegro 58/09) regulates in detail the procedure for granting temporary residence, or extension of temporary residence, granting permanent residence, and issuing of travel documents to foreigners, as well as the affixing cancellation of the residence up to 90 days, long stay visa (D visa) based residence, temporary residence, permanent residence and prohibition of entry in the foreigner travel documents, as well as the conditions of residence and house rules of the reception centre for foreigners, manner of charging the costs of accommodation in the reception centre and forcible removal, the content and layout of the forms, as well as the records content and manner of keeping.

The Law on Border Control (Official Gazette of Montenegro 72/09) regulates the mode and the procedure of checks of persons and items prior to entry in Montenegro.

The Rulebook on visas and visa forms (Official Gazette of Montenegro 64/09) provides for the conditions for issuing visas, the procedure of visas issuing, visa application forms, the cases where prior approval of the Police Directorate is required, visa form, the procedure of affixing visa in foreigner travel document, as well as the form of affixing visa in a travel document, details on conditions for extension of visa validity and the application form for visa validity extension, details on the procedure for annulment of issued visas, as well as the content and procedure of keeping the record on issued visas, denied visa application forms and annulled visas.

All above-mentioned legislation is harmonised with the relevant EU regulations.

The visa policy and visa regime with other countries are laid down by the Government of Montenegro. The Government, also concludes bilateral agreements with some countries on mutual travels of nationals, i.e. mutual visa regime.

**26. Which third countries are currently under visa obligation and which ones are not?**

**1) Nationals of the following countries are required visa to enter in Montenegro:**



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1. AFGHANISTAN	44. REPUBLIC OF SOUTH AFRICA	84. PAPUA NEW GUINEA
2. PDR ALGERIA	45. CAYMANS ISLANDS	85. REPUBLIC OF PERU
3. REPUBLIC OF ANGOLA	46. KINGDOM OF CAMBODIA	86. REPUBLIC OF RWANDA
4. ANGUILLA	47. REPUBLIC OF CAMEROON	87. DR OF SAO TOME AND PRINCIPE
5. ANTIGUA AND BARBUDA	48. QATAR	88. KINGDOM OF SAUDI ARABIA
6. REPUBLIC OF AZERBAIJAN	49. REPUBLIC OF KAZAKHSTAN	89. REPUBLIC OF SENEGAL
7. BAHAMAS	50. REPUBLIC OF KENYA	90. REPUBLIC OF SIERRA LEONE
8. BAHRAIN	51. PR CHINA	91. SYRIAN ARAB REPUBLIC
9. PR BANGLADESH	52. REPUBLIC OF KYRGYZSTAN	92. SOLOMON ISLANDS
10. BARBADOS	53. KIRIBATI	93. DR SOMALIA
11. BELIZE	54. REPUBLIC OF COLUMBIA	94. DSR SRI LANKA
12. REPUBLIC OF BENIN	55. ISLAMIC FR COMOROS	95. CENTRAL AFRICAN REPUBLIC
13. REPUBLIC OF BOTSWANA	56. DPR KOREA	96. REPUBLIC OF SUDAN
14. BURKINA FASO	57. KUWAIT	97. REPUBLIC OF SURINAM
15. REPUBLIC OF BURUNDI	58. PDR LAOS	98. KINGDOM OF SWAZILAND
16. KINGDOM OF BHUTAN	59. KINGDOM OF LESOTHO	99. SAINT LUCIA
17. REPUBLICS OF CHAD	60. REPUBLIC OF LEBANON	100. SAINT KITTS AND NEVIS
18. DOMINICA	61. REPUBLIC OF LIBERIA	101. SAINT VINCENT AND THE GRENADINES
19. DOMINICAN REPUBLIC	62. GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA	102. TAJIKISTAN
20. REPUBLIC OF DJIBOUTI	63. REPUBLIC OF MADAGASCAR	103. KINGDOM OF THAILAND
21. REPUBLIC OF EQUATORIAL GUINEA	64. REPUBLIC OF MALAWI	104. UR TANZANIA
22. ARAB REPUBLIC OF EGYPT	65. REPUBLIC OF MALDIVES	105. REPUBLIC OF TOGO
23. ETHIOPIA	66. REPUBLIC OF MALI	106. KINGDOM OF TONGA
24. REPUBLIC OF ERITREA	67. KINGDOM OF MOROCCO	107. REPUBLIC OF TRINIDAD AND TOBAGO
25. REPUBLIC OF FIJI	68. MICRONESIA	108. REPUBLIC OF TUNIS
26. REPUBLIC OF THE PHILIPPINES	69. MAURITIUS	109. REPUBLIC OF TURKMENISTAN
27. REPUBLIC OF GABON	70. ISLAMIC REPUBLIC OF MAURITANIA	110. TURKS AND CAICOS ISLANDS
28. REPUBLIC OF GAMBIA	71. REPUBLIC OF THE MARSHALL ISLANDS	111. EAST TIMOR
29. REPUBLIC OF GHANA	72. REPUBLIC OF MOLDOVA	112. REPUBLIC OF UGANDA
30. GIBRALTAR	73. MONGOLIA	113. UNITED ARABIAN EMIRATES
31. GRENADA	74. REPUBLIC OF MOZAMBIQUE	114. UKRAINE
32. REPUBLIC OF GEORGIA	75. MYANMAR	115. REPUBLIC OF UZBEKISTAN
33. REPUBLIC OF GUYANA	76. REPUBLIC OF NAMIBIA	116. REPUBLIC OF VANUATU
34. REPUBLIC OF GUINEA	77. KINGDOM OF NEPAL	117. SR VIETNAM
35. REPUBLIC OF GUINEA-BISSAU	78. REPUBLIC OF NIGER	118. REPUBLIC OF ZAIRE
36. REPUBLIC OF HAITI	79. FR NIGERIA	119. REPUBLIC OF ZAMBIA
37. REPUBLIC OF INDIA	80. REPUBLIC OF COTE D'IVOIRE	120. WESTERN SAMOA
38. REPUBLIC OF INDONESIA	81. SULTANATE OF OMAN	121. REPUBLIC OF CAPE VERDE
39. REPUBLIC OF IRAQ	82. ISLAMIC REPUBLIC OF PAKISTAN	122. REPUBLIC OF ZIMBABWE
40. ISLAMIC REPUBLIC OF IRAN		
41. REPUBLIC OF YEMEN		
42. REPUBLIC OF ARMENIA		

43. KINGDOM OF JORDAN 83. PALESTINE

**2) The following countries nationals are not required entry visa to enter in Montenegro:**

- |   |   |  |
|---|---|--|
| 1. ALBANIA                                      | 29. JAPAN                                     | 56. RUSSIAN FEDERATION –<br>bilateral agreement                |
| 2. PRINCIPALITY OF<br>ANDORRA                   | 30. CANADA                                    | 57. REPUBLIC OF<br>VENEZUELA.                                  |
| 3. REPUBLIC OF<br>ARGENTINA                     | 31. REPUBLIC OF CYPRUS                        | 58. ROMANIA  |
| 4. ARUBA  | 32. REPUBLIC OF KOREA                         | 59. REPUBLIC OF EL<br>SALVADOR                                 |
| 5. AUSTRALIA                                    | 33. REPUBLIC OF COSTA<br>RIKA                 | 60. REPUBLIC OF SAN<br>MARINO                                  |
| 6. REPUBLIC OF AUSTRIA                          | 34. REPUBLIC OF CUBA –<br>bilateral agreement | 61. REPUBLIC OF<br>SEYCHELLES                                  |
| 7. KINGDOM OF BELGIUM                           | 35. REPUBLIC OF LATVIA                        | 62. REPUBLIC OF<br>SINGAPORE                                   |
| 8. REPUBLIC OF BELARUS –<br>bilateral agreement | 36. KINGDOM OF<br>LICHTENSTEIN                | 63. UNITED STATES OF<br>AMERICA                                |
| 9. BERMUDA                                      | 37. REPUBLIC OF LITHUANIA                     | 64. SLOVAK REPUBLIC  |
| 10. BOSNIA AND<br>HERZEGOVINA                   | 38. GRAND DUCHY OF<br>LUXEMBOURG              | 65. REPUBLIC OF SLOVENIA                                       |
| 11. FEDERATIVE REPUBLIC<br>OF BRAZIL            | 39. REPUBLIC OF HUNGARY                       | 66. REPUBLIC OF SERBIA   |
| 12. BRUNEI DARUSSALAM                           | 40. REPUBLIC OF<br>MACEDONIA                  | 67. THE HOLY SEE   |
| 13. REPUBLIC OF BULGARIA                        | 41. MALAYSIA                                  | 68. KINGDOM OF SPAIN   |
| 14. CZECH REPUBLIC                              | 42. REPUBLIC MALTA                            | 69. KINGDOM OF SWEDEN  |
| 15. REPUBLIC OF CHILE                           | 43. UNITED STATES OF<br>MEXICO                | 70. SWISS CONFEDERATION  |
| 16. KINGDOM OD DENMARK                          | 44. PRINCIPALITY OF<br>MONACO                 | 71. REPUBLIC OF TURKEY –<br>bilateral agreement                |
| 17. REPUBLIC OF ESTONIA                         | 45. REPUBLIC OF<br>NICARAGUA                  | 72. UKRAINE  |
| 18. REPUBLIC OF ECUADOR                         | 46. KINGDOM OF<br>NETHERLANDS                 | 73. UNITED KINGDOM OF<br>GREAT BRITAIN AND<br>NORTHERN IRELAND |
| 19. REPUBLIC OF FINLAND                         | 47. NETHERLANDS ANTILLES                      | 74. ORIENTAL REPUBLIC OF<br>URUGUAY                            |
| 20. FRENCH REPUBLIC                             | 48. KINGDOM OF NORWAY                         | 75. BOLIVARIAN REPUBLIC<br>OF VENEZUELA                        |
| 21. REPUBLIC OF<br>GUATEMALA                    | 49. NEW ZEALAND                               |  |
| 22. HELLENIC REPUBLIC                           | 50. FEDERAL REPUBLIC OF<br>GERMANY            |  |
| 23. REPUBLIC OF<br>HONDURAS                     | 51. REPUBLIC OF PANAMA                        |  |
| 24. REPUBLIC OF CROATIA                         | 52. REPUBLIC OF PARAGUAY                      |  |
| 25. IRELAND                                     | 53. REPUBLIC OF POLAND                        |  |
| 26. REPUBLIC OF ISLAND                          | 54. REPUBLIC OF PERU                          |  |
| 27. REPUBLIC OF ITALY                           | 55. PORTUGUESE REPUBLIC                       |  |
| 28. STATE OF ISRAEL                             |   |  |

Holders of valid travel documents issued in Hong Kong Special Administrative Region of the People's Republic of China and Macao Special Administrative Region of the People's Republic of China, as well as of those issued by the UN and its specialised agencies (Laisser-Passer), are not required visa to enter in Montenegro.

The above-mentioned data relate to the holders of national travel documents (diplomatic, service and ordinary passports).

Nationals of the European Union member states, the Principality of Andorra, Principality of Monaco, Republic of San Marino, Holy See and Swiss Confederation, Bosnia and Herzegovina, Republic of Serbia, Republic of Croatia, Republic of Macedonia and Republic of Kosovo may enter, transit and stay in Montenegro up to 30 days with valid ID card, or other document confirming their identity and nationality.

Holders of travel documents with valid Schengen visa, the United States of America valid visa or residence permit of those countries, can enter and stay, or transit through the territory of Montenegro up to seven days, no later than the expiry of visa validity, if the visa validity period is shorter than seven days.

Holders of travel documents issued by the European Union member states or the United States of America in compliance with the 1951 Convention relating to the Status of Refugees, or 1954 Convention relating to the Status of Stateless Persons, as well as of travel documents for foreigners, may enter, transit and stay in Montenegro up to 30 days without visa required.

3) Based on bilateral agreements, concluded by the former Yugoslavia or the State Union of Serbia and Montenegro, which after acquiring independence Montenegro has assumed and continued to apply pursuant to the Decision on declaration of independence of the Republic of Montenegro (Official Gazette of Montenegro 36/06), as well as pursuant to international treaties concluded as independent state, holders of diplomatic and service passports of following states may enter Montenegro without visa:

THE REPUBLIC OF ARMENIA, REPUBLIC OF AZERBAIJAN, ARAB REPUBLIC OF EGYPT – only diplomatic passports, REPUBLIC OF ECUADOR, PEOPLE'S REPUBLIC OF CHINA, REPUBLIC OF GEORGIA, GUINEA, ISLAMIC REPUBLIC OF IRAN, NORTH KOREA, REPUBLIC OF MOLDOVA, MONGOLIA, REPUBLIC OF PAKISTAN, TAJIKISTAN, TURKMENISTAN, UKRAINE and SR VIETNAM.

Negotiations for concluding bilateral agreements on visa abolishment for holders of diplomatic and service passports with Kyrgyzstan, Kazakhstan and Algeria are ongoing.

## **27. Are there any provisions for a seasonal visa free regime?**

The Law on Foreigners does not contain any explicit provision on the seasonal visa exemption for entry in Montenegro. However, Article 14 of the Law provides for that the Government of Montenegro regulates the visa regime, which may also present legal basis and formal assumption for making decisions on introducing seasonal visa free regime.

## **28. What types of short- and long-term visas are issued, including by diplomatic representations abroad?**

The Law on Foreigners provides for the following types of visas issued by diplomatic or consular missions of Montenegro:

- airport-transit (A visa),
- transit (B visa),
- short stay visa (C visa),
- long stay visa (D visa).

Short term visas are the following: airport-transit (A visa), transit (B visa) and short stay visa (C visa); and long term visa is: long stay visa (D visa). In certain sense, approval of temporary residence in Montenegro can also be considered as long stay visa, which is regulated by the Law

on Foreigners and by the Rulebook on procedures for granting temporary residence and permanent residence and issuing travel and other documents to foreigners.

Airport-transit visa (A visa) is issued to a foreigner for single or multiple transit through the airport international transit area, for the travel interruption period, or transfer between two stages of an international flight, without entering the territory of Montenegro. The period of validity of such visa is up to three months. As a rule, a foreigner for the time of inter-landing at an airport in Montenegro not leaving airport transit zone or the airplane, is not required visa. However, the Government may determine that, if the reasons of national security and public order require so, some countries nationals will be required airport-transit visa.

Transit visa (B visa) is issued to a foreigner for one, two or more transits through the territory of Montenegro, and is valid up to six months. Based on this visa, a foreigner can stay in Montenegro for five days at the most. Transit visa (B visa) can be issued to a foreigner possessing entry visa of the country he is travelling to, or through whose territory is transiting, unless otherwise provided by international treaty. This type of visa can be individual or collective one.

Short stay (C visa) is issued for tourist, business or other purposes travel, for single or multiple entry in Montenegro, and for continuous stay no longer than 90 days within the six-month period, from the day of first entry. C visa for multiple entry is issued for one year period, exceptionally it can be issued for a longer period, but not longer than five years, which is decided by the Ministry of Foreign Affairs. Short stay visa (C visa) can also be collective one, however not longer than 30 days, and is affixed in a group passport. C visa may not be extended, except for humanitarian, professional or personal reasons, or *force majeure*. The Police Directorate makes decision on extension of visa, till when a foreigner is allowed to stay in Montenegro.

Long stay visa (D visa) is issued for single or multiple entry in Montenegro to a foreigner intending to stay on the territory of Montenegro more than 90 days, but not longer than six months within one year period, from the day of first entry. Long stay visa (D visa) can be issued to a foreigner:

- intending to stay in Montenegro for performing business and other activities, performing expert work defined by contract on business - technical cooperation, on long term production cooperation, on transfer of technology and on foreign investments;

- coming in Montenegro in the capacity of diplomatic or consular mission staff of a foreign country and international organisation accredited in Montenegro, economic and cultural representations, as well as to their families members, and their cohabitants, holders of diplomatic or service passports.

Exceptionally, for humanitarian, personal or professional reasons, the police at the border crossing points can issue:

- short stay visa (C visa), for single entry and residence up to 15 days,
- transit visa (B visa), for single transit up to five days,
- transit visa (B visa), to a sailor or a group of sailors.

Pursuant to the Law on Foreigners, the Ministry of Foreign Affairs regulation (Rulebook on visas and visa forms) provides for in more detail conditions for issuing visas, the manner of visa issuing, visa application form, cases in which prior Police Directorate approval is required, visa form, the mode of affixing visa in foreigner travel document, as well as the form for affixing visa in travel document, conditions for extension of visa validity, and application form for extension of short stay visa (C visa) validity, the manner for annulment of issued visas, as well as the content and the manner of keeping the record on issued visas, denied visa application forms and annulled visas.

## **29. What criteria and conditions are used as a basis for issuing the different types of visas?**

Along with the visa application form, a foreigner, depending on the type of visa he is applying for, is obliged to submit the following:

- valid travel document,
- one photo,
- evidence on the purpose of stay in Montenegro (invitation letter or letter of guarantee from a legal or natural person from Montenegro),
- proof of provided accommodation (confirmation of paid tourist arrangement, hotel or booking of other kind of accommodation),
- evidence on possession of sufficient means for subsistence during the stay in Montenegro, as well as for return in a home country, or for travel in a third country (cash, checks, statement on the bank account),
- proof of the mean of transportation, or intention of return to the country he/she is coming from, or to a third country (return ticket, vehicle registration card and driving license),
- proof of the health insurance,
- proof of payment of the consular fee,
- other evidence based on which the justification of the visa application form can be assessed.

The number and type of documents supporting visa application form depend on the possible risk of illegal immigration, and the circumstances of each individual case. In certain cases, defined by the secondary legislation, prior Police Directorate approval is required before issuing visa to some countries nationals.

Pursuant to provisions of Article 25 of the Law on Foreigners, visa shall not be issued to a foreigner if:

- 1) he/she does not possess valid travel document,
- 2) he/she does not have enough means of sustenance during the stay in Montenegro, and to return to the country he/she arrived from, or for the travel to a third country,
- 3) he/she is transiting, not fulfilling requirements for entry in a third country,
- 4) the protective measure of removal or security measure of expulsion is in force, or his/her residence is being cancelled,
- 5) required for the reasons of national security, public order and public health,
- 6) being registered as an international offender in relevant records,
- 7) he/she does not appear in person when being requested by diplomatic or consular mission of Montenegro,
- 8) being requested by diplomatic or consular mission, he/she does not submit required documents as the evidence on the purpose and conditions of stay in Montenegro,
- 9) being requested by diplomatic or consular mission, he/she does not submit the evidence on health and travel insurance,
- 10) he/she was residing in Montenegro more than 90 day, whilst six months from the day of first entry did not elapsed.

Exceptionally, a foreigner can be issued visa, or he/she can be approved entry in Montenegro, if required by humanitarian reasons, interests of Montenegro or internationally accepted obligations.

When performing border check at the entry in Montenegro, the Police Directorate can shorten visa validity period at the border crossing point, if:

- 1) established that the foreigner does not have enough financial means for subsistence;
- 2) the visa expiry date exceeds the travel document validity;
- 3) the foreigner exceeds 90 day period within six – month period, from the date of first entry.

**30. What is the standard procedure for the assessment of a visa application? Which institutions are responsible to carry out the assessment?**

When receiving visa application form, diplomatic or consular mission staff establishes the foreigner identity, as well as the regularity and validity of the travel document, whether the application form is filled out correctly and legibly, and whether required evidence is submitted along with the application form.

Diplomatic or consular mission staff assesses justification of the visa application form, based on visa application form supporting documents submitted by the foreigner, based on the data gathered during the interview with the foreigner, as well as based on prior approval given by the Police Directorate required in some cases provided by the Rulebook on visas and visa forms.

Prior Police Directorate approval is necessary when there are basis of suspicious indicating that the applicant may threat to the public order, national security and public health in Montenegro, especially if:

- the applicant is registered in records on international offenders;
- the application form is submitted by a foreigner coming from the state falling under the visa regime;
- applying for multiple entry short stay visa with one year validity;
- established in available records that the applicant, during the previous stay in Montenegro, has exceeded approved residence period specified in visa;
- the applicant has unsettled family relations, used to be married to a Montenegrin national, especially in a case of having minor children born in that marriage living in Montenegro.

In cases when prior Police Directorate approval is required, visa cannot be issued without the approval.

Before making a decision on issuing visa, diplomatic or consular mission staff determines whether the reasons for non issuing visa refereed to in Article 25 of the Law on Foreigners, exist. The foreigner will be orally informed on the reasons for non issuing visa.

The Ministry of Foreign Affairs of Montenegro, or diplomatic or consular missions, and in certain cases Police Directorate, are institutions competent for assessment of visa applications.

**31. Does your country have online connections between visa-issuing authorities and the Foreign Ministry?**

At this moment, there is no online connection between diplomatic or consular missions and the Ministry of Foreign Affairs.

Setting up online connections, i.e. visa information system is planned for upcoming period, once the required funds are available.

The Ministry of Foreign Affairs' visa information system should be connected with integrated border management information system.

**32. Does a national visa register/database exist (including granted visas and rejected visa applications)?**

Article 97, paragraph 2 of the Law on Foreigners (Official Gazette of the Republic of Montenegro 82/08, being implemented since 1 January 2009) prescribes that a state administration body competent for foreign affairs keeps the records on the following: issued visas, denied visa

application forms and annulled visas, issued special identification cards for foreigners and issued travel documents for foreigners in another state. In addition, the Rulebook on visas and visa forms (Official Gazette of Montenegro 64/09) was adopted, which regulates in detail the content and the manner of keeping records on issued visas, records on denied application forms and annulled visas. On the basis of the aforementioned legislation, records on visas are kept in electronic form and they are the constituent part of the visa information system but, in addition to that, records can be kept in the form of a book which must be certified, banded, and the pages must be numbered; the book is concluded at the end of the calendar year, on the page where the last foreigner was entered or if all pages are filled.

Having regard to the abovementioned, national registry/electronic visa database being a constituent part of the visa information system, is not completely established yet.

### **33. What is your capacity to detect falsified documents?**

At the basic police training courses, border police officers are trained in techniques of production and security features of travel documents, as well as in methods and ways of detecting forged documents.

In addition, the Police Academy in Danilovgrad, with the participation of international experts, on regular bases organises seminars and specialised courses for border police officers, in order to train them and to introduce the latest security methods being applied in the process of producing travel documents to protection them from forgery, with the presentation of examples case studies of forgery.

The border crossing points in Montenegro are equipped with devices for detecting forged documents, produced by Entac Uvec Pass/d and Projectina, containing UV magnifier and the lamp.

The most frequent border crossing points are equipped with the CROSS MATCH A100 machine readers of the documents, in order to detect forged documents. Border police officers are using the following features of this device:

Scanning documents in high resolution (400 Dpi);

Scanning documents under UV, IR and White Light;

Scanner RFID in line with ICAO/ISO standards, and

Check of Kinegram and OVD security features

At those border crossing points, the Police Directorate has the software control over the validity of inserted or read data, directly thorough INTERPOL I – 24/7 MIND system, or indirectly through the Police Directorate database, by making enquiries in the national and INTERPOL database on stolen and lost travel documents (I24/7). A large number of persons is checked every day against the INTERPOL database.

Sophisticated device Docubox Dragon Pia 5/ICAO/IPI/PC, having various capacities for detecting forged travel documents is available at four border crossing points (the Airport in Podgorica and the Airport in Tivat, border crossing point Debeli Brijeg toward the Republic of Croatia and the Port of Bar for international passenger traffic).

If during the border check, basis of suspicion are established at the border crossing points, indicating a person presented or is in possession of a travel document or other document suspected to be forged, the person along with the document is handed over competent organisational unit of the Criminal Police Department, for further procedure.

In addition, on 16 December 2008, Forensic Centre in Danilovgrad, within the Police Directorate is opened.

Besides other groups and tasks within the organisational structure of the Forensic Centre, the Group for examination of handwriting, documents and information technologies is established. The

Group has staff and equipment to conduct examination various documents (travel documents, visas, identity cards, driving licenses, etc.), submitted by the regional police units, as well as by the judiciary. The staff engaged in those tasks passed relevant specialised training within the Centre itself, and is acquiring new knowledge, exchanging experience and information through participation in various seminars and lectures, as well as through contacts with its counterparts.

Documents examination is conducted by using Projectina Docubox Dragon and Foster+Freeman VSC 4, with the capacity of using UV, transparent, white, IR, side and Lumi light by changing filter. By using the Retro light, it is possible to examine the retroreflective elements on laminates and on holograms.

Examination of documents is based on check of the authenticity of the document form itself, as well as on examination of possible changes made on the document, which is relevant for confirming the document authenticity. After the examination, the findings and opinion are given, based on which further procedural and judicial actions are conducted.

In 2008, and in first six months of 2009, the Forensic Centre was delivered the total number of 3055 documents for examination. The following types of documents were submitted to the Forensic Centre for examination:

Type of document	Travel documents	Identity cards	Driving licences	Vehicle registration cards	Visas	Total
In 2008	44	41	88	2257	-	2430
in first six months of 2009	11	14	15	581	4	625
Number of established forgeries	31	31	31	64	3	160

On 24 May 2009, at the ENFSI (The European Network of Forensic Scientist Institutes) regular session held in Ankara, Turkey, the Forensic Centre was official admitted to the Network membership.

**34. Do the existing visas allow applicants to work in your country without a residence permit or working licence?**

Pursuant to the Law on Foreigners, visa is defined as a permit enabling a foreigner to enter, stay and transit through Montenegro for a certain time period, however without the possibility to work in Montenegro, a person intending to work in Montenegro has to acquire the approval for temporary residence for the purpose of employment or seasonal work, based on previously issued working permit.



**35. Does your legislation foresee any provision for the punishment of persons entering your territory without a passport? If not, do your authorities have the intention to introduce any amendment to this end and when will this be done?**

Pursuant to the Law on Border Control (Official Gazette of Montenegro 72/09) - Punitive Provisions, Article 67 provides for that a natural person shall be punished by a fine in the amount of ten fold to twenty fold of the amount of the minimum salary in Montenegro, if he/she:

- Crosses the state border out the specified border crossing point, or crosses or attempt to cross the state border without valid travel document or other document prescribed for crossing the state border outside the period of time determined for traffic on the border crossing point, or contrary to the purpose of the border crossing point, and
- Does not show documents required for crossing of the state border, or does not undergo border check, or leaves the border crossing points area before conducting border check, or avoids or attempt to avoid border check.

Pursuant to the Law on Foreigners (Official Gazette of Montenegro 82/08) punitive provisions, among other things, Article 100 provide for that a foreigner shall be fined from three up to 15 minimal salaries in Montenegro for if he/she enters Montenegro, and stays on its territory without valid travel document containing visa or approval of residence permit.

In a case of committing the above-mentioned misdemeanour, a foreigner may be also pronounced a protective measure of removal from the territory of Montenegro for one year period in a case, independently or along with the fine.

Pursuant to Article 405 of the Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06, 40/08):

1. Anyone who without the required permission crosses or attempted to cross the state border, under arms or by use of force, shall be punished by imprisonment sentence not exceeding one year.
2. Anyone who deals with illegal transfer of other persons across the state border, or who enables another for gain to illegally cross the border, or to illegally stay or transit, shall be punished by imprisonment sentence of three months up to five years.
3. Where an offence referred to in the paragraph 2 of this Article was committed by several persons in an organised way, by abuse of office or in a manner that endangers the life or health of persons whose illegal border crossing, stay or transit is enabled, or if a number of persons are smuggled, the offender shall be punished by imprisonment sentence of one up to 10 years.
4. Means intended for or used for the commission of offences referred to in paragraphs 1 to 3 of this Article shall be confiscated.

**36. In which cases can visas be issued at border crossings? How frequently is this done?**

Pursuant to the Law on Foreigners (Official Gazette of Montenegro 82/08) provisions, visa is issued by the diplomatic or consular missions of Montenegro. Exceptionally, if required for humanitarian, professional or personal reasons, the police at the border crossing points can issue:

- Short stay visa (C visa), for a single entry and stay up to 15 days,
- Transit visa (B visa), for a single transit up to five days,
- Transit visa (B visa), to a sailor or a group of sailors.

For the first seven months of 2009, 707 visas were issued at the border crossing points (January 271, February 151, March 94, April 68, May 37, Jun 36, July 50). By adopting the Regulation on visa regime (Official Gazette of Montenegro 18/09), significant decrease of visa application forms is registered. Visas were mostly issued to sailors, persons coming in official visit to Montenegro, as well as to the nationals of the countries where Montenegro does not have diplomatic or consular mission, and who due to a short notice, could not submit the request in some other country.

**37. Do you have any agreements with third countries to issue visas on your behalf? In this case, how is the assessment of each request ensured?**

Montenegro concluded bilateral agreements on visa issues and consular protection with the Republic of Serbia (on 17 February 2007) and Republic of Bulgaria (on 20 May 2008), pursuant to which diplomatic and consular missions of the respective countries, in the countries where Montenegro does not have its own diplomatic or consular mission, issue visas for entry in Montenegro and offer consular protection to Montenegrin nationals. Diplomatic or consular missions of the Republic of Bulgaria issue visas and represent interests of Montenegro in Armenia, Azerbaijan and Georgia, and the arrangement on expanding to Agreement to Kazakhstan and Moldova was also reached.

Upon receiving visa application form for Montenegro, diplomatic or consular representative missions of the above-mentioned countries states submit visa application forms to the competent bodies of Montenegro – the Ministry of Foreign Affairs (Department for Consular Affairs and Diaspora) and to Police Directorate for the approval. Visa can be issued only upon the approval of those bodies.

### **External borders and Schengen**

**38. Please provide information on legislation and other rules governing the area of border management in your country.**

The Law on the State Border Surveillance (Official Gazette of the Republic of Montenegro 72/05) ([Annex 174](#)), regulates the state border surveillance, the manner of conducting border checks, inland control, international border police cooperation and cooperation of the agencies engaged at the state border.

Within the meaning of this Law, the state border surveillance means the border check and the border protection, which aims at:

- securing the state border inviolability;
- protection of life and health of persons;
- prevention and detection of crimes and misdemeanours, and locating and apprehension of the perpetrators of those crimes and misdemeanours;
- prevention of illegal immigrations;
- prevention and elimination of other activities and actions which endanger public security.

The new Law on Border Control (Official Gazette of Montenegro 72/09) is fully harmonised with the Schengen Borders Code and with the European Union legislation.

The goals to be achieved by adoption of the this Law are the following: securing conditions for free movement of people, goods, services and capital; creation of conditions for full reform of the security sector in terms of better border management, in regard to illegal immigration and, all other aspects of trans-border and organised crime; developing more efficient police cooperation and

harmonisation of their actions, faster flow, exchange and use of information and data, especially at operational level; adoption of more precise and clear procedures conducted at the border crossing points.

Secondary legislation:

- Decree on conducting underwater activities in the waters of the Republic of Montenegro (Official Gazette of the Republic of Montenegro 66/06)

Other legislation governing this area is the following:

1. Law on State Administration (Official Gazette of the Republic of Montenegro 38/03 and Official Gazette of Montenegro 22/08).

This Law sets up the concept of modern, professional, efficient and effective state administration in Montenegro.

Secondary legislation:

- Decree on organisation and operation of state administration (Official Gazette of Montenegro 59/09)

2. Law on Police (Official Gazette of the Republic of Montenegro 28/05) ([Annex 168](#)) ([Annex 169](#)).

This Law regulates police tasks, police competences and duties, the status of police officers and control of the police activities and, inter alia, conducting state border surveillance and border check.

Secondary legislation:

- Rulebook on conducting certain police tasks and use of powers while conducting those tasks (Official Gazette of Montenegro 5/07);

- Rulebook on conditions and method of selection of a police officer to be posted abroad (Official Gazette of Montenegro 32/07);

3. Law on Asylum (Official Gazette of the Republic of Montenegro 45/06).

This law prescribes principles, conditions and procedures for granting asylum, recognising refugee status and granting subsidiary and temporary protection, bodies competent for decision making, rights and obligations of asylum seekers, those being recognised refuge status and granted supplementary and temporary protection, as well as the reasons for cessation and revocation of refugee status and subsidiary and temporary protection in Montenegro.

Secondary legislation:

- Decree on content and procedure of records keeping in the field of asylum (Official Gazette of Montenegro 09/08);

- Decree on financial aid to asylum seekers, those being granted refugee status, and subsidiary protection (Official Gazette of Montenegro 56/08);

- Decision on layout and content of forms and procedure of issuing documents to asylum seekers, a person being granted refugee status, a person being granted subsidiary protection, and a person being granted temporary protection (Official Gazette of Montenegro 13/09);

- Rulebook on asylum application forms and record forms on orally submitted asylum application (Official Gazette of Montenegro 4/07);

- Rulebook on procedure of taking photo, fingerprints, signature and other data from asylum seeker (Official Gazette of Montenegro 4/07);

4. Law on Foreigners (Official Gazette of Montenegro 82/08) regulates the terms for entry, movement and stay of foreigners on the territory of Montenegro.

Secondary legislation:

- Decree on visa regime (Official Gazette of Montenegro 18/09);

Procedure of drafting other relevant secondary legislation for implementation of the Law on Foreigners is in progress.

5. Law on Personal Data Protection (Official Gazette of Montenegro 79/08)

This Law provides for protection of data on individuals under the conditions and in a manner regulated by this Law, in compliance with principles and standards contained in ratified international treaties on human rights and fundamental freedoms and universal provisions under the international law.

6. Law on Data Secrecy (Official Gazette of Montenegro 14/08).

This Law provides for single system of establishing data secrecy, access to classified data, keeping, using, recording and protecting classified data.

Secondary legislation:

- Decree on the manner and procedure of marking the data secrecy (Official Gazette of Montenegro 67/08);

- Decree on the record on classified data (Official Gazette of Montenegro 67/08);

- Decree on detailed conditions and manner of enforcing the measures for protection of classified data (Official Gazette of Montenegro 72/08);

- Decree on content and form of the authorisation for access to confidential data (Official Gazette of Montenegro 71/08);

7. Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08).

This Law, inter alia, regulates the criminal offence of illegal crossing of the state border and smuggling of persons (Article 405).

8. Law on Misdemeanours (Official Gazette of the Republic of Montenegro 25/94).

This Law regulates the conditions of misdemeanour liability, conditions of regulation and application of misdemeanour sanctions, system of sanctions, misdemeanour proceedings, procedure of execution of decisions on misdemeanour and organization and operation of bodies competent for misdemeanours.

9. Law on Weapons (Official Gazette of the Republic of Montenegro 49/04 and Official Gazette of Montenegro 49/08).

This Law regulates the conditions for procurement, holding, carrying, production, trade and transport of weapons and ammunition, as well as the manner of handling weapons.

Secondary legislation:

- Rulebook on programme and manner of training on holding and carrying, and proper use of firearms (Official Gazette of the Republic of Montenegro 5/05);

- Rulebook on the forms of documents on weapons and ammunition (Official Gazette of the Republic of Montenegro 2/05 and Official Gazette of Montenegro 35/08);

- Rulebook on forms and manner of keeping the records on weapons and ammunition (Official Gazette of the Republic of Montenegro 2/05);

- Rulebook on room and technical conditions for safe production and storage of arms and ammunition (Official Gazette of the Republic of Montenegro 2/05);

10. Law on Registers of Permanent and Temporary Residence (Official Gazette of Montenegro 13/08).

This Law constitutes and regulates the manner of keeping the registers of permanent and temporary residence of Montenegrin nationals and foreigners, as well as the manner of amending, use and protection of data.

Procedure of passing relevant secondary legislation for implementation of this Law is in progress.

11. Law on Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (Official Gazette of Montenegro 4/08).

This Convention regulates measures of the border control, necessary for prevention and detection of cases of trafficking in human beings.

12. The Customs Law (Official Gazette of the Republic of Montenegro 7/02, 38/02, 72/02, 21/03, 31/03, 29/05, 66/06 and Official Gazette of Montenegro 21/08).

This Law regulates the customs procedure, rights and obligations of persons participating in the customs procedures, and duties and powers of the body competent for the customs clearance of goods.

Secondary legislation:

- Decree on implementation of the customs law (Official Gazette of the Republic of Montenegro 15/03, 81/06 and Official Gazette of Montenegro 38/08);

- Decree on the procedure for exercising the rights of exemption from the customs duty (Official Gazette of the Republic of Montenegro 22/03);

- Decree on deferred payment of the customs debt (Official Gazette of Montenegro 25/09);

- Decree on the type, level and manner of payment of the fee for services provided by the customs authority (Official Gazette of Montenegro 47/08);

- Decree on details of the procedure and conditions for opening of free shops (Official Gazette of the Republic of Montenegro 43/05);

- Decree on the customs procedure of handling goods suspected to violate intellectual property rights (Official Gazette of the Republic of Montenegro 25/05 and Official Gazette of Montenegro 16/08);

- Decree on the conditions of representation before customs bodies (Official Gazette of the Republic of Montenegro 20/03, 62/04);

- Decree on the conditions and the manner of selling customs goods and other procedures related to the customs goods (Official Gazette of the Republic of Montenegro 22/03, 62/04);

- Decree on issuing certificates supporting goods in export, import or transit (Official Gazette of the Republic of Montenegro 41/05);

- Rulebook on the form, content, the manner of submitting and filing-out the customs declaration and collective application (Official Gazette of the Republic of Montenegro 16/03, 43/04, 2/05, 14/05, 48/07);

- Rulebook on types and manner of using customs symbols (Official Gazette of the Republic of Montenegro 49/05);

- Rulebook on special measures of customs supervision and customs procedure for goods used as supplies for the means of transportation in international transport (Official Gazette of the Republic of Montenegro 78/06, 57/07);

- Instructions on conditions and the manner of paying the customs debt by a third person instead by the debtor (Official Gazette of the Republic of Montenegro 19/04);

- Instructions on special measures of customs supervision in placing the goods on free market, or in the procedure of export and import of sugar (Official Gazette of the Republic of Montenegro 37/03);

- Instructions on special measures of customs supervision in placing the cigarettes in the procedure of transit, export and re-export (Official Gazette of the Republic of Montenegro 14/07);

13. Law on Customs Tariff (Official Gazette of the Republic of Montenegro 75/05 and 17/07).

This Law regulates the customs rate in amounts defined by the customs tariff, on the goods imported in the customs area of Montenegro.

Secondary legislation:

- Decree on harmonisation of nomenclature of the customs tariff for 2009 (Official Gazette of Montenegro 78/08);

14. Law on Customs Services (Official Gazette of the Republic of Montenegro 7/02 and 29/05).

This Law regulates the scope of operation of the body competent for customs activities, rights, obligations and responsibilities of customs officers.

15. Law of Food Safety (Official Gazette of Montenegro 14/07).

This Law regulates grounds and principles for providing the high level of protection of life and health of people, protection of interests of consumers and requirements in the field of safe food and animal feed production and trade.

16. Law on Inspection Control (Official Gazette of the Republic of Montenegro 39/03).

This Law regulates all relevant elements of the inspection control providing insight in the work and actions of the institutions, legal persons, state bodies, municipal bodies, the capital city, royal capital, and the Republic, natural persons and other subjects in regard to the compliance with the regulations and undertaking proper measures. It involves general issues on conducting inspection control, inspection control principles, duties and powers of inspectors, rights and obligations of inspection subjects and other persons, inspection control procedure, special actions of the inspection procedure, relations between inspection and other bodies, the inspection procedure costs, joint conducting of inspection control, and issues in regard to the status and responsibility of inspectors.

17. Law on Protection of Citizens from Infectious Diseases (Official Gazette of the Republic of Montenegro 32/05).

This Law regulates infectious diseases threatening the health of the Montenegrin citizens, as well as infections resulting from performing health care activities, measures for their prevention and suppression, bodies competent for their enforcement, manner of providing the funds for their enforcement, as well as conducting supervision over the implementation of this Law.

18. Law on Plant Health Protection (Official Gazette of the Republic of Montenegro 28/06).

This Law regulates plant health protection and biological measures for protection of plants, measures for prevention of introduction and spread of harmful organisms and measures for control of harmful organisms on plants, plant products and objects under supervision, as well as other issues of relevance for plant health protection.

19. The Law on Planting Material (Official Gazette of the Republic of Montenegro 28/06).

This Law lays down the conditions and method of production, trade in and import of planting materials of fruit trees, grape vine, hop, decorative plants, medicinal and aromatic herbs, procedure of recognition of planting material, registration of varieties and rootstocks in the Register of varieties and rootstocks of planting material and other issues of relevance for production of and trade in planting material.

20. The Law on Seed Material of Agricultural Plants (Official Gazette of the Republic of Montenegro 28/06).

This Law regulates conditions and method of production, processing, control, post-control, quality testing, trade in and import of seeds of cereals, industrial plants, fodder crops, vegetables, medicinal, aromatic and spice herbs, flowers, tuber, bulbs, cloves, seedlings, rhizome, mycelium of edible and medicinal mushrooms, recognition of agricultural plant varieties, registration of the varieties in the Register of Agricultural Plant Varieties and other issues of relevance for production of and trade in seed material.

21. The Law on Plant Varieties Protection (Official Gazette of the Republic of Montenegro 48/07 and 48/08).

This Law regulates the conditions and procedure of plant varieties protection as well as rights and obligations of holders of breeders' rights.

22. The Law on Plant Protection Products (Official Gazette of Montenegro 51/08).

This Law lays down the method of classification, registration, trade in and use of plant protection products and active substances, maximum permitted levels of residues of plant protection products, method of keeping the registers and records, data exchange and other issues of relevance for plant protection products.

23. The Law on Plant Nutrition Products (Official Gazette of the Republic of Montenegro 48/07).

This Law regulates the conditions for production of, trade in, characteristics and application of the plant nutrition products, as well as other issues of relevance for production of and trade in plant nutrition products.

24. The Law on Ratification of the International Convention on Plant Protection (Official Gazette of Montenegro 8/08).

25. The Law on Genetically Modified Organisms (Official Gazette of Montenegro 22/08).

This Law regulates the conditions for use of genetically modified organisms and products which contain, consist of or are obtained from genetically modified organisms, their use in closed systems and deliberate introduction into the environment, as well as trading, handling, transport, packing, transit through territory of Montenegro, labelling, processing and measures for prevention and removal of harmful effects.

Secondary legislation:

- Rulebook on requirements for production line, trade, import and sampling of pesticides and fertilizers (Official Gazette of the Federal Republic of Yugoslavia 12/99)

- Rulebook on health checks of plant consignments in trade across the state border (Official Gazette of the Federal Republic of Yugoslavia 69/99)

- Rulebook on types of packaging for pesticides and fertilizers and on destruction of pesticides and fertilisers (Official Gazette of the Federal Republic of Yugoslavia 35/99).

- Rulebook on marketing of genetically modified organisms and products made of genetically modified organisms (Official Gazette of the Federal Republic of Yugoslavia 62/02),

- Rulebook on restricted use of genetically modified organisms (Official Gazette of the Federal Republic of Yugoslavia 62/02),

- Rulebook on the method of marking of agricultural and food products obtained from genetically modified organisms (Official Gazette of Serbia and Montenegro 06/03),

- Rulebook on the content of and on data from the register of genetically modified organisms and products of genetically modified organisms (Official Gazette of the Federal Republic of Yugoslavia 66/02)

- Order on types of planting material from import and on monitoring of health condition at end user's (Official Gazette of the Federal Republic of Yugoslavia 8/99)

- Order on prohibition of import and transport of the certain plant species and placing of certain plant species imported for cultivation purposes under quarantine supervision (Official Gazette of the Federal Republic of Yugoslavia 65/99)

- List of quarantine-harmful organisms (Official Gazette of the Federal Republic of Yugoslavia 8/99)

- List of economically-harmful organisms (Official Gazette of the Federal Republic of Yugoslavia 65/99 and 67/99)

26. Veterinary Law (Official Gazette of the Republic of Montenegro 11/04 and 27/07)

This law regulates: infectious animal diseases, prevention of occurrence, control and eradication of infectious animal diseases, preventive veterinary measures, mandatory scope of animal health protection, animal welfare protection, financing of animal health protection, requirements to be complied with by legal persons in veterinary profession, ensure carrying out of activities of public interest, as well as other issues of relevance for veterinary profession.

27. The Law on Animal Welfare Protection (Official Gazette of Montenegro 14/08)

This Law regulates the rights, obligations and responsibilities of natural and legal persons for animal welfare protection with regard to protection of animals against torture in keeping and breeding, killing and slaughter, in surgical interventions performed on animals, in transport and experiments, rules regarding the handling of animals, as well as other issues of relevance for protection of welfare of animals.

### **39. Does an integrated border management (IBM)**

Integrated Border Management Strategy ([Annex 182](#)) was adopted on 23 February 2006, and Action plan on implementation of the strategy for 2006-2013 was adopted on 7 December 2006.

The activities defined in the Action plan on implementation of the strategy are divided in short-term activities until the end of 2007, medium-term activities until the end of 2009, and long-term activities until the end of 2012.

The Strategy and the Action plan are developed based on European Commission Guidelines for Integrated Border Management in the Western Balkans, as well as the Schengen catalogue with recommendations and best practices in border control of the Council of Europe General Secretariat from 2002.

The Strategy and the Action plan created conditions for harmonised implementation of the activities of all agencies involved in integrated border management, in compliance with their competences, in order to establish efficient and risk-adapted system harmonised with European Union standards. Next stage of the integrated border management system development is related to assuming responsibility for efficient management of the external borders of the European Union, and subsequently harmonisation with the Schengen requirements.

Integrated border management strategy contains basic guidelines, i.e. the activities to be taken, in order to develop Action plan for its implementation: institutional framework of the organisational units of: the Ministry of Interior and Public Administration, Ministry of Health, Police Directorate - Border Police, Customs Administration, the Veterinary and Phytosanitary Administration; coordination mechanisms; cooperation; resources and time frameworks for implementation of the Strategy.

On 12 November 2007, the Government of Montenegro set up Interagency Commission for implementation of the integrated border management strategy and the Action plan for its implementation.

Interagency Commission is governmental body tasked to coordinate and enhance cooperation between the authorities competent for border management, in order to simplify and synchronise actions of the border procedures, pursuant to the competencies to improve quality of the actions, efficiency and harmonisation of the actions with the European Union standards and reaching required level of the border security, as a part of the overall security system of Montenegro. Authorities competent for border management are the following: the Ministry of Interior and Public Administration, Police Directorate, Customs Administration, Veterinary and Phytosanitary Administration.

Pursuant to the Integrated border management strategy and the Action plan, the Ministry of Interior and Public Administration, Police Directorate, Customs Administration, Phytosanitary and Veterinary Administration concluded:

- Agreement on mutual cooperation in integrated border management, signed on 3 February 2009, in order to improve mutual cooperation and increase efficiency in work ([Annex 183](#));
- Special Agreement on setting up the coordination teams for implementation of the Strategy and the Action plan, signed on 5 May 2009, establishing seven coordination teams on regional level and 28 expert teams at the border crossing points;
- Special Agreement on rules of conduct at the border crossing points, signed on 5 May 2009, laying down general rules of internal order at the border crossing points related to the use of



facilities, means and equipment, standards on hygiene and conduct of officers working at the border crossing points, and of those working in business organisations, in commercial facilities.

- Working methodology of the coordination teams in implementation of the Strategy, drafted by the Interagency Commission expert on 9 June 2009.

The Interagency Commission for the Strategy implementation, reports semi annually to the Government on implementation of the Action plan, after which the Government makes proper conclusions aimed at achieving dynamics in implementation of the Action plan in this field.

#### **40. How are the ministerial competences arranged in regard to border management (administrative arrangements)?**

The Government of Montenegro regulates the border crossing points, in compliance with the international agreements, and it defines: the border crossing point area, conditions for setting up and equipping border crossing points for conducting safe border control in compliance with international standards and requirements; it appoints commission for the activities on demarcation and establishing the state border; it concludes agreements on the state border, and it concludes agreements with other countries on international police cooperation.

State border management related activities are under the competence of the following ministries and administration bodies, organised in the following way:

- **Ministry of Interior and Public Administration**

Service for integrated border and border crossing points management, as separate organisational unit of the Ministry of Interior and Public Administration, conducts the state border security related activities, integrated border management and managing the border crossing points, as well as the activities related to the organisation and financing of construction, reconstruction, modernisation and maintenance of the border crossing points, closing of the side roads exiting on the border line, drawing up of the strategy and the of border crossing points management annual plans.

- **Ministry of Foreign Affairs**

Is in charge of developing bilateral cooperation with other countries, issuing diplomatic and official documents, issuing diplomatic overflight permits, providing expert support to the Commission dealing with demarcation and establishment of the state border, and preparing conclusion of international agreements on state border, establishes and solves border incidents.

- **Ministry of Spatial Planning and Environmental Planning**

Is in charge of issuing permits for building and setting up facilities and installing of the equipment in the border crossing point area, issuing approvals in the procedure of adoption of general and detailed urban plans, organising space reaching up to 100 meters from the border line.

- **Ministry of Transport, Maritime Affairs and Telecommunications**

Is in charge of marking border crossing points, and border crossing points area, by regulated marks.

- **Ministry of Health**

Is in charge of supervision at the borders, provided for by the Law on Protection of the Citizens from Infectious Diseases, and by the Law on Food Safety, through the Section for health-sanitary inspection.

- **Police Directorate**

Border Police Department, as a separate organisational unit of the Police Directorate, conducts protection and border check activities.

- **Customs Administration**

Is in charge of activities regarding the customs supervision, customs clearance and goods control.

- **Real-Estate Administration**

Is in charge of measuring, marking, maintenance and renewal of the border marks at the state borders, and maintenance of the border line, as well as preparation of documents and keeping records on the state border.

- **Veterinary and Phytosanitary Administration** conducts veterinary and phytosanitary border control.

#### **41. Is there a centralised and clearly structured public authority with a direct chain of command between Border Police Units?**

The Police Directorate was established by the Decree on organisation and functioning of the state administration (Official Gazette of the Republic of Montenegro 28/05), pursuant to which the Police Directorate was entrusted with precisely defined competences, rights and obligations.

Pursuant to the Rulebook on internal organisation and job descriptions, Border Police Department is organised within the Police Directorate, as a centralised organisational unit, clearly structured with a direct chain of command between the border police units at the national, regional and local level.

At the national level (Police Directorate of Montenegro), within the Border police Department there are following four Sections:

1. State Border Surveillance Section;
2. State Border Check Section;
3. Intelligence Section, and
4. Section for Foreigners and Suppression of Illegal Immigration.

At regional level, there are eight regional border police units:

1. Border Police Regional Unit in Berane;
2. Border Police Regional Unit in Pljevlja;
3. Border Police Regional Unit in Bijelo Polje;
4. Border Police Regional Unit in Podgorica;
5. Border Police Regional Unit in Niksic;
6. Border Police Regional Unit in Bar;
7. Border Police Regional Unit in Herceg Novi, and
8. Border Police Regional Maritime Unit.

At the local level, there are following 16 local border police units:

1. Local Border Police Unit in Plav;
2. Local Border Police Unit in Rozaje;
3. Local Border Police Unit in Pljevlja;
4. Local Border Police Unit in Boljanici;
5. Local Border Police Unit in Tuzi;
6. Local Border Police Unit - Airport of Podgorica;
7. Local Border Police Unit in Pluzine;
8. Local Border Police Unit in Banjani;
9. Local Border Police Unit in Vilusi;
10. Local Border Police Unit in Ulcinj;
11. Local Border Police Unit – Port of Bar;
12. Local Border Police Unit in Sutorina;
13. Local Border Police Unit – Airport of Tivat;
14. Border Police Local Maritime Unit in Podgorica;
15. Border Police Local Maritime Unit in Bar, and

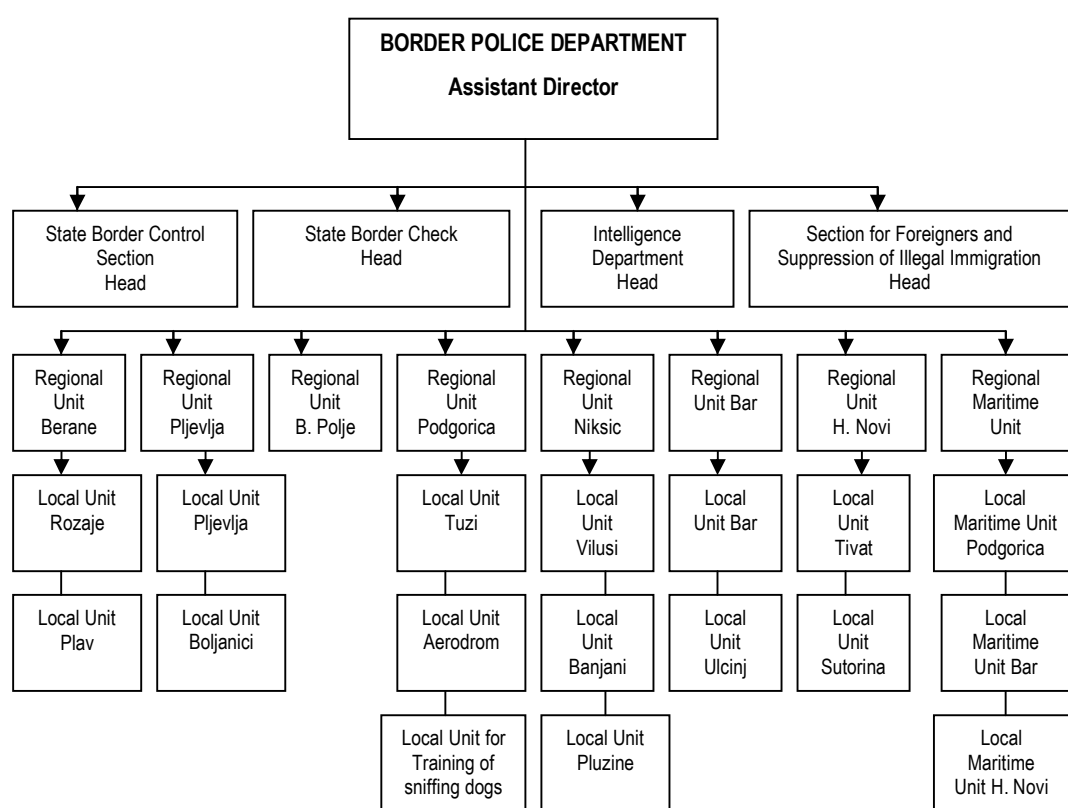
## 16. Border Police Local Maritime Unit in Herceg Novi.

Border police conducts surveillance of the state border of Montenegro in the length of 840.4 km, out of which 571.6 km on the land, and 268.8 km on the water (out of which 137 km is on the sea, 50.5 km on the lakes and 81.3 km on the rivers). In addition, border police conducts the state border check at 28 border crossing points (out of which 19 are for road traffic, 5 for maritime traffic, 2 for air traffic, and 2 border crossing points for railway traffic).

State border surveillance competence was taken over on 31 December 2003 by the border police from former Army of Serbia and Montenegro.

Within the Border Police Department there are 1 470 employees, out of which 147 are head of the organisational units, 1 312 police officers, and 11 positions are administrative staff – logistic support.

At this moment, 95% of available positions are occupied.



**42. Is there a constantly updated comprehensive situational picture at national level covering all information related to national border management? Is there a national coordination centre, coordinating 24/7 the activities of all agencies carrying out border control tasks?**

At the national level, Interagency Commission addresses all border management issues, as the coordination body tasked to provide and strengthen cooperation between the agencies, competency at the border. Based on regular reports of the teams' coordinators, activities of coordination teams at the regional and local level within integrated border management are directed, and the supervision over the implementation of the Strategy is conducted.

Teams coordinators at the regional and local level at the border crossing points, provide coordination and cooperation with the criminal police, general police, market, tax, forestry, water management, fishing inspections and local self-government bodies, aimed at implementing the Strategy, exchanging information, conducting risk analyses, intelligence related following of relevant issues, based on which activities on suppression of all aspects of cross-border crime are directed.

Coordination expert teams for integrated border management at the regional and local level are operational round-the-clock, aimed at: synchronising activities of border agencies; exchanging information relevant for suppression of all aspects of organised and cross-border crime; border check; inland control and cooperation of agencies at the state border; protecting life and health of people, etc.

Therefore, Interagency Commission for implementation of integrated border management Strategy and the Action plan for its implementation at the national level, and coordination teams for implementation of the Strategy at the regional and local level, are analysing the situation on the state border, which is constantly updated, and is used for coordination of the activities of all agencies conducting border control.

**43. Are there any plan to allocate reserves, staff and equipment to react to incidents along the borders?**

There are plans for regular and emergency engagement of the human resources and equipment aimed at securing the state border inviolability, and eliminating threats endangering public security.

Namely, the Police Directorate – Border Police Department, in charge of the state border surveillance, has the plans for regular and enhanced protection, i.e. the plans for regular and emergency engagement of the border police staff for allocation of reserves, staff and equipment, in order to respond to incidents along the border.

Plan is prepared based on the state border security assessment, and is updated on daily bases, in accordance with the intelligence analyses of the issues and risk analyses, which is used to direct the activities of regular patrols for the state border protection, and engagement of mobile units properly equipped, aimed at preventing the state border violations.

**44. Please describe the means of providing situational awareness and reaction capability on green and blue borders. Is the level satisfactory in relation to the threat analysis? What would be major fields of development in this respect?**

Within its scope of work, Border Police Department conducts surveillance of the green and blue border, as well as the border check. In addition, it conducts the control of movement and residence of foreigners, as well as suppression of illegal immigration, without organised crime elements.

Assessment of the situation at the green and blue border is conducted permanently based on risk analyses, at the central level (Border Police Department –the Sectors upon the lines of work), at the regional level (regional border police units), and at the local level (local border police units).

Based on the risk analyses, at the level of regional border police units, plans are drawn up on regular and enhanced surveillance of the state border, and plans on engagement of the field authorities for conducting surveillance of the state border are drawn up monthly, aimed at ensuring timely response to all security risks at green and blue border.

Electronic surveillance system on the blue border is established on the Adriatic Sea, Skadar Lake and River Bojana, which additionally, in the real time, provides awareness of the situation.

Ability to react to possible threats, at green and blue border, is aggravated mostly due to the terrain and local waters configuration, lack of modern technical devices and limited resources of the existing equipment, which is additionally conditioned by maintenance and proper functioning.

It is considered that it is necessary to improve additionally current risk analyses system, by:

- Allocating the staff at all levels to deal exclusively with risk analyses;
- Delivering specialised training to the allocated staff, and
- Providing technical conditions.

Taking into account the terrain characteristics, and the need to secure preservation of inland safety and property safety of legal and natural persons, the following further development in equipping and improving the border police working conditions is required, which was presented to international organisations and diplomatic representatives in June 2009 in Podgorica:

- Surveillance of the state borders under all conditions;
- Technical modernisation of the surveillance and border checks, and
- Equipping and development of the border maritime police.

Within the Instruments for Pre-Accession Assistance (IPA) for needs of the Police Directorate, drawing up of the following projects is ongoing:

- IPA 2008 Project on improvement of migration policy and its harmonisation in compliance with the European Union standards in the field of migration, visa, readmission and construction of shelter for foreigners, through strengthening the strategic, institutional, operational and infrastructure capacities of the Ministry of Interior and Public Administration and Police Directorate – Border Police Department;
- IPA 2009 Project on the strengthening of the Police Directorate capacities for fight against organised crime and corruption, and implementation of the integrated border management strategy, and
- IPA 2010 Project on enhancing the current safety and security system of Montenegro in compliance with the European Union standards, through strengthening the police administrative, technical and infrastructure capacities in the field of integrated border management, intelligence and fight against narcotic drugs.

Within its scope of work, the Customs Administration, pursuant to the Customs Law, conducts surveillance of the green and blue border, aimed at preventing illegal trade of goods across the state border.

In its regular activities, the customs officers collect information on events at the blue and green border:

- based on the activities of local intelligence customs officers located in the regions (southern, central part and northern part);
- based on customs open lines (launched in 2005), and
- based on database, containing all data on offenders and suspicious activities since 1 January 2004, which is gathered in the Intelligence Section, where data is processed and analysed.

Based on gathered information, as well as on information collected through international cooperation, current situation along the green and blue border is assessed, resulting in establishment and enforcement of proper measures and actions from the customs scope of work.

Regarding the situation at the green and blue border, there is a need for better technical equipment of the customs authorities, primarily for night vision new generation devices (thermovision cameras), as well as for continuous training of the customs officers for conducting activities in the green and blue zone.

#### **45. Describe the training system for the Border Police.**

Within the Project on reform of education of the Montenegrin police, the Police Academy conducts basic police training, supplementary trainings, vocational and specialised training of the Police Directorate staff.

By conducting basic police training, newly recruited police staff is prepared for conducting police activities, it is obtaining basis for vocational and specialised training, and further professional development. The training is delivered through implementation of two following education programmes:

1. Education programme for acquiring the rank of a policeman in duration of two years (2 625 teaching classes) for candidates who graduated from high school, and
2. Education programme for police officers in duration of 10 months, for candidates who graduated from university.

Through implementation of the education programme for acquiring the rank of a policeman in duration of two years, future policemen are obtaining specialised knowledge and skills for conducting the following duties:

- General policing;
- Traffic safety;
- Border policing;
- Community policing;
- VIP and facilities security, and
- duty service.

In addition, this kind of education enables obtaining basic knowledge for conducting activities in the following fields:

- Special anti-terrorist unit;
- Special police unit, and
- Criminal police.

Implementation of this education programme involves combination of theoretical, practical and situational training, aimed at acquiring knowledge and skills, and building up approaches guarantying:

- respect of fundamental values of democracy and the rule of law;
- full transparency towards the community and understanding of social, cultural and other changes;
- respect of the need for fight against all forms of discrimination;
- compliance in regard to the use of force with the principles of the European Convention of Human Rights;
- stress tolerance skills;
- communication skills, etc.

The Programme involves 27 teaching modules divided into 5 following groups of subjects:

I Group – general law related subjects:

- Basics of law;
- Administrative Law;
- Criminal law – general part;
- Criminal procedure law, and

- National security and the European Union security.

II Group – general education subjects:

- Sociology;
- Police psychology;
- Police ethics and code of conduct;
- Human rights, and
- English language.

III Group – specialised subjects:

- Police tasks and powers;
- Traffic safety;
- Criminalistics (tactics, techniques and methodology);
- Criminology;
- State board surveillance and border issues;
- Public order and misdemeanour law;
- Anti-terrorism;
- Physical fitness and defence tactics;
- Tactical communication;
- Armament with shooting practice, and
- Community policing.

IV Group – medical subjects:

- First aid, and
- Forensic medicine.

V Group – IT subjects:

- Telecommunication systems;
- Basics of IT (according to ECDL standard);
- Police IT system, and
- Application of the police IT systems.

The subject on state board surveillance and border policing, involves 55 lessons of theory in the first module, 80 lessons of the practical training in the second module, and 20 classes of supplementary training in the third module, which is the total of 155 lessons.

In the first half of 2008, in cooperation with international experts and the Police Directorate and the Ministry of Education and Science staff, the Police Academy made amendments to the Education programme for the rank of a policeman.

Therefore, through implementation of the basic police training, i.e. through implementation of the Education programme for the rank of a policeman in duration of two years, policemen are also trained in the field the state border surveillance and check.

The Education programme for the rank of a policeman in duration of ten months, for candidates with university degree, the same lessons and groups of subjects as within the Education programme for the rank of a policeman in duration of two years are covered. This education programme has not been implemented so far, due to the fact that the Police Directorate did not recruit significant number of staff with university degree in the last two years.

Within the supplementary police training, the Academy organises five-month courses for:

- the border police, and
- the general police staff.

This kind of training is exclusively designed for the police officers who have been engaged in the police organisational units, but haven't received any basic police training. Training courses for the border police staff are delivered pursuant to the supplementary training programme. In cooperation with the Border Police Department staff, within the European Commission recommendations on assessment of the requirements to be fulfilled within the Road map for visa liberalisation regime, in third quarter of 2009, the Police Academy made amendments to this programme. Innovated supplementary training programme for the border police staff is substantially and thematically harmonised with the General programme of education of the border staff drawn up by FRONTEX.

In cooperation with the Police Directorate, the Police Academy continually organises specialised training and professional development related training for the Police Directorate staff. This form of training is delivered in compliance with the annual programmes of vocational and specialised training, prepared jointly by the Police Directorate operational departments and the Police Academy management team. Special segment of the annual programme is professional and specialised training of the border police staff, involving in average more than twenty different training courses and seminars being delivered during a year.

In most of the vocational and specialised training courses and seminars, international experts (the OSCE, the **International Criminal Investigative Training Assistance Programme** (ICITAP)), the United States of America Defence Department, the Austrian Development Agency, etc.), are invited to deliver the training.

Through this form of training, the border police staff is further developing its knowledge and skills in the following fields:

- conducting border check and detecting forged documents;
- suppression of trans-border trafficking in narcotic drugs;
- illegal immigration prevention;
- suppression of trafficking in human beings;
- prevention of stolen vehicles smuggling;
- prevention of trafficking of weapons of mass destruction;
- handling asylum seekers;
- use of various equipment in border check and surveillance of the state border;
- risk analyses, etc.

#### **46. Are the programmes in line with the Common Core Curriculum on border guard training?**

The training program in the field of state board surveillance and border policing, delivered under the basic police training and the program for supplementary border police staff training is thematically and substantially harmonised with the General programme on education of border staff drawn up by the FRONTEX, incorporating DCAF and European Commission recommendations.



The above-mentioned programs involve the following subjects:

- Concept of border related issues and legislation governing the border check and surveillance;
- Green border surveillance;
- Blue border surveillance;
- Crossing of the state border and border crossing points;
- Passengers and luggage border check:
  - Passengers and travel documents check;
  - Methods and manners of forged documents detection, and
  - Prevention of trans-border smuggling of narcotic drugs and stolen vehicles..
- Prevention of smuggling the weapons of mass destruction;
- Risk analyses and profiling while conducting border check;
- Basis of European Union;
- Schengen acquis, Schengen Borders Code and Schengen external and internal borders;
- International police cooperation:
  - Convention on the police cooperation in South-East Europe;
  - Other legislation on international border cooperation;
  - Joint border patrols, and
  - Joint border crossing points and functioning of the joint border crossing points.
- Border surveillance related risk analyses;
- Intelligence-operational activities of the border police;
- Techniques of conducting interviews;
- Concept of foreigner related issues and requirements for entry of foreigners in Montenegro:
  - Law on Foreigners and other legislation;
  - Documents of foreigners;
  - Visa regime, and
  - Illegal immigration.
- Residence of foreigners:
  - Residence types and conditions;
  - Illegal stay and forcible removal;
  - Categories of foreigners being granted special status, and
  - Permanent residence, temporary residence and work of foreigners.

#### **47. Are border police officers properly trained and specialised?**

In cooperation with the Police Academy and with the support of international organisations, the border police staff is being delivered the training in compliance with the methods being harmonised with European standards.

Since 2007, continuous training is conducted through the programme on professional development of the state employees and civil servants, drawn up by the Human Resources Administration. Through this programme, border police staff underwent several courses on different topics.

In 2007 and 2008, the Police Academy delivered 20 training courses and seminars to 343 border police officers, and the supplementary basic police training for 94 officers was organised additionally.

In 2009, it is planned to deliver a number of vocational and specialised seminars and training courses on: application of individual legal provisions, threat posed by weapons of mass destruction, training for border maritime police, detection of forged documents, protection of the state border from possible threats and terrorist actions, technical devices for state border surveillance and check, prevention of trans-border smuggling of drugs, fight against trafficking in human beings and illegal immigration, visa regime, application of the Code of police ethics, Instructions on reporting corruption in the police, language and IT training etc.

In addition, the number of training courses is conducted abroad, through seminars, workshops, roundtables and similar training events.

Special training organised in cooperation with the Port Authority, for acquiring the rank of boat commander operator and sailor mechanic is delivered to the border maritime police staff, in charge of the police engineman and police steersman. Police Directorate staff conducting the activities of anti-diversion check of passengers and luggage, are delivered supplementary training in the form of seminars and training courses. The Police Academy organises the training for the sniffing dogs handlers.

#### **48. Are border police officers able to communicate in foreign languages?**

Pursuant to the police Rulebook on internal organisation and job descriptions, as a requirement for recruitment within the Police Directorate, i.e. to be able to conduct police tasks and duties, applicants are required at least to hold secondary police school or other high school degree, during which at least one foreign language is studied.

In addition, supplementary training delivered within the basic police training, being mandatory for the staff conducting the duties of policemen, also involves foreign language courses.

The number of border police staff attended few foreign languages courses, organised by the Police Academy, Human Resources Administration and the OSCE.

In March 2009, the Police Academy opened the School of English language, thus enabling the police staff, under very favourable conditions, to acquire or improve the knowledge in this, within the overall reform process, very important field.

Border police organisational units, in charge of border surveillance and check at the border crossing points towards the Republic of Albania, have a number of staff able to communicate in Albanian, which is relevant for setting up joint patrols for securing the border, and for the work at joint border crossing points.

#### **49. Describe the risk analysis system in the Border Police. Describe the use of risk analysis on the level of operative management and possible results.**

Strategic risk analyses monthly reports are drawn up at the central level, by the Border Police Department Intelligence Section, at the regional level week reports are drawn up by the regional border police units, in which each unit has one intelligence officer (intelligence assistant) in charge of intelligence, who manages the number of intelligence officers in the field (head of security sections).

Field intelligence officers (head of security sections) draw up intelligence reports by using 4x4 system, which are further processed and analysed, and are used for directing patrol activities and setting up ambushes, aimed at preventing all forms of cross-border crime, resulting in achievement of good results in the practice.

Some intelligence reports are forwarded to the Criminal Police Department (if these are criminal offences with elements of organised crime – trafficking of human beings, narcotic drugs, etc.), in order to enable the border police, together with the criminal police, to fight also these forms of organised crime.

Within the Project of trade and transport facilitation in Southeast Europe (TTFSE), based on the loan of the World Bank, the Customs Administration together with the partners, the company Charles Kendall & Partners and Memex from the United Kingdom, initiated the development of the risk management system. Initial activities on the system development started in July 2005, and were finalised in March 2007. The system testing phase was finalised on 24 April 2007, when the system was fully integrated into the existent customs IT system, being available to all organisational units of Customs Administration.

Main functions of the risk analyses system are the following:

- collection of data and information for establishing risk parameters and profiles (mechanisms of definition, modernisation and maintenance, enabling feedback information);
- risk analyses and assessment through the processing of data on declarations by using risk profiling, intelligence and other sources;
- establishing integrated data system on suspicious persons and vehicles (including boats and vessels), to be used for the purpose of conducting checks, review, surveillance and security;
- setting up proper measures (level/number of controls), and
- analysing results, drawing up reports, and providing feedback information, aimed at the risk profiling improvement.

Establishment of the risk analyses system required setting up of the basic multi-disciplinary team involving: risk management team (RMT) for the purpose of selectivity, target tracing (TT) for the purpose of support to the Customs Administration IT Department, risk managers and Strategic Risk Commission.

## **50. How is border management supported by intelligence?**

Intelligence is supporting the Border Police Department and the Customs Administration activities, aimed at conducting efficient border management.

Border management, within the Border Police Department, is supported by intelligence in compliance with the Intelligence Led Policing model. Intelligence and risk analysis products present a base for directing the activities of patrols and setting up ambushes, as well as the border crossing points activities. Intelligence products and risk analysis outcomes, are used to plan police tactical-operational activities and to direct the police staff activities.

At the level of the Customs Administration, intelligence is gathered from different sources by the intelligence Section. After being processed, data is forwarded in writing or through the risk analysis system to the related organisational units. If the information is forwarded through the risk analysis system, when processing declarations in the customs information system, a field officer will receive the red channel, meaning he/she is obliged to conduct the goods inspection.

## **51. How is the gathering of information, its analysis and distribution arranged?**

Within the Border Police Department, Intelligence Led Policing model is being applied.

Gathering information is conducted at the level of the sections.

Border line territory is divided in sections, with the number of them within each local border police unit. Each security section has one or more intelligence officers (heads of security sections) who are in constant contact with the police officers.

These intelligence officers, as well as all police officers are obliged to gather information and draw up intelligence reports (by using 4x4 system).

Each regional border police office has one intelligence officer (intelligence assistant). He/she is the head of intelligence officers in the local units, and he/she monitors, consolidates and directs their activities. He/she distributes all information to the central level, i.e. to the Border Police Department – Intelligence Section.

Information analyses at the regional level are conducted by intelligence officer (intelligence assistant) at regional units, and at the central level this task is conducted by the Intelligence Section.

Information regarding the scope of work of the local or regional level organisational units are distributed immediately for further processing (with previous approval of the central level), while information regarding the central level are distributed to the Criminal Police Department and other state bodies for the purpose of joint action.

Within the Customs Administration, information is gathered in the Intelligence Section Department.

The following sources for gathering information are used: Customs open hot line, local intelligence customs officers, other organisational units within the Customs Administration, other state institutions, economic entities, as well as international sources.

Information is assessed based on 4x4 system. After gathering information checks are conducted through various sources, such as: the customs information system, risk analysis system databases, the Commercial Court Central Register, container tracking software, other state bodies, international sources etc. Processed information along with the proposal for its distribution is submitted to the Customs Administration Director for approval.

Following the approval given by the Customs Administration Director, information is distributed to the competent organisational unit of the Customs Administration, or to other state body in a case the information does not refer to the Customs Administration scope of work. Distribution of processed information is conducted in writing or through the risk analysis system risk profiles. If the information is to be delivered through the risk analysis system, a field officer will receive the red channel, meaning he/she is obliged to conduct the goods inspection.

**52. Describe the organisational structure of the national service or national services responsible for border control tasks:**

**a) legal and regulatory aspects**

Following Ministries and administration bodies are competent for the border control:

- Ministry on Interior and Public Administration
- Ministry of Health
- Police Directorate–Border Police Department
- Customs Administration
- Veterinary Administration
- Phytosanitary Administration

The answer to this question is given within the answer to the question 38.

## **b) human resources and training**

The following agencies within their competencies, are engaged in the border control:

### **POLICE DIRECTORATE**

Pursuant to Police Directorate Rulebook on internal organisation and job descriptions of 15 October 2008, there are 1 470 positions within the Border Police Department. Currently, 1 396 positions are occupied, or 95%.

Since 2003, the basic course has been delivered to the border police staff in charge of border surveillance, i.e. state border control and protection.

This course lasts for 120 days, and involves the following:

- Border Police Department organisation
- Borders and the Law on State Border Surveillance
- Green border surveillance and protection
- Blue border surveillance and protection
- Border check and border crossing points
- Border control
- Law on Foreigners
- Suppression of smuggling of narcotic drugs
- Suppression of trafficking in human beings

From 1 January to 31 July 2009, 85 different forms of vocational training events were attended by 687 Border Police Department officers.

Specialised training within the professional development process is being delivered in the following areas:

- Fight against drugs trafficking with the focus on detecting drugs during inspection and search;
- Management of incidents involving weapons of mass destruction;
- Criminal intelligence;
- Methods for detecting forged travel documents;
- Suppression of illegal immigration and human trafficking;

In the upcoming period, the activities on professional development of the border police staff will be continued, with the focus on implementation of the new Law on State Border Control, as well as on suppression and detection of other forms of organised cross-border crime.

### **CUSTOMS ADMINISTRATION**

Pursuant to the Customs Administration Rulebook on internal organisation and job descriptions, there are 669 positions. Within the Customs Administration there are 535 state employees and civil servants, 38 trainees and 33 officers engaged according to the service contract.

In 2007, 304 state employees and civil servants of the Customs Administration attended 144 different forms of training courses, while in 2008, 393 staff attended 136 different forms of training courses.

From 1 January 2009 to 31 July 2009, 296 state employees and civil servants of the Administration attended 102 different forms of vocational training courses.

In the upcoming period, the focus will be on long term planning of professional development of the state employees and civil servants of the Customs Administration, and on the activities to be undertaken to straighten the training unit.

## **PHYTOSANITARY ADMINISTRATION**

Phytosanitary inspection is within the Phytosanitary Matters Department – Inspection Control Section, within the Phytosanitary Administration.

At the moment, there are 16 officers within the Section, out of which 13 are border phytosanitary inspectors allocated at 13 border crossing points:

In the previous period, phytosanitary inspectors were delivered training through the following projects: Technical assistance to straightening veterinary and phytosanitary service in Montenegro (EUROPEAID/114720/D/SV/YU, 2002 – 2005), CARDS 2001 – Integrated Border Management (IBM) and a large number of TAIEX workshops, study visits and expert missions.

## **VETERINARY ADMINISTRATION**

Veterinary border inspection is organised at nine border veterinary posts and the activities of border veterinary control are performed by 9 border veterinary inspectors.

So far, the training of the veterinary border inspectors was conducted through the following projects: Technical assistance to straightening veterinary and phytosanitary service in Montenegro (EUROPEAID/114720/D/SV/YU, 2002 – 2005), CARDS 2001 – Integrated Border Management (IBM) and a large number of TAIEX workshops, study visits and expert missions.

### **c) border control procedures**

Border control procedures are conducted by the following state and administration bodies within the scope of their competences:

#### **The Ministry of Health**

In addition to the administrative measures and actions provided for by law regulating inspection control, Health and Sanitary Inspection is obliged to undertake the following administrative measures and actions in a case of the legislation violation:

1) for persons coming from a country affected by cholera, plague, yellow fever, malaria and viral hemorrhagic fever (except for hemorrhagic fever with kidney syndrome), to order placing under medical supervision at the border crossing points, i.e. on places of entry in the country;

2) to prohibit crossing of the border in both directions, when certain disease occurred or spread out in border area of the state, or at some border crossing points of a neighbouring country;

Health and sanitary inspectors inspect the safety of the food of vegetable origin after primary production, combined and other food in production, international trade, wholesale and retail, as well as individually declared packed retail food of animal origin in small trade.

## **POLICE DIRECTORATE**

Montenegrin border control procedures encompass measures and activities concerning the protection of state border and control of crossing the state border, whilst the Rulebook on the manner of conducting certain police duties and use of powers while conducting duties (Official Gazette of Montenegro 05/07) provides for in detail the relevant procedures.

The state border protection is conducted by the patrol activity on land, sea and internal waters, by surveillance of certain areas, by setting up ambushes and other operational-tactical measures, actions and procedures by using technical devices and sniffing dogs, aimed at conducting control of movements of persons and means of transportation, preventing illegal border crossing, securing the border inviolability and preventing cross-border crime.

State border control procedures, within the scope of work of the border police involve the following: check of persons, control of objects and control of means of transportation.

Within the control procedures, border police staff is empowered to: check the documents used for crossing state border, check of fulfilment of the requirements for entry and stay, entering in travel document data on entry and exit from the country, the date on prohibition of entry and other relevant data, taking fingerprints and palm prints and other biometric data, holding the person for time required for efficient performance of border control, check in wanted persons records, and inspection and search of a person, if it is not possible to conduct the control otherwise.

Within the meaning of the Law on State Border Surveillance, control of objects involves control of objects possessed by a person or being placed in a transportation mean.

In the case of a reasonable doubt on possession of prohibited things and objects, the officer of the competent body is authorised to request from the person to show up things and objects possessed by that person.

Check of a transportation mean is the control involving internal and external visual inspection of a transportation mean, search of a transportation mean, and check in the records of vehicles searched for.

### **CUSTOMS ADMINISTRATION**

Pursuant to the Customs Law (Official Gazette of the Republic of Montenegro 7/02, 38/02, 72/02, 21/03, 31/03, 29/05, 66/06, and Official Gazette of Montenegro 21/08), customs control involves conducting the following actions by the customs authority: inspection of goods, checks whether there are required documents, as well as the documents authenticity, inspection of accounts and other documents, inspection of means of transportation, inspection of luggage and other goods transported or carried by persons, conducting checks and other similar actions, aimed at securing proper application of the customs and other regulations applicable on goods being the subject of customs control.

Customs officers are authorised to conduct customs control on entire territory of Montenegro, pursuant to the Law on Customs Service (Official Gazette of the Republic of Montenegro 7/02, 29/05). Customs control at the border is directed to the border crossing points, which are used for transportation of goods and passengers. Customs control is also conducted in passenger traffic.

Customs officers conduct inspection of customs declaration and documents supporting the declaration, control of import and export of domestic and foreign means of payment, import control, export and transit control of goods being subject of special measures for the reasons of security, protection of health and life of people, animals and plants, environment, national, artistic, historical or archaeological values, or protection of property.

Aimed at checking the submitted customs declarations, customs officer may conduct inspection of the goods. In a case some irregularities are established during inspection, i.e. if goods is not properly declared, it will be temporarily seized, and is subjected for further procedure pursuant to the regulations. If during inspection or search of goods, weapons or narcotic drugs illegally transported in or from the customs territory are found, the goods will be immediately seized, and the persons being in possession of the goods will be temporary restricted in movements, and the Police Directorate competent body will be immediately informed accordingly.

Pursuant to the Agreement on mutual cooperation between the Customs Administration and the Police Directorate, joint checks are initiated and conducted.

### **PHYTOSANITARY ADMINISTRATION**

Border phytosanitary inspection conducts health inspection of shipments of plants in international trade (import, export, re-export, transit), it issues certificates on health conditions of plants (phyto certificate), samples plants, undertakes phytosanitary measures for the purpose of prevention of import and spreading, and eradication of harmful organisms pursuant to the law.

### **VETERINARY ADMINISTRATION**

Border veterinary inspection conducts control of the trade of animals, food of animal origin, food for animals and other products and materials of animal origin in international transport (import, export,

transit), being conducted exclusively at the border inspection posts which fulfil basic hygiene-technical and working conditions.

All such shipments have to be inspected by border veterinary inspector.

#### **d) infrastructure, IT systems and equipment**

In the previous period, since taking over of the state border security, and establishment of civil surveillance of state border in 2003, a set of activities is undertaken in developing and modernising border security system, as a part of overall security system in Montenegro.

Namely, in 2003 and 2004 specialised equipment was purchased and the border crossing points Dobrakovo, Dracenovac, Rance, Ilino brdo, Kobila, Metaljka, Sitnica, Vracenovici and Sukobin were reconstructed through the US Government donation amounting 4.5 million dollars,

Through the funds allocated from the Budget of the Government of Montenegro and donation support of the European Union the following modern border crossing points were constructed:

- Towards the Republic of Croatia, BCP Debeli Brijeg - CARDS Programme 2004 (EUR 2,816,273.00);
- Towards Bosnia and Herzegovina, BCP Scepan Polje - CARDS Programme 2004 (EUR 1,141,444.00);
- Towards the Republic of Albania, BCP Bozaj - CARDS Programme 2006 (EUR 800,000 Euros);
- On 18 Jun 2009, joint border crossing point Murican-Sukobin was opened towards the Republic of Albania.
  - It is planned to reconstruct the border crossing point Sitnica, towards Bosnia and Herzegovina;
  - It is planned to reconstruct the border crossing points Dobrakovo and Dracenovac towards the Republic of Serbia, within IPA programme 2008.

Other border crossing points are built and reconstructed with the funds allocated from the Budget of the Government of Montenegro.

#### **• Information (IT) systems and equipment**

IT infrastructure of all border crossing points involve local computer networks with PC working stations having installed Windows XP professional SP3 operational system. IT infrastructure differs depending on whether a border crossing point is integrated into the central information system or not:

- The border crossing points which are not connected to the central information system, have installed local server with local database. Local database involves the same set of data as central database of Police Directorate, and is synchronised weekly with the central database. Those border crossing points do not have document machine readers, or the mode for online search of INTERPOL I-24/7 database on stolen license plates and stolen and lost travel documents. However, INTERPOL NCB Podgorica staff inserts in the national database on wanted persons, data on persons subject of international wanted notices issued by other INTERPOL NCBs, meaning that those BPCs are making checks in such a way.
- 15 border crossing points: the Airport of Podgorica, the Airport of Tivat, Port of Bar, Debeli Brijeg, Dobrakovo, Dracenovac, Sitnica, Kula, Sukobin-Muricani, Bozaj, Rance, Kobila, Luka Kotor, Port of Zelenika and Ilino Brdo which are the most frequent border crossing points, which are integrated into the central information system of the Police Directorate, have installed informational sub-system for checking and registering entries/exits, with the capacity to make searches in the national data base by entering basic data, as well as in INTERPOL database on stolen registration plates and stolen and lost travel documents in real time (on-line). Seven border crossing points have document machine readers, CrossMatch A 100, with the possibility of scanning travel documents.



Donation of the European Union and International Organisation for Migrations is expected in the forthcoming months, for the purpose of purchasing 13 travel documents readers, which will simplify the procedure of the state border crossing.

Installation of the software for the border check and training of the border police staff for using new software and hardware, was conducted in parallel with the integration of the border crossing points into single computer network of the Police Directorate.

The border crossing points are provided with basic technical devices and equipment for routine checks and sampling, as well as for fast exchange of information with other border agencies (direct telephone lines and telephone equipment, computer equipment, radio connection system, devices for detection of forged documents).

Bigger border crossing points have CO<sub>2</sub> detectors for detection of persons concealed in vehicles, hand held detectors for detection of radioactive materials and metal.

Video surveillance system is installed at the Airports Podgorica and Tivat, and the border crossing points Port of Zelenika, Debeli Brijeg and Sitnica.

Still there are no automatic readers of license plates at the border crossing points, and there are no devices for the detection of narcotic drugs and explosives.

\* Electronic surveillance system of blue border

The Police Directorate– Border Police Department has launched in 2007 implementation of the Project on electronic surveillance of blue border, in cooperation with Section for Telecommunication and IT and other organisational units of the Police Directorate, aimed at enhancing the border security system on water, strengthening the efficiency of border check, and rationalisation of human and technical resources.

Electronic surveillance system of blue border is intended for conducting electronic surveillance of the coastal zone of the Adriatic Sea, territorial waters and coastal zone of Skadar Lake and River Bojana, including also surveillance of the green border towards the Republic of Albania over the territory between Skadar Lake and Sasko Lake.

Electronic surveillance is conducted by applying multi-sensorial surveillance of relevant local waters and territories, by using radar, thermovision, television and other surveillance sensors.

By operational use of the existing electronic surveillance system of blue border, significant results are achieved so far in preventing illegal crossings of the state border, smuggling of goods and illegal fishing.

Level of implementation of the electronic surveillance system of blue border being reached so far is the following:

Two communication-operational centres are set up:

- main communication-operational centre, within the regional border maritime police unit in Bar, which is used for remote monitoring over all installed television cameras (on the Adriatic Sea, Skadar Lake and River Bojana) and the Maritime Safety Administration AIS system.
- local communication-operational centre of the local border maritime police unit in Podgorica, in Bozaj, which is used for remote monitoring over the cameras installed on Skadar Lake, from which optionally remote monitoring over all remaining television sensors can be done.

On the Adriatic Sea, television surveillance under daily conditions by using two television cameras, installed on stationary centres for electronic surveillance “Crni Rt” and “Obosnik” is done. On the location Crni Rt local performance radar surveillance sensor is established, and on location Obosnik, preparations for installation of radar surveillance sensor are finalised.

Television surveillance under daily conditions with two television cameras is done on Skadar Lake, the cameras being installed on the stationary stations for electronic surveillance Bozaj and Stegvas.

Television surveillance under daily conditions with one television camera is done on the River Bojana, the cameras being installed on stationary centre for electronic surveillance Fraskanjel. Two mobile centres for electronic surveillance perform radar, thermovision and television surveillance of defined local waters, coastal zone and territory based on security assessment. The electronic surveillance system of the blue border is complementary with ten patrol vessels with navigation radars, seven in the local waters of the Adriatic Sea and three in the local waters of Skadar Lake.

In the process of further implementation of the electronic surveillance system of the blue border, it is planned to:

- develop the software which will provide connection of all surveillance sensors in single surveillance system of the Montenegrin waters and coastal zones;
- connect main communication-operational centre of the regional border maritime police unit at the regional level with main communication-operational centres in Italy, Croatia and Albania;
- Purchase of 4 long range thermovision sensors;
- Purchase of day-night cameras for all remaining stationary centres and electronic surveillance stations;

More detail information on information systems and equipment of the border authorities are given in the answers to the questions 54 and 57.

**e) co-ordination and co-operation with other relevant services (customs, veterinary and phyto-sanitary authorities and/or other services/agencies).**

Coordination and cooperation between the Ministry of Interior and Public Administration, Police Directorate, Customs Administration, Veterinary and Phytosanitary Administration, is performed based on the following agreements:

- Agreement on mutual cooperation in integrated border management;
- Special agreement on establishment of coordination teams for implementation of the Strategy at the regional and local level;
- Special agreement on rules of conduct at the border crossing points.

The Agreement on mutual cooperation between the Police Directorate and Customs Administration was signed in October 2008, defining in detail mutual cooperation between respective authorities in fight against corruption and organised crime.

**53. What equipment is available to the border guards? Is there any major lack of infrastructure or equipment as regards the arrangements for, or organisation of, border checks?**

For conducting border surveillance, Border Police Department staff uses day and night vision devices (binoculars for day observation, binoculars - visor for night vision, hand held thermovision cameras, mobile centres for electronic surveillance and stationary centres and stations for electronic surveillance), means of transportation (passengers, terrain vehicles, trucks, scooters, patrol boats, and a helicopter owned by the Ministry of Interior and Public Administration, when needed), personal weapons and equipment (gun, automatic rifle, rubber stick, communication devices, handcuffs, protective helmet, protective mask and protective vests). In addition, for the purpose of efficient and effective enforcement of the state border surveillance, additional equipping of the border police with modern material-technical devices is needed.

Border police has basic equipment for border check: computer network connected to the Police Directorate central database; a database not directly connected which is weekly updated; phone connection; UV lamp and magnifier devices for documents check; CO<sub>2</sub> detector; hand held

detector for identification of radioactive materials; hand held metal detector.

Main infrastructure weak point of the border crossing points relates to lack of proper traffic infrastructure and storage capacities at less frequent border crossing points. Funds are being provided for development of infrastructure and proper equipment of the border crossing points.

Border police does not have special equipment for detection of narcotic drugs and explosives. Border crossing points mostly have no specially designated places and equipment for inspection of vehicles. Also, there is no a software which would enable examination of specimens and security features of the existing types of travel documents of all countries which are used for crossing a border, or well written manuals illustrating travel documents features.

Border crossing points have no devices for reading biometrics and their comparing with the database, or devices for automatic reading of license plates. Some, less frequent border crossing points, are lacking full information and communication equipment (lack of direct connection with the police information system). It is necessary to establish video surveillance with remote monitoring at all border crossing points (at this moment, there is local video surveillance at five border crossing points).

**54. Which first and second-line equipment do you have in place at border-crossing points? Describe all the methods used by border guards for carrying out routine checks on national databases and registers.**

At the border crossing points, border police has the following equipment:

- IT equipment integrated in the central police IT system:
  - PC work stations;
  - printers;
  - UPSs;
  - Local area network (LAN) , and
  - Active network equipment (Switch 100Mb/s).
- PCs not integrated in the central information system:
  - server (Windows 2000 server), and
  - local database weekly synchronised with the central database (transfer media - USB memory).
- Telephone connections (mobile and landline network);
- Radio relay connection, and
- UV lamp devices for checking documents.

The most of border crossing points have the following equipment:

- Vehicle inspection devices – Multiwarm Field Spec CO<sub>2</sub> detector;
- Field Spec N&H Hand held detector for identification of radioactive materials;
- Hand held metal detector;
- X-ray devices for check of hand baggage (only at the airports and at the Port of Bar);
- metal detector door (only at the airports and at the Port of Bar), and
- Canberra industries, model S585 radsentry Stationary device for identification of radioactive materials (the Port of Bar).

The following border crossing points integrated in the central information system: the Airport of Podgorica, Airport of Tivat, Port of Bar, Port of Kotor, Bozaj, Sukobin, Debeli Brijeg, Kobila, Sitnica, Rance, Dobrakovo, Dracenovac, Kula, Ilino Brdo, the Port of Zelenika, have the following equipment:

- CrossMatch D-Scan A 100 documents machine reader – the Airport of Podgorica, Airport of Tivat, Port of Bar, Debeli Brijeg, Sitnica, Dracenovac, Dobrakovo;
- Active network equipment:
  - Switch 100Mb/s;
  - Link established through (leased optical fibre traffic capacity of 1Gb/s) FO-UTP 100Mb/s media convertor – the Airport of Podgorica, Airport of Tivat, Port of Bar, Dobrakovo, Rance, Dracenovac;
  - Link established through leased radio link from Broadcast Diffusion Centre of Montenegro (NERA) with traffic capacity of 2Mb/s (Sukobin and the Port of Zelenika), and
  - Link established through radio links owned by the police obtained by donation of the European Agency for Reconstruction (EAR) from CARDS program 2005 with traffic capacity of 49 Mb/s (Bozaj, Kobila, Kula, Ilino Brdo).

Main task of information subsystem for border check is check of entry and exit of passengers and vehicles. By entering set of data by border police officers, the software solution enables the following:

Basic border check:

- Enquiries of vehicles and vehicles owners (license plates, vehicle registration cards, VINs) in database on vehicles searched for;
- Enquiries of vehicles in database on vehicles registered in Montenegro;
- Database on persons being prohibited from entering or exiting Montenegro;
- Additional Montenegrin vehicles related enquiries (registration status, insurance policy);
- Enquiries based on type of vehicle (Montenegrin and foreign vehicles, entry and exit);
- Check of travel document by documents reader and automatic search of data contained in travel document, with the possibility of manual entering of data;
- Automatic search enables the check of date, comparison of the elements from MRZ and visible zone, check of control number, check of optical elements, check of MRZ-RFID elements, possibility of zooming in of photos;
- Check of passengers based on data read out from a travel document (data on travel document, data on a travel document holder) in database on wanted persons;
- Data checks of Montenegrin travel documents in database on Montenegrin travel documents;
- Check of personal data in database on Montenegrin citizens;
- Saving photos (personal photo, photo from a travel document under normal, UV, IR and oblique light);
- Automatic check of information whether visa is required for foreign nationals based on citizenship of a person and type of travel document;
- Automatic issuing of some documents at the border – tourist pass;
- In the case of a so called HIT, i.e. positive search of a vehicle, person or object in database on wanted persons/searched vehicles and objects, it is possible to enter data on undertaken measures against the vehicle, person or objects;

- Automatic alarm generated to supervisor in the case of a HIT alarm, and taking over of alarm by supervisor;
- Module which through application software is directly communicating with MIND (Mobile Interpol Network Database) system, which represents the system of access to INTERPOL database for users outside the INTERPOL NCB. MIND presents check of INTERPOL database, when crossing (entry/exit) the border.  
MIND system enables check of travel documents and motor vehicles;
- Preview of photos with the possibility of zooming in, and
- Keeping and maintaining database on persons registered as persons interesting from the security point of view.

Statistic and analytic reporting:

- Daily reporting on the activities of a police officer;
- List of persons checked at the border;
- List of vehicles checked at the border;
- Passengers and vehicles traffic;
- Prohibited entry in Montenegro and exit from Montenegro ;
- Other border police activities;
- Notes on activities of users and subsequent checks, and
- All border police related activities are saved (who, when, where, what), with the possibility of further review based on user account or work station.

While entering data on persons and vehicles in the police database, border police officers can be alarmed on an irregularity, requiring manual entry of the changes due to unidentified status. Border police officer must compare data on persons and vehicle with the application fields marked red. Fields marked red/alarm are the following: wanted (meaning that the person is registered as wanted person), INTERPOL (INTERPOL wanted notice entered by INTERPOL NCB Podgorica staff in the police national database), MIND (online search of INTERPOL database on stolen travel documents and stolen vehicles), enhanced surveillance (data on persons of interest to the police from the security point of view), invalid documents of Montenegrin nationals, database on foreign nationals being prohibited entry in Montenegro, and status of passports reader (scanning of travel documents, and depending on validity of the document the error is reported in the form of a message). After comparing data, or additional check of the person or vehicle, the officer must enter manually the status of crossing, depending on undertaken actions, which can be the following: prevented crossing, unaccomplished crossing, and approved crossing.

Second line of check involves search of the person, check of travel documents by using Docubox Dragon device, or detailed inspection of the vehicle by using mechanical tools.

When checking travel documents, border police staff enters in the database passenger surname and name, and other data on passenger and vehicle crossing the state border.

When name and surname of the passenger are entered, automatic check against national and INTERPOL database on wanted persons, national and INTERPOL database on lost and stolen travel documents and national database on persons interesting from the security point of view, is done.

If it is found out that the passenger or travel document is wanted/searched for in national database, the person will be kept, and competent police organisational unit which issued the wanted notice is informed for the purpose of conducting the check of arrest warrant validity. If positive, the person is arrested and taken to the nearest regional police unit

If it is found out that the passenger or travel document is wanted in INTERPOL database, the passenger is kept, INTERPOL NCB is informed to conduct additional checks and informing

INTERPOL NCB which issued the wanted notices. After receiving reply from INTERPOL NCB, the passenger is arrested and taken to the nearest regional police unit.

If it is found out that the passenger is registered as interesting from the security point of view, he/she and the fellow passengers are thoroughly checked, after which the report is drawn up on all gathered information, which is subsequently distributed to the criminal police.

Similar procedure is conducted when detecting vehicles registered in the national or INTERPOL database. If a vehicles or license plates are registered in the national database, criminal police is informed, and if registered in INTERPOL database, INTERPOL NCB Podgorica is informed. The vehicle, together with the driver, is taken to the criminal police for further processing.

Customs authority has the following basic equipment at the border crossing point:

- terminal connectors connected to the Customs Administration central information system, and
- phone connection with fax machine, close phone communication group at the mobile operator.

At the most of border crossing points, customs authority has the following secondary equipment:

- desktop computer with TFT monitor, keyboard, UPS and optical mouse;
- laser printer;
- scanners;
- photocopy machines;
- paper shredders;
- classifier;
- digital photo cameras;
- narcotic drugs testing set + reserve reagents;
- fibre optic (only at larger BCPs);
- borescope (only at larger BCPs);
- hand held x-ray with portable monitor;
- ultra-sound distance measurer;
- metal detectors;
- booster kit sets;
- telescopic ladder;
- chargeable portable driller;
- portable chargeable reflectors;
- fluorescent jackets;
- fluorescent short coats;
- helmets;
- personal safe deposits;
- basic tools: battery lams and batteries, crowbars, hammers, claws, meter, French keys, borer, bodkin, screws handles and components, opener knives, telescopic mirror, metal toolbox;
- additional tools: set of keys, set of inserts, tool for removing panels from vehicles, small saws and blades, set of six corner keys, scalpel and blades;

- post sets: adhesive tapes and appliances for taping, digital scale, high intensity lamps, bodkin, borer, trimming knives and blades, handles for screws and tools, claws (only at the customs post office and at the airports);
- maritime sets: safe-west with automatic inflation, slip, telescope mirror and battery lamp + batteries, gloves, band for tool, opening knife, handles for screws and components, French keys (only at ports);
- system for fuel tank discharge (only at larger BCPs);
- ASI Lloyd receiver at the Port of Zelenika for tracking vessels and surveillance of the port traffic through PC;
- radio device for two-way communication, Motorola (only at the airports);
- one portable scanner for container inspection (the Port of Bar);
- one small vessel (on the Skadar Lake);
- scales for vehicles of capacity 50 tons - 8 pieces (only at larger BCPs), and
- service vehicles.

The Customs Administration staff posted at the border crossing points, in addition to the customs information system, has database on offences, as well as the database on suspicious activities within the risk analysis system.

- Database on offenders involves data on companies, means of transportation and persons involved in customs offences. The database contains data on all offenders since 1 January 2004, and is updated regularly. Enquiry can be conducted based on any of the mentioned parameters.
- Database on suspicious activities involves data obtained from mutual exchange, data obtained from other state bodies and agencies, as well as other data on suspicious activities. Enquiry can be conducted based on any data, such as: name of offender, name of company, address, type of goods, etc.

#### **55. Do you have the capacity to secure machine-readability of new documents?**

Within the CARDS program support 2005, the European Agency for Reconstruction donated to the Police Directorate 39 CROSS MATCH A 100 passports machine readers, for border check and processing of gathered data. Devices are placed at the following seven border crossing points: the Airport of Podgorica, Airport of Tivat, Port of Bar, Dobrakovo, Dracenovac, Debeli Brijeg and Sitnica.

International Organisation for Migrations (IOM), through the Project on capacity development of Montenegrin Police Directorate in the field of suppression of illegal immigration and suppression of organised cross-border crime, donated 9 document machine readers (6 for the border police at the border crossing point Bozaj and 3 for the border police which are used at other border crossing points).

Through the European Union funds, in compliance with the Project on joint border crossing point with the Republic of Albania, Sukobin – Muricani, 6 machine readers of documents will be provided.

Within approved IPA 2009 Project on Straightening Police Directorate capacities, it is planned to purchase machine readers of documents for the Port of Kotor BCP.

Within approved IPA 2010 Project on Straightening border control, intelligence and fight against narcotic drugs, it is planned to purchase machine readers of documents for the following border crossing points: Rance, Ilino Brdo, Dracenovac and Kula.

**56. Describe what is done to detect falsified documents and, in particular, to improve the exchange of information to combat counterfeit travel documents.**

During border check, by using technical devices and skills, experience and knowledge, border police staff checks whether there are signs of forgery on travel documents.

If basis of suspicion exists that a person presented or possessed travel document or other document with possible signs of forgery, he/she is subjected to the interview in regard to all circumstances related to the conditions required to be fulfilled for crossing the state border (possession of travel document, comparison of data from travel document with the person himself/herself, interview on travel circumstances, etc.). At the same time, inspection of the belongings or of the luggage is conducted, aimed at detecting documents which possibly might indicate his/her identity.

If, after conducting the above-mentioned actions, there is still suspicion that the travel document is forged, and other travel document is found, or the person give statements confirming the travel document is forged, he/she along with the travel document and the report is handed over to the criminal police staff of the competent regional police organisational for further procedure.

The above-mentioned procedure is only first step in establishment of “visible” forged documents during border check.

All other examinations of forged travel documents are conducted by the Forensic Centre, which is part of the Police Directorate, whilst the samples of detected forged documents are kept in court files.

Within the exchange of information, the Ministry of Foreign Affairs and the Ministries, regularly submit to the police of specimens of travel documents of the countries which recently issued new documents, which are further on submitted to the border crossing points staff. Also, the police receive from the Ministry of Foreign Affairs and other competent authorities, information on stolen forms, visa stickers or invalid diplomatic travel documents.

Memorandum of understanding was signed on 20 November 2008 in Skopje, the Republic of Macedonia, between the Ministry of Interior of the Republic of Albania, the Ministry of Security – the Border Police of Bosnia and Herzegovina, Ministry of Interior – General Police Directorate of the Republic of Croatia, Ministry of Interior of the Republic of Macedonia, Ministry of Interior and Public Administration of Montenegro and Ministry of Interior of the Republic of Serbia, established the system of exchange of statistics on illegal immigration and regional early warning system. In addition to statistics, data and information on persons identified to use forged travel documents and on the documents country of origin is monthly exchanged. By using early warning system, signatories of the Memorandum are also exchanging data on missing blank travel documents, visa stickers, blank permits and newly detected forged travel documents and other documents.

Within international cooperation, Dutch border police submit to Montenegrin police by e-mail, ECID Alert submitted by international Schiphol Airport in Amsterdam, involving the newest forgery cases. Those alerts and forged documents copies are distributed by the Police Directorate further on to the border crossing points.

The Police Academy in Danilovgrad delivers police basic and specialised training to the border police staff, with participation of international experts, aimed at informing the relevant staff on production techniques and security features of travel documents, and on methods to detect forged documents.



**57. Describe your IT equipment and online connections at the borders. Are all border posts equipped to the same level and are all staff trained in the use of the equipment? Are communication systems compatible with those used by neighbouring countries, and/or by EU Member States?**

PCs at 14 border crossing points are connected to police single information network, having continuous access to databases and records. Other border crossing points have standalone PCs with special software, and its database is weekly updated.

Taking into account that border crossing points do not have the same level of equipment, training of the border staff is conducted depending on the level of equipment at border crossing points.

All border crossing points have the same police owned IT infrastructure:

- LAN;
- PC work stations;
- printers;
- UPSs, and
- active network equipment (Switch 100Mb/s).

Border crossing points not integrated in central information system: Scepan Polje, Metaljka, Sula, Vuče, Nudo, Krstac, Grncar, Vracenovici, Port of Zelenika, Port of Risan, Port of Budva, Railway Station Bijelo Polje, Railway Station Tuzi have the following IT equipment:

- server ( Windows 2000 server), and
- local database weekly synchronised with the central database (transfer media - USB memory).

Border crossing points integrated in central information system: the Airport of Podgorica, Airport of Tivat, Port of Bar, Port of Kotor, Bozaj, Sukobin, Debeli Brijeg, Kobilja, Sitnica, Rance, Dobrakovo, Dracenovac, Kula, Ilino Brdo, have following IT equipment:

- CrossMatch D-Scan A 100 machine reader of ID documents (the Airport of Podgorica, Airport of Tivat, Port of Bar, Debeli Brijeg, Sitnica, Dracenovac, Dobrakovo).
- Active network equipment:
  - switch 100Mb/s;
  - Link established through leased optical fibre cable (Telecom of Montenegro) of traffic capacity of 1Gb/s.

LAN network communication between border crossing points (the Airport of Podgorica, Airport of Tivat, Port of Bar, Port of Kotor, Dobrakovo, Rance, Dracenovac) and police transport networks is established through Zyxel MC 100 Media converter 100Mb/s. Devices are protected from oscillations and electric power breakdowns.

- Link established through leased radio link owned by Broadcasting Centre of Montenegro (NERA) traffic capacity of 2Mb/s (Sukobin).
- Link established through radio links owned by the police obtained through donation of the European Agency for Reconstruction (EAR) from CARDS Programme 2005, RED LINE, with traffic capacity of 49 Mb/s (Bozaj, Kobilja, Kula, Ilino Brdo).

All border crossings are not equipped by the same technological equipment. Quantity of IT equipment depends on the size of the border crossing points, and the number of staff conducting border check. All border police staff is trained to conduct border check by using information subsystem. Training of the border police staff in this field is conducted by the police IT Section staff, while the Police Academy provides real simulation of one land border crossing point.

IT communication systems are projected and implemented by applying conventional protocols and standards, thus providing possibilities for exchange of information with the neighbouring countries and European Union member states. To illustrate with, direct communication and information exchange achieved through INTERPOL information system, located in Lyon, France.

**Table review of IT equipment and online connection at the border crossing points, possessed by the Police Directorate – Table 1 ([Annex 187](#))**

Since 2003, integrated information system is in use within the Customs Administration, which involved procurement of new IT equipment (PCs, servers and network equipment) being implemented in newly installed centralised information system. Concept of the new information system – Picture 1 ([Annex 187](#))

At the moment, Customs Administration has 400 PCs, distributed at 34 customs posts in the whole of Montenegro. All PCs are “brand name” of licensed Windows XP Professional and Microsoft Office 2003 package operational system. The PCs are procured on public tenders. The PCs brands are DELL, FUJITSU SIEMENS, HP.

Server related equipment being used is DELL. Server environment has 20 physical servers of the following types: Power Edge (2850, 2950, 6650, 1650, 750, R200) and DELL system storage DELL/EMC CX200 i DELL/EMC CX3, i BACKUP system DELL/PowerVault 122T. OS are Linux RHES, Windows SERVER, Fedora.

System platform:

1. Linux Red Hat ES 4.0;
2. Linux Red Hat ES5.0;
3. Linux Red Hat AS 4.0;
4. Linux Red Hat AS 5.0;
5. Windows 2000 Server;
6. Windows 2003 Server;
7. Application server Oracle 10g, and
8. Relational database Oracle 10g.

For connection of customs post to integrated information system, Montenegrin Telecom transmission system is used (wherever possible, i.e. wherever Telecom had developed its infrastructure). At the posts where Telecom could not offer its services, the Customs Administration covered those posts with the mobile providers signals, and those posts are connected to the customs information system (CIS) by the means of local providers which enabled connection.

Main characteristics of the network are the following:

1. TCP/IP networking;
2. Scale: Local Area Network (LAN), Wide Area Network (WAN), Metropolitan Area Network (MAN), Virtual Private Network (VPN);
3. Connection method: Optical fibre, Ethernet, Wireless LAN;
4. Network topology: Star network, and
5. MAN Network Interface Cards: E1 link. The line data rate is 2.048 Mbit/s.

Customs Administration – connection to CIS, July 2009 - Picture 2 ([Annex 187](#)).

Posts not being connected to the customs information system are envisaged by the systematisation and are planned to be connected into a unique information system, or are the posts of the type not requiring IT support.

Picture 3 ([Annex 187](#)) – MONTENEGRO CUSTOMS LAN – Local Area Network

Picture 4 ([Annex 187](#)) – MONTENEGRO CUSTOMS – Wide Area Network (WAN), Metropolitan Area Network (MAN)

Table 2 ([Annex 187](#)) – MONTENEGRO CUSTOMS – SERVERS LAN

Picture 5 ([Annex 187](#)) – MONTENEGRO CUSTOMS – Public zone - VPN

Picture 6 ([Annex 187](#)) – INTERCONNECTING Central Bank of Montenegro to Montenegro Customs

Picture 7 ([Annex 187](#)) – INTERCONNECTING IRU Net GENEVE to Montenegro Customs

Picture 8 ([Annex 187](#)) – Site to Site IPSec VPN ZZi Ljubljana – MNE CUSTOMS

Picture 9 ([Annex 187](#)) – MONTENEGRO CUSTOMS – Electronic submission of declaration IBM WebSphere MQ

Picture 10 ([Annex 187](#)) – Site to Site IPSec VPN SER CUSTOMS – MNE CUSTOMS

Picture 11 ([Annex 187](#)) – MONTENEGRO CUSTOMS BACKUP SERVERS

### **Border offices and border crossing posts – training of the customs staff**

All border offices conducting customs activities being integrated in the customs single information network which is fully centralised. All border crossing points are uniformly equipped, hence the quantity of IT equipment depends on the size of the border crossing point and the number of the customs officers being engaged.

Within the training on the customs activities, the customs staff is obliged to pass the exam on customs informational system (CIS), where they obtain knowledge and skills for using IT tools and all customs integrated system applications.

Server and IT and communication platform implemented in CIS, is the latest and the most modern technology being in use, and is used since the very beginning of introducing integrated CIS, thus enabling efficient exchange of data with all other technical systems. (The network optimisation is used by segmentation on VLANs, by defining ACL providing additional safety of the network traffic - L3 Switch Cisco. Safety and encryption of all data is ensured, mostly of XML formats, which enter or exit the CIS network through integrated Cisco and Juniper firewalls.

### **58. Which national databases and registers do you have in place (e.g. wanted and missing persons, stolen vehicles, stolen property, etc.)? Please describe the searching procedures and search tools.**

Pursuant to Article 19 of the Law on Police (Official Gazette of the Republic of Montenegro 28/05), the Police Directorate is empowered to keep records on:

- 1) persons arrested on any ground;
- 2) committed crimes prosecuted *ex officio*, misdemeanours and persons whose personal or property rights were threatened or violated by commission of a crime or misdemeanour (damaged person);
- 3) wanted persons and objects searched for, and persons being prohibited from entry in Montenegro;
- 4) persons subject to the procedure for establishing identity, fingerprinted persons, photographed persons and DNA profiles;
- 5) used coercive means;
- 6) complaints submitted by citizens;
- 7) missing persons;
- 8) missing objects;
- 9) unidentified bodies.

Pursuant to the provisions of the Law on State Border Surveillance (Official Gazette of the Republic of Montenegro 72/05), the Police Directorate keeps records on persons:

- 1) being checked at the border (in electronic form);
- 2) persons being subject of the procedure for establishing identity
- 3) who announced hunting, or fishing along the border line;

4) being issued the permit for performing the regular activity at border crossing point area (official persons, persons in possession of the permit for movement and stay at the border area and persons intending to cross the state border);

5) persons, i.e. members of crew of passenger or commercial boat not being in possession of required visa, for the time the boat is kept at border crossing point, or in port, being issued the permit for movement in the port area;

6) members of foreign security services in uniform in possession of short firearms and vehicle marked with relevant signs, being issued the permit to enter Montenegro.

The Police Directorate is using databases pursuant to the Law on Police and other laws governing keeping of records within the police competencies.

The following electronic databases are available at the border crossing points:

Persons subject of national wanted notices

Persons interesting from the security point of view

Lost and stolen travel documents

Stolen motor vehicles and license plates

Border Police Department also keeps other records at the border crossing points, pursuant to other police legislation and methodology:

Events log

Register on shift takeover

Record on persons being in possession of the permit to enter and take out weapons through the territory of Montenegro, for the purpose of hunting or participation in sport competitions

Record on number of persons and vehicles having crossed the state border

Record on number of persons and aircrafts having crossed the state border

Record on number of persons and vessels having crossed the state border

Record on number of persons and trains having crossed the state border

Record on persons being subjected to detailed border control

Record on issued permits for movement in port or airport area

Record on received official mail

Record on visas issued at border crossing points

Book of records on seized weapons, ammunition and explosive devices

Record on seized items and objects

Record on arrested persons

Record on use of coercive means

Record on control check-ups

Operational register of persons (according to information from official mail and written reports)

Operational register of vehicles and license plates (according to information from official mail and written reports)

Record on certain measures undertaken against persons at border crossing points (search, deportation, entry/exit denied).

Pursuant to the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03) and Law on Police (Official Gazette of the Republic of Montenegro 28/05), Criminal Police Department conducts daily entering, cancelling, amendments and updates in the national databases on wanted persons and objects searched for, persons and object missing and located,

arrested persons. Users of the national databases are all operational police units and the Police Directorate staff. Search in those applications are conducted electronically through the PCs connected to the network in all police regional and local units, as well as in all regional border police units.

The procedure of using the database implies allocation of user name and password to each police officer.

The above-mentioned national databases are kept in hard copy (files) and electronically.

National database involves the following application:

nationally wanted persons

nationally searched missing persons

nationally searched vehicles

nationally searched license plates

nationally searched weapons

nationally searched for the owners of temporary seized weapons

nationally searched objects

The above-mentioned applications – supporting documents and files, are used and kept in compliance with legal provisions provided for in the Criminal code, Criminal Procedure Code, the Law on Archive Activity of Montenegro and Instruction on keeping and using archive material and register materials of the Police Directorate of Montenegro.

The Police Directorate (INTERPOL NCB) is using the following INTERPOL databases on:

wanted persons, vehicles, personal and travel documents

Smuggling of narcotic drugs (practical experience, analyses, statistics, the member countries annual reports)

Financial crime (data on credit cards forgery modus operandi, statistics on different registered crimes, warnings on new crime trends, etc.)

Forensic (fingerprints check, DNA profiles)

Cyber crime (cyber crime manual, contact points in the field of cyber crime suppression, etc.)

Wanted notices (Red, Blue, Yellow, Green, Orange, Black)

Stolen and missing works of art and other valuable objects

Stolen and missing weapons

Statistics on international crime

Statistics and relevant information on vehicles smuggling

INTERPOL NCB takes over data from INTERPOL database, makes checks against compliance with international legislation, enters data and updates the national database on wanted persons (Police Directorate database on internationally wanted and missing persons) all persons wanted (or missing) in INTERPOL database, thus the national database on wanted/missing persons represents a copy of INTERPOL database on wanted/missing persons.

INTERPOL NCB and other Police Directorate segments use other INTERPOL databases by conducting direct enquiries.

INTERPOL NCB enters/updates the following data in INTERPOL database:

Wanted notices for persons wanted by Montenegrin judicial authorities

Search for missing persons and minors

Search for vehicles stolen in Montenegro

Lost/stolen/invalid travel and ID documents

Data on stolen works of art

Criminal offence related statistics (at annual level)

INTERPOL NCB uses the following national databases:

Citizens database (involving issued ID documents) containing:

Name and surname

Date and place of birth, as well as permanent residence address

Personal identification number

Name of a parent

Number of ID, date of issuing and validity

Database on registered vehicles, containing the following data on vehicles and the vehicle owners:

License plates, date of issue, validity

Vehicle registration card, data on owner, date of issue, validity

VIN

Database on vehicles searched for at the national level

Database on issued travel documents (travel document number, identification data on the travel document holder, date of issue, validity)

Photos of persons being issued travel documents

Police Directorate databases on:

Police Directorate records

Data on persons criminal record (persons convicted by final and enforceable judgement for a crime)

Data on misdemeanour records of persons (persons convicted for misdemeanours)

Database on persons wanted by judicial authorities:

Data on persons wanted by Montenegrin judicial authorities

Data on persons wanted by international judicial authorities

Data on missing persons

Database on weapons in possession of citizens (data on number and type of weapons, weapons owners)

Database on persons checked at the BCPs (record on border checks conducted at Montenegrin BCPs), involving:

Person ID (name, surname, number and type of travel document, date and place of crossing the state border, license plates of the vehicle used while crossing the border)

Status of crossing (approved crossing, denied crossing)

Data on persons being checked (whether a person is wanted at national or international level), data on travel documents (whether a document is searched for at national or INTERPOL database) and vehicles (whether a vehicle is searched for by VIN and/or license plates in national or INTERPOL database)

Police officer at border crossing points who entered data

Search is made online by direct enquiry in the database, by entering one or more key words/search criteria. Database is accessed through closed police network. After making enquiry, the database sends back one (or more) answer presenting the requested information. Access to

the database is done on the principle of authorisation, meaning that every user, by entering username and password, has authorisation to access certain data (or certain level of data) according to “need to know” principle.

In addition, there are open sources – databases on:

Registered legal persons – companies in Montenegro (the Commercial Court Central Register, containing data on legal person, identification data on company responsible person, identification data on company founder)

Registered real-estate ownership (data on persons – owners/users of real-estate registered in the Real-Estate Administration of Montenegro).

Data on phone subscribers (enlisted landline phone numbers).

Search is made online by direct enquiry in the database, by entering one or more key words/search criteria. After making enquiry, the database sends back one (or more) answer presenting the requested information. Access to databases is not restricted, and is available to public by accessing open internet.

**59. Is border surveillance based on risk analysis? Is it supported by sufficient technical means? Do you have specific operational mobile units for border surveillance and if yes, in which parts of the borders?**

Risk analyses products are grounds for directing the police activities at green and blue borders. The Instruction drawing up risk analysis within Montenegrin border police of Montenegro was drawn up.

It should be pointed out, that Border Police Department staff participates in the work of the Working Group for risk analysis under the auspice of the Geneva Centre for the Democratic Control of Armed Forces (DCAF), with participation of border police representatives of the Western Balkans countries.

The Working group Action plan provides for drawing up the manual for practical application of risk analysis in the Western Balkans countries from 2009 to 2012.

In addition, within the above-mentioned period, it is planned to train the staff in charge of making risk analysis, and to provide required equipment.

To support the risk analyses, border police is lacking sufficient equipment, as well as operational mobile units especially designated for conducting border surveillance, however they are established by using the existing ones in case-by-case bases.

Within the border maritime police, as a part of the Group for electronic surveillance (10 officers), there are two electronic surveillance mobile centres, equipped with radar, thermovision and television surveillance sensors. Electronic surveillance mobile centres are mainly used for multisensor surveillance of Montenegrin waters and coastal zones of the Adriatic Sea, Skadar Lake and River Bojana, while if required for operational purposes, they can be used in the whole of Montenegro.

From the beginning of July this year, electronic surveillance system is functional also on the Adriatic Sea, Skadar Lake and River Bojana under day conditions, with command-operational centre in Bar, which made surveillance of the blue border significantly more efficient and rational.

In addition to the customs information system, the Customs Administration at the border crossing points also has risk analyses system, involving databases on offenders and suspicious activities. Also, in addition to databases, risk profiling enables selection of shipments for inspection. The Customs Administration does not have mobile units used exclusively for border surveillance, however it has operational mobile teams within the Smuggling Suppression Section, able to respond on the whole of the territory of Montenegro, and are engaged when required.

**60. How does your country co-operate with neighbouring countries to improve border security (formal bilateral agreements as well as practical arrangements on customs and border police activities)?**

Aimed at enhancing regional security and cross-border cooperation, as well as further development and strengthening good neighbour relations, international cooperation is developed through authorities involved in the border security system.

Police cooperation with the neighbouring countries aimed at enhancing border security is developed pursuant to the following signed agreements:

- Protocol between the Government of the Federal Republic of Yugoslavia and the Republic of Croatia on temporary regime along the south border between two respective countries in the area of Prevlaka, signed on 10 December 2002;
- Agreement on technical arrangements on temporary operating procedures between the Ministry of Interior and Public Administration of Montenegro and KFOR (International Security Forces in Kosovo) – TOPA Agreement, signed on 15 December 2008;
- Ministerial declaration on border security in Southeast Europe between the Ministry of Interior and Public Administration of Montenegro, Ministry of Interior of the Republic of Serbia, Ministry of Interior of the Republic of Macedonia, Ministry of Security of Bosnia and Herzegovina, Ministry of Interior of the Republic of Albania, signed on 6 March 2009.

Following adoption of the Law on Ratification of the Convention on Police Cooperation in South-East Europe (Official Gazette of Montenegro 1/08), aimed at the Convention implementation, the following agreements and protocols are signed:

- Agreement between the Government of Montenegro and the Council of Ministers of Bosnia and Herzegovina on conducting border checks at the joint border crossing points, signed in Belgrade, Serbia on 6 March 2009;
- Protocol on conducting joint patrols along the common state border between the Ministry of Interior and Public Administration of Montenegro and Ministry of Interior of the Republic of Serbia, signed in Belgrade, Serbia on 6 March 2009. Implementation of this protocol has not started yet;
- Protocol on conducting joint patrols along the common state border between the Ministry of Interior and Public Administration of Montenegro and Ministry of Security of Bosnia and Herzegovina, signed in Belgrade, Serbia on 6 March 2009;
- Agreement between the Government of Montenegro and the Council of Ministers of the Republic of Albania on opening joint border crossing point Sukobin-Muricani, in Muricani, signed on 17 January 2007, in Ulcinj, Montenegro.

Pursuant to the Agreement, Protocol between the Government of Montenegro and the Council of Ministers of the Republic of Albania on conducting joint border control at joint border crossing Sukobin-Muricani, was signed on 18 June 2009 on the occasion of opening the joint border crossing;

- Working arrangements on establishing of operational cooperation between the Police Directorate of Montenegro and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of European Union (FRONTEX), signed on 18 June 2009;
- Agreement between the Government of Montenegro and the Government of the Republic of Albania on cross-border police cooperation, signed on 15 January 2008;
- Protocol between the Ministry of Interior and Public Administration of Montenegro and Ministry of Interior of the Republic of Albania on organising joint patrols along the state border, signed on 15 January 2008;
- Protocol between the Ministry of Interior and Public Administration of Montenegro and Ministry of Interior of the Republic of Albania on organising and holding meetings at national, regional and local level between representatives of respective border services, signed on 15 January 2008;



- Protocol between the Ministry of Interior and Public Administration of Montenegro and Ministry of Interior of the Republic of Serbia on organising and holding of meetings at national, regional and local levels between representatives of respective border services, signed in Budva, Montenegro on 22 February 2008;
- Protocol between the Ministry of Interior and Public Administration of Montenegro and Ministry of Security of Bosnia and Herzegovina on organising and holding meetings at national, regional and local levels between representatives of respective border services, signed in Budva, Montenegro on 22 February 2008.

The Customs Administration cooperates with customs authorities of other countries pursuant to concluded bilateral agreements, presenting the grounds for exchange of information between customs administrations.

The above-mentioned agreements provide for: mutual assistance in preventing and investigating the violation of customs, foreign currency and foreign trade regulations; providing assistance by exchange of information used for the purpose of suppressing smuggling; mutual harmonisation of customs systems; advancement of customs techniques and addressing issues within the application of customs legislation; enhancement of mutual cooperation; harmonisation of regulations and simplification and acceleration of customs procedures in goods and passenger traffic; defining of submission and use of information and documents, as well as their use in possible court proceedings; participation of experts and witnesses in those proceedings; protection of personal data which can be subjects of exchanged information, etc.

Montenegro took over and applies international treaties and agreements ratified by the State Union, and which refer to Montenegro, and which are in conformity with its legal order. The Customs Administration concluded agreements on mutual assistance in customs matters, as well as the agreements concluded with customs services of the countries having no concluded agreements before, by using the model of the agreement on mutual assistance in customs matters, recommended by the World Customs Administration.

The following agreements with the neighbouring countries are being implemented:

- Agreement between the Government of Montenegro and the Government of the Republic of Croatia on mutual assistance in customs matters, signed on 9 December 2005 in Podgorica, Montenegro;
- Agreement between the Federal Republic of Yugoslavia and Bosnia and Herzegovina on customs cooperation and mutual assistance, signed on 18 December 2001, in Sarajevo, Bosnia and Herzegovina;
- Agreement between the Customs Administration of Serbia and Customs Administration of Montenegro on customs cooperation and mutual assistance, signed on 29 April 2003, in Belgrade, Serbia;
- Memorandum of understanding between the Customs Administration of Montenegro and customs service of the United Nations Interim Administrative Mission in Kosovo (UNMIK) on cooperation and mutual administrative assistance in customs matters, signed on 19 November 2004, in Podgorica, Montenegro;
- Agreement between the Government of the Republic of Montenegro and the Council of Ministers of the Republic of Albania on mutual assistance in customs matters, signed on 26 December 2005, in Tirana, Albania;

Agreement between the Government of Montenegro and the Government of the Republic of Serbia on border control in railway traffic, signed on 9 March 2009, will facilitate and accelerate the procedures of the state authorities at the border between two countries, as well as reduce the time of keeping the trains at the border crossing points. Border control will be conducted in trains being in motion, and during regular stops of trains at the border railway stations. The Agreement shall be implemented from the date of signing the Protocol on implementation of the Agreement.

International cooperation with the neighbouring countries, in the field of strengthening border control in the area of phytosanitary and veterinary protection, is developed pursuant to the following signed agreements:

- Agreement between the Government of Montenegro and the Government of the Republic of Croatia on cooperation in the area of plant health protection, signed on 18 October 2005;
- Agreement between the Government of Montenegro and the Government of the Republic of Croatia on veterinary cooperation, signed on 18 October 2005.

**61. Please provide information on the state of play regarding cooperation with FRONTEX.**

Working Arrangement between the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and the Customs Administration was signed on 18 June 2009 at the Agency headquarters in Warsaw, Poland. Official signing resulted from the decision made by the FRONTEX Management Board on 25 March 2009, to approve the proposal for the Working Arrangement, prepared in cooperation between representatives of FRONTEX and the Ministry of Interior and Public Administration of Montenegro and the Police Directorate of Montenegro.

Main elements of cooperation defined by the Working Arrangement are the following:

- exchange of information in the field of risk analysis with FRONTEX risk analysis unit;
- cooperation in the field of training;
- technical cooperation implying research activities and development;
- joint operations, and
- joint illegal immigrants return policy.

Signing of the Working Arrangement officially established partner relationship between the Police Directorate of Montenegro and FRONTEX, which will open the possibility for the Police Directorate to participate in all activities FRONTEX is already conducting with other signatory countries.

On 20 November of 2008, Western Balkan countries signed the Memorandum of understanding, defining establishment of the exchange of statistics on illegal immigration. The Memorandum also provides for the exchange of statistics by e-mail through monthly and *ad hoc* reports. The exchange of such information shall be conducted through national contact point.

After signing of the Working Arrangement, the Police Directorate will make its contribution in drawing up annual report on risk analyses between Western Balkan countries and FRONTEX. Joint report will be significantly relevant for all participating countries, mostly because it will serve as a base for planning operational activities, as well as for strengthening cooperation in the field of integrated border management, between Western Balkan countries and FRONTEX.

The Police Directorate also has the possibility to participate actively in FRONTEX working bodies, as well as to use the support being provided by FRONTEX to its partners. In this regard, the Police Directorate will be provided with the opportunity to participate in deciding upon the activity plan, and to present its own requirements for improvement of technical and human resources, which is possible with FRONTEX financial support.

Within the Police Division for international police cooperation and European integration, an officer is designated as contact point between the Border Police Department of Montenegro and FRONTEX.

**62. What is the state of affairs concerning international agreements on borders and border co-operation with neighbouring countries? Please provide:**

Preparation for concluding border related international agreements with the neighbouring countries (demarcation and establishing of the state border)

Commission for demarcation and establishing of the state border and preparation for conclusion of international agreements on the state border was established pursuant to the Decision of the Government of Montenegro (Official Gazette of the Republic of Montenegro 7/07).

- The Republic of Croatia

The government of Montenegro adopted the Decision on setting up the Commission for preparation of the legal procedure for demarcation between Montenegro and the Republic of Croatia before the International Court of Justice in the Hague (Official Gazette of Montenegro 24/08 and 62/08).

First meeting of Montenegro and Croatia Joint Commission for demarcation on Prevlaka, was held on 14 January 2009 in Zagreb, Croatia at the level of the Ministers of Foreign Affairs of the two countries.

It is planned the Commission to start with preparation of the documentation, based on which the International Court of Justice in the Hague will decide on demarcation on the sea on Prevlaka between Montenegro and the Republic of Croatia, thus finalising the issue initiated in 1991.

The Parliaments of two countries will commit to accept the decision of the International Court of Justice in the Hague.

It should be pointed out that on 10 December 2002, the Protocol was signed between the Government of the Federal Republic of Yugoslavia and the Government of the Republic of Croatia on temporary regime along the south border of two countries, aimed at establishing temporary regime which facilitate reaching the final solution for identification, i.e. determination of the joint state border. Temporary regime will be valid until the conclusion of the Agreement at the border.

The Protocol provisions do not in any way prejudice the demarcation between two countries.

- Bosnia and Herzegovina

The Agreement on the length of the state border between Serbia and Montenegro and Bosnia and Herzegovina was initialled (verified), by the Interstate diplomatic commission for the state border, in Belgrade, Serbia on 3 December 2003.

The Commission of the Government of Montenegro for demarcation and determination of the state border and preparation for conclusion of international agreements, and the State commission for the border of Bosnia and Herzegovina, agreed to take the Interstate diplomatic commission for the state border between the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnia and Herzegovina, work results as bases for further negotiations on the state border.

On 19 February 2009 in Podgorica, Montenegro, the text of the Draft agreement on the state border between Montenegro and Bosnia and Herzegovina was agreed upon.

- The Republic of Albania

The border between Albania and Montenegro was determined in the period from 1922 to 1925 pursuant to the Florence Protocol, and clearly marked in the period from 1954 to 1955. The Agreement between the Government of the Federal People's Republic of Yugoslavia and the Government of the People's Republic of Albania on reconstruction of ruined and damaged border pyramids, as well as construction of border inter-pyramids at the state border of Yugoslavia and Albania, was signed on 11 December 1953.

Pursuant to that Agreement, the Agreement between the Government of Montenegro and the Council of Ministers of the Republic of Albania on reconstruction, repair and maintenance of pyramids, inter-pyramids and other border marks along the state border of Montenegro and Albania, was concluded on 6 November 2009 in Podgorica.

- The Republic of Serbia

With the Republic of Serbia, there were no negotiations on preparation of the Agreement on state border and determination of border crossing points between two states.

- The Republic of Kosovo

With the Republic of Kosovo, negotiations on preparation of the Agreement on state border and determination of the border crossing points between two states are being prepared.

**a) short description of agreements existing or being planned;**

In the answer given to the question 60, all existing signed agreements and protocols on cooperation with the neighbouring countries on strengthening border safety are already given, and they are the following: Agreements with Bosnia and Herzegovina, Republic of Serbia, Republic of Albania, Republic of Croatia and International Security Forces in Kosovo.

By concluding planned agreements in the field of border security, issue of concluding border related agreements with the neighbouring countries will be fully addressed, and it will provide for categorisation of the border crossing points, border traffic and cooperation pursuant to the Convention on police cooperation in South-East Europe.

**b) summary of the content of the agreements;**

The agreements between Montenegro and the neighbouring countries on cross-border police cooperation are regulating cooperation between border police in ensuring public order in border areas, especially in prevention and detection of criminal offences and misdemeanours threatening border security.

Those agreements regulate authorities competent for implementation of the agreements, define border areas from the aspect of competencies of border police organisational units, harmonise police activities in conducting some activities, mutual communication, exchange of information, use of special police equipment, education, supplementary training and professional development of the staff, provision of assistance in case of accidents and natural disasters, joint meetings and working commissions, secondment of police liaison officers, responsibilities for damage compensation, data protection and other issues relevant for police cross-border cooperation.

Protocols on conducting joint patrols along the joint state border with the neighbouring countries regulate setting up and conducting joint patrols along the joint state border, enhancing cooperation of signatories in fight against all types of trans-border crime and establishment of the system of efficient state border control and surveillance.

Protocols on holding regular meetings of border authorities at national, regional and local level regulate holding of regular meetings of border authorities staff.

Protocols contain obligation of holding regular meetings at national level, the procedure of holding meetings at regional and local level, competencies of border police organisational units, data protection and content of the minutes being taken at all levels.

**c) level at which the agreements were or will be adopted, as well as the (expected)**

Pursuant to Article 43 the Law on State Border Surveillance (Official Gazette of the Republic of Montenegro 72/05), international border police cooperation is being conducted on the basis of the Agreement concluded by the Government with other states. In relation to the previously said, signatories to the Agreement are obliged that their police border services will cooperate mutually, in accordance with national legislation, with the aim of preventing, suppressing and revealing criminal offences and their perpetrators.

Agreements on cooperation are concluded by the Government of Montenegro in accordance with the assessment of interests of Montenegro, determined by the dynamics of meeting the obligations from this area and in accord with the neighbouring countries.

Dynamics of adopting planned agreements on cooperation depends, among other things, on the interests of the other party signatory to the agreement.

#### **d) local border traffic arrangements;**

Border crossing point for local border traffic is the place for crossing the state border for the purpose of staying in certain area of a neighbouring country, i.e. stay of a neighbouring country nationals in certain area of Montenegro, pursuant to international agreement.

Out of the total number of 28 border crossing points functioning in Montenegro, two of them are allocated for local border traffic, border traffic:

- Towards Bosnia and Herzegovina, border crossing points Krstac and Nudo.

#### **e) BCPs with neighbouring countries**

Border crossing point for international traffic is the place used for crossing the state border by Montenegrin and foreign nationals.

Out of the total number of 28 border crossing points functioning in Montenegro, 26 border crossing points are open for international traffic and two for border traffic:

- Towards the Republic of Croatia, border crossing points Debeli Brijeg and Kobila.

- Towards the Republic of Albania, joint border crossing point Sukobin - Murican and border crossing points Bozaj, Grncar and the Railway Station Tuzi.

- Towards Bosnia and Herzegovina, border crossing points Metaljka, Sula, Scepan Polje, Krstac, Vracenovici, Ilino Brdo, Nudo and Sitnica.

- Towards the Republic of Serbia, border crossing points Vuca, Dracenovac, Dobrakovo, Rance, Cemerno and the Railway Station Bijelo Polje.

- Towards the Republic of Kosovo, border crossing point Kula.

Air border crossing points are the following: the Airport of Tivat and Airport of Podgorica.

Maritime border crossing points are the following: the Port of Bar, Port of Zelenika, Port of Kotor, Port of Budva, Port of Risan

During the previous period, border crossing points for international and border traffic were established/opened pursuant to the decisions, agreements and decrees of the Federal Executive Council of the Socialist Federal Republic of Yugoslavia, the Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Montenegro.

Nevertheless, due to the need of establishing legal bases for functioning of existing border crossing points, and possibly the new ones, it is necessary to conclude agreements with the neighbouring countries, as the Law on State Border Surveillance (Official Gazette of the Republic of Montenegro 72/05) lays down that border crossing points shall be determined by the Government pursuant to international agreements.

By determining land border crossing points with the neighbouring countries, indirectly is confirmed that old administrative – cadastral borders, are now the state borders.

Pursuant to the Decision of the Government of Montenegro (Official Gazette of Montenegro 81/08),

the Commission for determination of the border crossing points and establishment of the border traffic regime with the neighbouring countries was set up, aimed at assessing the existing border crossing points, and the need for possible re-categorisation, as well as the need to open new border crossing points and determine border traffic, to prepare and submit to the Ministry of Interior and Public Administration of Montenegro proposal for the agreements with the neighbouring countries on determination of border crossings points and agreements on border traffic, and to submit to the Government of Montenegro regular semi-annual reports on the work of the Commission.

After the establishment of the Commission, the activities are undertaken on initiation of negotiations with the neighbouring countries on preparation of the proposal for the agreement on determination of the border crossing points and agreements on border traffic with the following neighbouring countries:

- Republic of Croatia

Pursuant to the Protocol of 10 December 2002 between the Government of Federal Republic of Yugoslavia and the Government of the Republic of Croatia on temporary regime along the south border between two states, the Protocol signatories (Article 18) agreed until the conclusion of the agreement on determination of the border crossing points, the border crossing points Karasovici–Sutorina is still to be used for all international land passenger and goods traffic, and the border crossing point Vitaljina-Njivice to be categorised as the border crossing for international land passenger traffic.

There were no negotiations with the Republic of Croatia on preparation of the agreement on determination of border crossing points between Montenegro and the Republic of Croatia.

- Republic of Albania

On 17 January, in Ulcinj, Montenegro, the Agreement was signed between the Council of Ministers of the Republic of Albania and the Government of Montenegro on opening joint border crossing point Murican – Sukobin, in Murican.

Furthermore, on 18 June, the Protocol was signed between the Government of Montenegro and the Council of Ministers of the Republic of Albania on conducting joint border control on joint border crossing point Murican – Sukobin.

- Bosnia and Herzegovina

Proposal for the agreement on determination of the border crossing points between Montenegro and Bosnia and Herzegovina and proposal for the agreement on border traffic between Montenegro and Bosnia and Herzegovina is prepared.

- Republic of Serbia

There were no negotiations with the Republic of Serbia on preparation of the agreement between the Government of Montenegro and the Government of the Republic of Serbia on determination of the border crossings between two states.

On 9 March 2009, the Agreement was signed between the Government of Montenegro and the Government of the Republic of Serbia on border control in railway traffic.

- Republic of Kosovo

Negotiations with the Republic of Kosovo on preparation of the agreement on determination of border crossing points are being prepared.

## **Judicial co-operation in civil matters**

**63. Please provide information on legislation or other rules governing this area, and their adhesion to relevant international conventions.**

Legal ground for judicial cooperation in civil matters are multilateral and bilateral international agreements, as well as national laws, precisely the Law on Civil Proceedings (Official Gazette of the Republic of Montenegro 22/04 and 76/06) ([Annex 164](#)) ([Annex 165](#)), and the Law on resolving the conflict of laws with the regulations of other countries ([Annex 170](#)). The Constitution prescribes that ratified and published international agreements, and generally accepted principles of international law are the constituent part of the national legal system, and have supremacy over the national law, and are directly applied when the relations are defined differently from the internal legislation.

Procedure of provision of legal aid in civil matters is regulated by the Law on Civil Proceedings. According to that Law, courts shall provide legal aid to foreign courts in cases prescribed by international agreement, as well as when the mutuality in providing legal aid exists. A court shall deny legal aid to a foreign court, if performance of an act contrary to public order is requested. In that case, a competent court providing legal aid shall forward the case to the Supreme Court, for the purpose of adoption of the final decision. Courts provide legal aid to foreign courts in the manner prescribed by the national law. The act which is the subject of a foreign court's request may also be conducted in the way requested by the foreign court, unless such a procedure is contrary to public policy.

The Law on resolving the conflict of laws with the regulations of other countries in certain relations, encompasses the rules for determination of the applicable law in status, family, property, and other material relations with international element. In addition, this Law encompasses the rules for determination of jurisdiction of courts, and other bodies in Montenegro, for the purpose of defining these relationships, and the rules for the recognition and enforcement of foreign judicial and arbitration decisions.

Multilateral international agreements, which Montenegro ratified and which represent legal ground for judicial cooperation in civil matters, are the 1905 Hague Convention on Civil Procedure, the 1945 Convention on Civil Procedure, the 1980 Convention on International Access to Justice, the 1970 European Agreement on the Transmission of Applications for Legal Aid, the 1961 Convention on Elimination of the Requirement for Legalization of Foreign Public Documents, the 1980 Convention on the Civil Aspects of International Child Abduction, and the 1956 Hague Convention on the law applicable to maintenance obligations towards children.

The existing Law on Resolving Conflicts of Laws with Regulations of Other States (Official Gazette of the Socialist Federal Republic of Yugoslavia 43/82, 72/82 and Federal Republic of Yugoslavia 46/96) is harmonised with relevant international documents which were in force at the time of its adoption. Montenegro has begun the adoption of the new Law on Resolving Conflicts of Laws with Regulations of Other States which will be harmonised with relevant international documents, especially with regard to its significance for regulating civil relations with foreign elements.

**64. How are foreign judicial decisions in civil and commercial matters recognised and enforced?**

The law on resolving the conflict of laws with the regulations of other countries (Official Gazette of the Socialist Federal Republic of Yugoslavia 43/82, 72/82, and Federal Republic of Yugoslavia 46/96) regulates rules of procedure and rules of recognition and enforcement of foreign judicial and arbitration decisions. However, in case of status, family, property or other material and legal relations with foreign element which are regulated by international agreements, the provisions of this law shall not apply, meaning that this law is only applied to relations not regulated by

international agreements. The Constitution of Montenegro regulates the legal system by ensuring that ratified and published international agreements and generally accepted principles of international law form the constituent part of the national legal system and have supremacy over the national law and are directly applied when regulating relations differently from the national law.

Enforcement of decision of a foreign court is regulated by the Law on Enforcement Procedure (Official Gazette of the Republic of Montenegro 23/04), and shall be ordered and enforced under this law, if the decision meets the conditions for recognition and enforcement stipulated by the law or the international agreement.

Recognition and enforcement of foreign court decisions is regulated with precision by The law on resolving the conflict of laws with the regulations of other countries, thus the foreign court decision is equated with the decision of the national court, and is legally effective in the country of recognition only if the national court recognizes it, meaning that recognition is the basic condition for equation of the foreign decision, as well as for its legal effect. In order for the foreign decision to be recognized, it is necessary for the applicant to submit, along with the decision, the certificate of foreign competent court or body on legal effectiveness of the decision according to the law of country which adopted it. The Law provides conditions for denial of the recognition of the foreign decision, in case when the person against whom the decision has been adopted determines that he could not participate in the procedure due to irregularities in the procedure. In case when the summons, the complaint or the decision by which the procedure was initiated, have not been delivered in person, or in case that delivery in person has not been done at all, it shall be particularly considered that the person, against whom the court decision has been adopted, could not participate in the procedure, except in case when he in any way engaged himself into the subject matter in the first instance procedure.

The foreign court decision shall not be recognized:

- if the subject matter is under the exclusive jurisdiction of the national court or other state body;
- if court or other public authority has adopted the final and enforceable decision in the same subject matter, or if the state has already adopted already recognized foreign court decision in the subject matter. The court shall halt the recognition of foreign court decision if there is a pending case before the national court in the same legal matter and among the same parties until the final case resolution is reached;
- if it is contrary to the system determined by the Constitution;
- If there is no mutuality/

Existence of mutuality with respect to recognition of foreign court decisions is assumed until the contrary is proved, and if there are any doubts regarding the existence of mutuality, the explanation is provided by the public authority competent in justice matters (the Ministry of Justice).

Conditions for the recognition of foreign court decisions, related to personal state (status), depend on the national they refer to. Thus, decisions of foreign courts related to personal state (status) of the national of the country to whom the decision refers, are recognized without the review of the court, meaning that with respect to these decisions, there is no review regarding whether the exclusive jurisdiction in the subject matter shall be of the national or of the foreign court, or whether it is contrary to the constitutionally established system, or whether there is mutuality. However, if a public authority determines that a foreign court decision refers to personal state (status) of a Montenegrin national, such a decision, in order to be recognized, is subject to a review. This legal rule requests submission of the certificate on final and enforceable decision, as well as the review whether the jurisdiction in the subject matter is of the national or other body, the review whether the final and enforceable decision has been adopted in the same subject matter, or whether a certain foreign decision in the same subject matter has already been recognized, as well as the review of the relation to the constitutionally established system and existence of mutuality. Non-existence of mutuality does not represent a barrier to the recognition of foreign court decision, if the recognition and enforcement are requested by a Montenegrin national. If foreign court decision refers to the personal state (status) of a foreigner who is not the national of the country which has adopted the decision, the decision shall be recognized if it meets the conditions for the recognition in the country where the national comes from.



Provisions that arrange the procedure for the recognition of foreign court decisions are accordingly applied to the enforcement of foreign court decisions. The applicant of the request for recognition of the foreign court decision shall, apart from the certificate of final and enforceable decision, submit the certificate of enforceability of that decision under the law of the state which adopted it.

Recognition of the decision of a foreign court, in matters related to personal condition (status), may be requested by any person having legal interest in it. The court responsible for the recognition and enforcement of foreign court and arbitration decisions is the court of the territory where the procedure of recognition, i.e. enforcement is to be conducted. Against the decision on recognition, i.e. enforcement parties may file an appeal within 15 days from the day of the delivery of the decision. The court of second instance shall decide on the appeal. If a separate decision related to the recognition of foreign court decision has not been adopted, any court may decide about the recognition of that decision as of the interlocutory action in the procedure, but only with the effect necessary for the outcome in the procedure.

**65. Are there special, simplified procedures available in your country for claiming and recovering non-contested and small claims?**

In legislation of Montenegro there are certain institutes which simplify court procedure for realizing certain small claims, and these are the procedure of small disputes and the procedure for issuance of payment order.

The Law on Civil Proceedings regulates the procedure in small disputes. Within the meaning of provisions of this law, small disputes are those disputes in which the claim refers to an amount not exceeding EUR 500, and not exceeding EUR 5000 in commercial matters disputes. Small disputes are also disputes in which the claim does not refer to a monetary claim where the plaintiff states that he, instead of fulfilling certain claim, accepts to receive certain amount of money not exceeding EUR 500 or EUR 5000, as well as disputes in which the subject of claim is not a monetary amount, but the transfer of movable property which value is not higher than EUR 500 or EUR 5000.

In the procedure of small disputes, if the court sets down main hearing and the plaintiff does not appear, even if he has been duly summoned, the court adopts the decision on rejection of the claim (judgement based on waiver). The summons for the main hearing shall, *inter alia*, state that a plaintiff who did not appear to the main hearing is considered to have waived the claim. The judgement in these disputes shall be announced immediately after the main hearing is closed. The judgement or decision in small disputes may be denied only in case of significant violation of provisions in civil contentious proceedings and misapplication of the substantive law.

The Law on Civil Proceedings prescribes the procedure for issuance of payment orders as well. The court issues a payment order to the defendant to fulfill the claim when the claim refers to a monetary claim; the authenticity of claim is proved by original or certified copy of the authentic document enclosed with the action. Documents particularly considered to be authentic are as follows: public documents; private documents in which the signature of the obliged person is certified by the competent body; bills of exchange and cheques with notes and refundable accounts, if needed for initiating the claim; extracts from verified financial books; invoices; documents which have status of the public document according to special regulations.

Payment order is issued by a court even when the plaintiff has not proposed its issuance in the claim, and when all conditions for doing so are met. When the claim refers to the monetary claim not exceeding EUR 500, the court shall issue the payment order against the defendant, although authentic documents have not been enclosed, but the claim indicates the basis for and the amount of debt, as well as evidences by which accuracy of the particulars of claim may be determined. Such payment order may be issued solely against the main debtor.

Payment order is issued by court without the hearing. Payment order prescribes that the defendant shall fulfill the claim with estimated costs within 8 days after receiving the order, or shall fulfill the claim in bill of exchange and cheques disputes within 3 days after receiving the order, or may file

the objection against the payment order within the same period of time. The defendant may reject the payment order only by the objection. If the objection is filed timely; the court shall decide on the subject matter after the hearing.

In addition, provisions of the Law on Civil Proceedings, that prescribe that the court is to determine if there are non-contested claims among parties and other barriers for making decision and to adopt decision on the dispute without setting down a hearing, shall be applicable on non-contested small claims as well.

In accordance with the Law on Enforcement Procedure, the enforcement may be decided based on the authentic document, for the purpose of realizing monetary claims of legal entities and entrepreneurs, which represents a simplified enforcement procedure for non-contested claims as well as for small claims.

#### **66. How are foreign decisions in family law matters (i.e., legal separation, divorce, marriage annulment, parental responsibility, maintenance obligations)**

With respect to the procedure and rules for the recognition and enforcement of foreign court decisions, the answer to the question 64 should be considered, bearing in mind the fact that the recognition and enforcement of foreign court decisions is regulated by one law, i.e. the Law on resolving the conflict of laws with the regulations of other countries (Official Gazette of the Socialist Federal Republic of Yugoslavia 43/82, 72/82, and Federal Republic of Yugoslavia 46/96), which, consequently, applies to all types of foreign court decisions.

When it comes to the recognition and enforcement of foreign court decisions in family matters, there are only two exceptions with respect to the conditions referred to in answer to the question 64, thus a foreign court decision shall not be recognized if:

- there is exclusive jurisdiction of the national court or other state body in the subject matter. However, if the defendant requests the recognition of foreign court decision adopted in the matrimonial dispute, or if it is requested so by the plaintiff, and the defendant does not object, the exclusive jurisdiction of the national court shall not be considered as a barrier to the recognition of the decision.
- there is no mutuality. However, the lack of mutuality is not considered as a barrier to the recognition of the foreign court decision adopted in matrimonial dispute and in the dispute on recognition or denial of paternity or maternity, as well as in case when the recognition or enforcement of decision is requested by a Montenegrin national.

Owing to special significance of the enforcement procedure for decisions to commit a child, the Family Law (Official Gazette of the Republic of Montenegro 1/07) regulates the special court procedures as well as the enforcement procedure. Namely, it is stipulated that deciding to enforce court decision to commit a child to a parent or to other person or organization for children's foster and education, the competent court shall be the one having territorial jurisdiction for the party requesting enforcement, as well as the court in whose territory the child happens to be. For carrying out the enforcement, the competent court shall be the one in whose territory the child happens to be. When carrying out forced enforcement, the court takes into account urgency of the procedure, as well as the need to protect child's integrity to the greatest possible extent. In the procedure of enforcing and securing the decision on protection of rights prescribed by this law, provisions of the Law on Enforcement Procedure shall apply, unless it is differently stipulated by this or some other law.

**67. How are cases of international child abduction dealt with under the 1980 Hague Convention on the Civil Aspects of International Child Abduction? Please specify the number of applications made under the Convention for the return of children for the last three years, the outcome of the applications (return or non-return of the child)**

Applications for the return of children are resolved according to the The Hague Convention on the Civil Aspects of International Child Abduction from 1980. The Ministry of Justice is the central communication authority in these matters. It forwards applications to the court competent for adoption of decisions related to Articles 11 and 12 of the above mentioned Convention. The territorial jurisdiction shall be of the court in whose territory the child is assumed to be. In acting under provisions of this Convention, the court cooperates with law enforcement bodies in order to find the child, as well as with social welfare centers for the purpose of protecting the interests of the child, and arranging voluntary return of the child to the home country, within the Article 10 of the Convention.

In the past three years, 9 (nine) applications for the return of taken child have been filed. In one of these cases the child has been returned. Montenegro has filed 2 (two) applications to other countries for the return of the child. In one of the two applications, the child returned voluntarily, while the other case is pending.

An average duration of the procedure is nine months.

**68. How does your legislation solve conflicts of jurisdiction and applicable law as regards international insolvency proceedings? How are foreign decisions on insolvency recognised and enforced?**

The Law on Business Organisations Insolvency (Official Gazette of the Republic of Montenegro 6/02, 1/06 and 2/07), Title 11, regulates cross-border insolvency.

Within this Title, conflict between competences, applicable law regarding international insolvency proceedings, recognition and enforcement of foreign insolvency decisions are resolved and courts in Montenegro are obliged to cooperate, to the greatest extent possible, with foreign courts and foreign bodies for insolvency proceedings, whether directly or through an administrator. The right of the court to communicate and directly request the information or assistance from foreign courts or foreign representatives is also determined.

Provisions of this Title define foreign insolvency proceeding as a judicial or administrative proceeding in a foreign state, which is conducted in accordance with regulations defining insolvency proceedings. It ensures the cooperation between courts and other state bodies of Montenegro and other states bodies included in the insolvency proceeding.

Cross-border insolvency, pursuant to the Law on Business Organisations Insolvency, is regulated by taking over the provisions of UNCITRAL Model Law (United Nations Commission on International Trade Law) on cross-border (international) insolvency from 1997, and in accordance with this Law, special attention is devoted to the recognition of foreign insolvency proceedings, decisions of liquidated foreign bodies, protection of creditors, cooperation of courts and other entities of insolvency proceedings from different states and simultaneously conduction of two or more insolvency proceedings against the same debtor.

Pursuant to Article 101 of the Law on Business Organisations Insolvency, provisions of cross-border insolvency are applied in the following cases:

1. when the assistance is sought by a foreign court or a foreign representative in connection with a foreign proceeding;

2. when assistance is sought in a foreign state in connection with a proceeding conducted in Montenegro;
3. when a foreign proceeding and the proceeding conducted in Montenegro are taking place concurrently;
4. when creditors and other persons in a foreign state have a legal interest in requesting the commencement of, or participating in a proceeding conducted in Montenegro.

Authorised bodies for conducting insolvency proceeding, insolvency court and administrator or any other person who is authorised to conduct affairs of reorganisation and bankruptcy-liquidation of a liquidated commercial entity in foreign insolvency proceeding may submit the request, to a court in Montenegro, for the recognition of a foreign insolvency proceeding or of a decision from the insolvency proceeding directly (Article 104 of the Law on Business Organisations Insolvency). This request may be submitted also by creditors of the insolvent debtor.

In Montenegro, foreign proceeding is recognised as the main proceeding provided that it is conducted in the state where the debtor has the centre of its main interests, and it is recognised as a non-main proceeding if it is conducted in a state where the debtor conducts commercial activity on a constant basis or where it has a business unit.

Foreign decision may be recognised if the requirements and presumptions prescribed by Article 116 of the Law on Business Organisations Insolvency are met and those are the following:

- that the decision was issued by a competent foreign court or other state body
- that the decision is enforceable under the law of the state where it was rendered and
- that the recognition of the foreign decision is not contrary to the public policy of Montenegro.

This means that the request for the recognition of a foreign court proceeding or insolvency decision must be formally and legally proper and documented. This implies that a certified decision on initiation of the foreign insolvency proceeding, appointment of the administrator and a certificate of the foreign competent court on the existence of main or non-main insolvency proceeding and the appointment of the administrator are submitted to the competent court in Montenegro.

Competent court in Montenegro, i.e. Commercial Court in Podgorica and in certain cases another competent court in accordance with the Law on Business Organisations Insolvency issues a decision on the recognition of a foreign proceeding or a decision, on the basis of the formally and legally proper request and received documents.

Recognition of the foreign proceeding means that the insolvency of the debtor is proven, which presents a prerequisite for initiating insolvency proceeding, if the contrary is not proven.

Recognised foreign proceeding or the decision is then equal to domestic insolvency proceeding or decision and recognised decisions are equally binding as the decision of the domestic insolvency court. That means that the decision on recognition of foreign insolvency procedure is binding for all persons to which a decision of the court in Montenegro on initiating insolvency proceeding has a legal effect.

The following legal consequences arise after the recognition of insolvency proceeding: firstly, the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is suspended; secondly, the execution against debtor's assets is suspended; and thirdly the transfer, encumbering or otherwise disposing of the property of the insolvency debtor is suspended.

Recognised foreign court decision in the procedure of execution is equal to domestic binding and enforceable court decision.

**69. Is it possible for parties involved in civil litigation in your country but not present in it, to ask for legal aid in the country of their habitual residency? If so, how are these requests received and dealt with by your country? Is the same possibility available to parties present in your country who are involved in litigation abroad? If so, how are these requests presented and then transmitted abroad?**

On 1 October 1988 Montenegro ratified the 1980 Hague Convention on International Access to Justice, which provides the possibility of providing legal assistance in civil and commercial matters to all persons with habitual residence in some of the member states of the above mentioned Convention. The Convention provides national treatment of foreigners before national courts, in terms of using legal assistance in civil and commercial matters. The central authority for submission of requests and central delivery body related to Articles 3, 4, and 16 of the Convention is the Ministry of Justice. The request for legal aid is decided by a competent court, in the procedure conducted in accordance with the national legislation.

Foreign citizens of the states which are members of international agreements regulating the right to access to courts, whose member is Montenegro as well, have the national treatment for accessing courts in Montenegro. If there is no international agreement, the Law on resolving the conflict of laws with the regulations of their countries prescribes that foreign citizens have the right to be exempted from costs of litigation, provided that there is mutuality. The Law on Civil Proceedings prescribes the conditions for the exemption from the costs of civil proceedings. The party whose overall financial standing prevents him from bearing the costs of proceedings without endangering minimum subsistence of himself and his family, shall be exempted from paying costs of the proceedings by the court. Exemption from paying costs of proceedings encompasses exemption from paying taxes and advanced costs of witnesses, forensic experts, inspections and court announcements. When a party, according to overall financial standing, is prevented from bearing the costs of qualified attorney, the first instance court shall, at party's request, determine the attorney, if it is necessary for the protection of the lawful interests of the party. A party with designated attorney is exempted from paying actual costs and fees to the designated attorney.

The Law on Advocacy (Official Gazette of the Republic of Montenegro 79/06) prescribes that foreign lawyers may act before judicial and other bodies in Montenegro, provided that there is mutuality.

Starting from the responsibilities arising from ratified international conventions and existing national legislation, the person with the residence in some of the countries which are members of the Convention of 1980, shall have the right to be exempted from paying costs due to bad financial standing, in accordance with conditions stipulated by the Law on Civil Proceedings, and may be represented before judicial bodies in Montenegro by lawyers listed in the directory of the country of their residence, provided that there is mutuality.

Draft Law on Free Legal Aid is underway, by which possible users of free legal aid are regulated, as well as criteria by which this right is to be exercised and providers of free legal aid are provided.

**70. Which alternative dispute resolution methods are available in your country, and how are they organised? How is their quality ensured?**

Legislation of Montenegro provides the possibility of alternative dispute resolution methods with the aim to disburden courts, to allow parties to solve disputes in a simpler and efficient way, as well as to harmonize national regulations from this field with relevant international conventions.

Alternative dispute resolution methods envisaged and regulated by the Montenegrin legislation are: mediation, court settlements, arbitration, procedures before the International Arbitration, amicable

labour disputes settlements, procedure before the Arbitration Committee for out-of-court settlement of consumer disputes.

### **Mediation**

The Law on Mediation (Official Gazette of the Republic of Montenegro 30/05) ([Annex 166](#)) regulates fundamental principles of the procedure for mediating (mediation), appointment and dismissal of mediators, mediation procedure in civil and legal matters and other disputes in which parties may freely manage their requests. This Law provides a special procedure for mediation of family disputes. In addition, Family Law (Official Gazette of the Republic of Montenegro 1/07) contains a part of provisions relevant for mediation of family disputes .

In mediation, parties attempt to settle a dispute, with the assistance of one or more mediators. The mediation procedure is voluntary, and it is initiated by the agreement of the parties or by the recommendation of court if the court procedure has been initiated at all. If the mediation procedure is initiated based on the recommendation by the court, and parties fail to settle the dispute through mediation within 60 days from the day of their referral to mediation, the court shall set down the hearing. If the mediation procedure is initiated independently from the court procedure on the basis of parties' agreement, the duration of procedure shall be determined as agreed.

Fundamental principles of mediation procedure are voluntariness, equality of parties, public exclusion, confidentiality, data secrecy, independence and impartiality. Parties in the mediation procedure have equal rights. Public is excluded from the procedure, and other persons may attend the procedure only with the permission of parties and consent of mediators. This procedure is confidential, thus all information concerning mediation and final settlement are confidential, unless otherwise agreed by the parties. Confidentiality of data is ensured by the return of each pleading, document, or paper used in the procedure to the party without keeping copies. Mediator is obliged to destroy each note made in the course of the mediation procedure after its termination. Principles of independence and impartiality require from the mediator to conduct the procedure independently and impartially, with the aim of achieving amicable dispute resolution. Mediator may not perform mediation under someone's influence, and mediator is obliged to act fairly towards each party to in the dispute. Mediator is entitled to a fee and compensation of expenses.

Mediator is a person who mediates in a dispute in accordance with principles of the mediation procedure. Mediators are appointed by the Minister of Justice, at the proposal of the Commission for Appointment and Dismissal of Mediators. The Commission is established by the Minister of Justice, and it consists of three members, one representative of the court, Association of Mediators of Montenegro, and the Ministry of Justice respectively. Members of the Commission for Appointment and Dismissal of Mediators are appointed for a four-year period.

A mediator may be a Montenegrin national, in a good health condition, with no previous criminal record which makes the person unworthy to perform duty, with the university degree and at least five years of work experience in the field, and who successfully completed training programme for mediators prescribed by the Ministry of Justice.

In cross-border disputes, a foreign citizen may be appointed as a mediator. Mostly, in those situations, a mediator who has citizenship different from the parties' in the procedure, is appointed as the mediator in cross-border disputes.

Parties shall mutually appoint one or more mediators. If there is an ongoing court procedure, and parties fail to agree on mediator, they may suggest that the court to appoint a mediator from the list of mediators. If there is no ongoing court procedure, and parties fail to agree on mediator, they may suggest the Commission for Appointment and Dismissal of Mediators to appoint the mediator from the list of mediators. When appointing mediator, the court or the Commission for Appointment and Dismissal of Mediators shall consider circumstances in the dispute, requirements that mediator has to fulfill, including the need to appoint a mediator who has citizenship different from the parties' in the procedure in case of cross-border disputes. Following its appointment, the mediator shall meet with the parties in order to become familiar with the nature and subject matter of dispute and with the issues needed to be solved. The mediator may request additional information and evidence from the parties, in any phase of the procedure.

By mutual agreement, parties may dismiss the mediator in any phase of the procedure. Moreover, parties may regulate the manner of conducting the procedure by mutual agreement, and if they fail to do so, the mediator shall determine it, with previous consent of the parties. Mediator is obliged to conduct procedure objectively and conscientiously, without extending it, taking into account the interests of each party. Mediator may not make promises, give promises of successful mediation, or impose dispute settlement on parties. Parties shall have plenty of time to consider all crucial facts and proposals for reaching the settlement.

Parties in this procedure may be represented by legal representatives, i.e. attorneys. Actions that they undertake in the procedure have the same legal effect as undertaken by the party. Communication between the mediator and the parties shall, as a rule, be oral. For the purpose of reaching the settlement, if agreed with the parties, mediator may manage joint or separate meetings with the parties, their legal representatives/attorneys, and may communicate with them and make minutes. The date, time, and place of mediation session are determined agreeably by the parties or by the mediator.

Mediation is ended:

- by reaching the settlement among parties;
- when parties accept the proposal by the mediator that mediation is no longer justified;
- by referring the abandonment of further mediation procedure to mediator and other party in written form.

The Law on Mediation ([Annex 166](#)) and the Family Law regulate a special mediation procedure in family disputes. Family disputes encompass: matrimonial disputes, parent-child relation disputes, as well as child maintenance disputes.

In divorce disputes, the mediation procedure is conducted under the action of one of the spouses. After receiving the action, the court sets down the hearing and requests the spouses to declare which mediator they want to approach in order to try reconciliation, meaning to reach an agreement on regulation of legal consequences in case of dissolution of marriage. If spouses fail to agree on mediator, the mediator shall be appointed by the court. Court shall, without delay, deliver the action to the mediator, the document of mediator's appointment, names and addresses of spouses, and information about their children, if they have them. Mediator shall, within eight days from the delivery of the act of appointment, call the spouses without their attorneys to attend the reconciliation procedure, by which they will try to solve troubled relationships, without conflict and dissolution of marriage. If spouses reconcile, it is considered that the action is withdrawn.

Mediator, who conducts mediation at the reconciliation session, calls the spouses to participate in procedure in person without attorneys. If the court procedure is not initiated, mediator examines parties about causes which led to troubled matrimonial relationships, and tries to eliminate these causes and to reconcile spouses.

If one spouse or both of them, although previously called for, fail to respond to the invitation of mediator for reconciliation and fail to provide justification, it is considered that reconciliation has not been successful, and the mediation procedure shall continue related to reaching the agreement among the spouses on the exercise of parental right after divorce and agreement on division of joint property. Spouses and their attorneys shall be invited to the session for reaching this agreement. If one spouse or both of them, although invited in an orderly manner, fail to respond to the invitation by the mediator for reaching the agreement on exercise of parental authority and division of joint property, and fail to provide justification, it is considered that the mediation has not been successful and the procedure under the divorce action shall continue.

Mediation procedure for reconciliation shall be conducted within a month from the day of the delivery of the action to the mediator, while the mediation procedure for reaching the agreement on consequences of the divorce shall be delivered within 60 days from the day of the termination of the reconciliation procedure. Mediator is obliged to inform the court about the success of mediation and to deliver the minutes on reconciliation and the minutes on the agreement of spouses on exercise of parental right and division of joint property, as well as the statements of spouses on the failure of reaching the agreement.

The agreement of spouses on division of joint property is entered into the judgment of divorce. The agreement of spouses on exercise of parental right is entered into the judgment of divorce, if the court is of the opinion that this agreement is in the best interests of the child.

During the course of the mediation procedure, mediator informs parties that they may go to marriage counseling, or contact other qualified institution or expert in marriage and family matters in order to resolve their marital and family problems. In these disputes, mediators take into account the best interests of children. Furthermore, they pay special attention to the presence of domestic violence. The child does not participate in the mediation procedure, unless the mediator conducts the conversation with the child to whom the child would like to be entrusted for caring, fostering and education. Mediator must take into account the age of the child, as well as child's capability to understand the significance of the given statement.

Parties may address the court or other authority in the course of the mediation procedure for the purpose of making urgent decisions on protection of parties, their children or property. The Law on Mediation prescribes the obligation to cooperation between social welfare centers, marriage counseling centres and other adequate institutions on one side and parties and mediator on the other. In this respect, mediator is obliged to inform social welfare center, about the termination of the mediation procedure. Following the communication, social welfare center is obliged to undertake measures necessary for the protection of the best interests of the child.

The quality of mediation is ensured through the functioning of the institution named Center for Mediation, founded by the Government of Montenegro, the Central Bank of Montenegro, and the Association of Mediators of Montenegro, on 16 October 2007. The representative body of the Center for Mediation is located in Podgorica. The Center for Mediation is a non-profit institution which plans, organizes and carries out continued improvement and training of mediators. The center provides technical support for conduction of mediation procedure and informs citizens and interested parties on the institute of mediation. The Center is obliged to provide access to data related to the activities of the Center for Mediation to interested persons and organizations, at their request. For the purpose of performing activity and work improvement, the Center may establish district units according to the principle of territory, in the area where there is a need and conditions to do so. Thus, the Center has two district units, in Kotor and Bijelo Polje.

### **Court Settlement**

The Law on Civil Proceedings (Official Gazette of the Republic of Montenegro 22/04 and 76/06) regulates court settlements. Parties may settle the subject matter in the course of the whole civil proceeding (dispute). Court shall, during the whole proceeding and in the way which does not threaten its impartiality, make efforts for parties to conclude the settlement. Settlement may refer to the whole claim or to the part of it. Settlements referring to claims that parties cannot access (that are opposite to *jus cogens* and moral) cannot be reached. Settlement is, as a rule, reached at the first instance court. If the appeal procedure has been initiated before the second instance court, the first instance court notifies the second instance court on the reached settlement. The agreement on settlement is entered into the records of proceedings, and is considered as concluded when parties, having read the records, put their signatures to it.

### **Arbitration**

The Law on Civil Proceedings (Official Gazette of the Republic of Montenegro 22/04 and 76/06) standardizes the issue of procedure before arbitrations with the seat in Montenegro. Natural persons with temporary residence or habitual residence in Montenegro, as well as legal entities with their seats in Montenegro, may agree on the national arbitration for resolving disputes on rights they may freely exercise.

In cross-border disputes, in which at least one of the parties is a foreign person, parties may as well agree on the foreign arbitration jurisdiction in the concrete dispute, if the exclusive jurisdiction of the national court is not prescribed by law or international treaty. Disputes may be addressed before permanent or *ad hoc* arbitration court. The basis of this procedure is the agreement on arbitration. By the agreement, parties entrust to the arbitration all or certain disputes which arose or will arise among them from a certain agreement or non-agreement legal relation. It may be concluded in the form of arbitration clause or a separate agreement. For the purpose of lawfulness



of the agreement, a written form is required. With respect to the arbitration agreement, provisions of the Law on Civil Proceedings have a subsidiary character, i.e. they are applied solely if the agreement does not regulate a certain issue.

Arbitrator is appointed by parties during the certain term and the same may be done by a third person, if so prescribed by the arbitration agreement. If the arbitrator is not timely appointed and the agreement does not provide anything else, the arbitrator shall be appointed by the court at the request of a party. In terms of the arbitrator's appointment, in this case, the jurisdiction shall be of the court competent for the dispute in the first instance, provided that the arbitration has not been concluded.

Each party may request, by means of action, that court pronounces the termination of validity of arbitration agreement in two cases: if parties within 30 days from the first invitation for nomination fail to agree on the selection of arbitrator who should be named jointly, or if the person who is by the agreement appointed for the arbitrator does not want to or may not perform the duty of the arbitrator. The court decides upon this request.

Arbitrator shall make the statement on assuming the responsibility in written form. Arbitrator is obliged to administer the procedure at adequate pace, and to avoid any extension of the procedure. Parties may agreeably dismiss the arbitrator who fails to fulfill its duties or prolongs their fulfillment. Arbitrator is entitled to compensation of expenses and fees for completed work.

If there are circumstances that raise doubts about arbitrator's impartiality, parties are entitled to seek the exemption for the arbitrator. The exemption may be requested as well if that arbitrator does not meet the necessary requirements the parties have agreed on.

In procedure before the arbitration, parties are equal. Parties are allowed to declare on the grounds and requests of the counterparty. Arbitration court may not use coercive means, or impose sanctions on parties in this procedure.

Parties shall determine the place of arbitration. If they fail to agree on this, the place of arbitration is decided by the arbitration court, taking into account the circumstances of the dispute. Parties agree on the rules of procedure as well. If they fail to agree, arbitration court may conduct the procedure in the way considered as appropriate.

Parties agree on the opening of the arbitration procedure. When this issue is not regulated, it is considered that the procedure starts on the day when the arbitration court receives the action in case the arbitration is conducted before the permanent arbitration court. In the action, a plaintiff shall state statement of claim, disputable issues and the statement of claim based on facts, while the respondent, in response to the complaint, has to defend with respect to plaintiff's allegations. Parties, along with pleadings, may submit documents they believe are important, or may refer to documents or other evidence they intend to submit. If the arbitration procedure is conducted before *ad hoc* arbitration, the procedure starts on the day when the plaintiff receives notification that the opposing party intends to bring the dispute before arbitration, stating that the individual arbitrator has been nominated and inviting the defendant to nominate another arbitrator or to provide own opinion on the proposed arbitrator.

Arbitration procedure is not open to public, but parties may envisage it differently. Parties may, as well, agree on the language in which the arbitration is to be conducted. If they fail to agree, arbitration court decides on the issue.

The issue of serving is agreed on by parties as well, and if they fail to agree on this, it is considered that pleadings are served on the day of their delivery to the address of the addressee, or the person authorised to receive of documents in written form. All pleadings, documents or other data submitted to arbitration court by a party, shall be referred to the other party. Each court findings, opinion or document on which the court may base its decision are submitted to parties as well.

Procedure may be conducted on the basis of documents, and the arbitration court may set down hearing for the purpose of oral hearing or presentation of evidence. Parties are timely informed on each hearing of arbitration court. In arbitration procedure, witnesses are examined at the main hearing, and if they accept, they may be examined out of the main hearing, i.e. they may reply to questions in written form, within the time limit. Arbitration court may nominate one or more experts,

that shall be requested to submit statements of facts and the opinion on issues to be addressed. In addition, arbitration court may request from the party to provide the expert with all necessary data, to submit necessary documents, goods or other things to the expert for the purpose of examination. If the arbitration court considers it necessary, or a party requests it, the expert is obliged to, following the submission of the written or oral statement of facts and opinion, take part in the hearing at which parties are allowed to make questions to the expert.

Arbitration court decides upon the rules that parties have chosen as authoritative for dispute resolution. On the contrary, the arbitration court decides upon law considered to be as closely related to the dispute as possible. Arbitration court may decide on dispute applying equity (*ex aequo et bono*), provided that parties have explicitly given such authority to the arbitration court..

Arbitration council decides on the base of the majority of votes, but parties are allowed to set out a different rule. If they fail to obtain needed majority of votes, court reviews the reasons for each opinion, and should it fail to obtain the majority of votes after that as well, the decision is made by the president of the arbitration council..

Arbitration procedure is terminated by adoption of arbitration award, withdrawal of action, agreement of parties on the termination of procedure, or if the arbitration court considers that continuation of procedure has become needless or impossible.

Award is adopted in the place of arbitration, in written form. It shall have the statement of reasons, unless parties have agreed that it is not necessary. Delivery of the award depends on the person who adopted it. If it is permanent arbitration court, then it delivers it to parties. If it is *ad hoc* arbitration court, award is delivered by the ordinary court, which would have the first instance jurisdiction in the dispute, provided that the arbitration agreement has not been concluded.

Arbitration court, at the request of party, determines which party and to what extent is obliged to compensate expenses of procedure to the other party, including the expenses of representation and fees of arbitrators. Court decides on expenses, at a rough estimate, taking into account all circumstances of dispute, and especially the outcome of arbitration procedure.

Annulment action may be filed against arbitration awards. The action is filed with the court of the first instance jurisdiction in dispute, provided that the arbitration agreement has not been concluded. Court shall annul the award which is contrary to public order. The award shall be annulled, if the party filing the action proves that:

- arbitration agreement has not been concluded or has not been lawful;
- constitution of arbitration court has not been in accordance with the Law on Civil Proceedings, or arbitration procedure, thus having the impact on the content of the award;
- party to the procedure has not had capacity to conclude the arbitration agreement, and to be the party to the dispute, or the party has not been duly represented
- the party which filed annulment action has not been duly informed about the initiation of arbitration procedure, or that has been unlawfully deprived of possibility to appear before the arbitration court;
- the award has been adopted without statement of reasons, or without signature;
- the award refers to a dispute which has not been provided for the arbitration agreement, or has not been encompassed by its provisions, or contained decisions on issues exceeding the limits of the arbitration procedure

The Law on Civil Proceedings regulates the arbitration procedure following the annulment of the award. If the award has been annulled for the reasons not referring to the existence or lawfulness of arbitration agreement, the agreement represents a lawful ground for a new arbitration. In other cases, a new arbitration in the same dispute is possible, if the parties conclude a new arbitration agreement after the annulment of the award.

### **Procedure before the International Commercial Arbitration Court**

There is an independent court called International Commercial Arbitration Court existing within the Chamber of Commerce of Montenegro. The scope of its activities includes reconciliation and

dispute settlement arising from international business relations, when its jurisdiction is agreed on. The International Commercial Arbitration Court is an independent and autonomous body in its decision making process. It has its president, presidency and secretariat. Its headquarters are in Podgorica.

The Assembly of the Chamber of Commerce adopted the Rulebook on International Commercial Arbitration which regulates its arrangement, jurisdiction, procedure for reconciliation and dispute settlement. When the Rulebook does not contain provisions referring to an issue brought before the International Commercial Arbitration Court, provisions of the Law on Civil Proceedings are applied. Parties may agree on application of the United Nations Commission on International Trade Law Arbitration Rules (UNCITRAL) in the proceedings in front of the International Commercial Arbitration Court.

Reconciliation and dispute settlement are performed by arbitrators. They may be Montenegrin nationals or foreign citizens. They are appointed from the list of arbitrators, which is determined by the Executive Board of the Chamber of Commerce, at the proposal of the Presidency of the International Commercial Arbitration Court. The list of arbitrators is revised every four years, with the possibility of their reappointment. There are arbitrators from Montenegro and other states on this list, who are chosen among numerous respected university professors, members of legal system, or company managers. A foreign party may appoint foreign citizen as an arbitrator who is not included in the list. A national party may appoint solely a foreign citizen as an arbitrator who included in the list. In this case, a homecountry's national from the list shall be appointed as the president of the panel of arbitration.

The reconciliation procedure is conducted independently from the arbitration procedure, and if it is not successful, anything done or declared during the procedure, in oral or written form, is not obligatory for the parties. Acceptance of this procedure does not involve accepting the jurisdiction of the International Commercial Arbitration Court in case of failure of reconciliation. Proposition for the initiation of this procedure is submitted in written form to the Secretariat of the International Commercial Arbitration Court. It may be submitted only by one party, or by both of them. The proposition provides the statement of facts, parties' points of view and necessary dispute-related documents. In this procedure, parties may participate either in person, or via attorneys. Parties may abandon the reconciliation procedure at any time. If the proposition for initiation of the reconciliation procedure has been submitted only by one party, the Secretariat of the International Commercial Arbitration Court shall notify the other party about it, and shall invite the party to declare on adoption of the proposition for initiation of procedure, and if does, to provide timely the statement of facts, its point of view, and necessary dispute-related documents in written form. If the counter-party fails to respond timely, or does not adopt the proposition, the Secretariat notifies the persons who provided proposition that the reconciliation procedure cannot be conducted. In case of adoption of the proposition for initiation of the procedure, as well as when both parties submit the proposition, the commission for reconciliation is established. The Commission consists of one representative nominated by each party respectively, and of a president, who is nominated from the list of arbitrators by the President of the International Commercial Arbitration Court, if the parties themselves have not appointed the president by agreement. The Reconciliation Commission examines the submitted propositions, studies the submitted documents, and gathers all necessary information. Based on the records examined, it submits its own non-obligatory proposal for the settlement to the parties. The outcome of the reconciliation procedure is entered into the records of procedure, signed by the members of the Commission and the parties.

The International Commercial Arbitration Court settles disputes from international commercial and other international business relations, *inter alia*, disputes related to ships and aircrafts, foreign investments agreements disputes, concession agreements disputes, disputes resulting from agreements on rights to intellectual property. The jurisdiction of the International Commercial Arbitration Court is based on the written agreement - the arbitration agreement. It may be concluded in relation to a certain dispute, as well as to future disputes which may arise from a certain legal relation.

Dispute is initiated by filing an application. The application is filed in the Secretariat of the International Commercial Arbitration Court. The application with attached documents is delivered by the International Commercial Arbitration Court to the defendant for the reply. In the statement,

which has to be submitted within the time limit, the defendant declares on the claim. One copy of the reply is served to the plaintiff by the Secretariat of the International Commercial Arbitration Court. The defendant, before the termination of the main hearing, may file a counter-action, if the claim of the counter-action results from the same legal relation. It is referred to the first party which may submit its reply as well. Parties may, within 30 days from the day of the response to the action, agree on appointing the sole arbitrator from the list of arbitrators, and inform the International Commercial Arbitration Court about this in written form. If they fail to agree on the arbitrator within the time limit, the President of the International Commercial Arbitration Court appoints the arbitrator.

The dispute is settled by the sole arbitrator, when the parties envisage this, or if disputes whose value does not exceed EUR 50000 are in question. In other cases, disputes are settled by the arbitration council consisting of three members. In disputes settled by the the arbitration council, the applicant shall appoint its arbitrator when filing the application, i.e. when paying the arbitration costs, and the respondent when filing the response to the action. The President of the International Commercial Arbitration Court shall appoint arbitrators in case that a party or both of them fail to appoint the arbitrator within the prescribed time period, or if they do not appoint another arbitrator within 30 days, if the appointed arbitrator refuses the appointment, as well as when parties let the International Commercial Arbitration Court appoint the arbitrator.

The president of the council is selected from the list of arbitrators, by arbitrators of parties. A person to be the arbitrator declares in written form on assuming the responsibility and is obliged to disclose any circumstances that may rise reasonable doubts about his impartiality or independence.

The principle of replacement of arbitrators is prescribed, when an arbitrator is prevented from fulfilling his duties, as well as the principle of exemption of arbitrator for the reason of doubts into his impartiality or independence.

Oral hearing is not set down in the arbitration procedure, if arbitrators determine that written pleadings and evidences are sufficient for adoption of the award. Parties shall be notified that the adoption of the award shall be performed in such a way. If neither of parties request oral hearing within 15 days from the notification, arbitrators shall adopt the award based on the submitted evidence. The oral hearing is always held when a party requests it. The oral hearings are held, as a rule, at the headquarters of the International Commercial Arbitration Court. As a rule, public is excluded from the hearing, unless otherwise agreed by the parties. Parties attend the hearing in person, or via attorneys. Furthermore, legal advisors may provide assistance to parties.

An arbitration award may not be adopted for the reason of non-appearance of parties, but arbitrators may, having determined that the parties have been duly notified of oral hearing and that they have no justification for the nonappearance, proceed with hearing the case as if the parties were present. Parties may agree on the language the procedure is to be conducted in. Arbitrators decide on presenting the evidence, at the proposal of parties or at their own initiative. They may order the presentation of evidence during the whole procedure. The strength of presented evidence is estimated according to free opinion. Presentation of evidence may be done by hearing witnesses, parties or experts.

Arbitration procedure terminates within one year from the day of the constitution of the arbitration panel, or the appointment of the sole arbitrator. Exceptionally, the procedure may be extended for the purpose of collecting evidence, or if parties require so. The issue is decided by the panel of arbitrators, or the sole arbitrator.

In the procedure, the law which the parties determine as the substantive law applicable to their agreement, shall be applied. If this is not determined, applicable law is the law to which the collision norms refer, and whose application is considered as the most appropriate in the specific case by the arbitration council or the sole arbitrator. In any case, the award is adopted in accordance with provisions of the agreement taking into account the commercial tradition which may be applicable to the business activity.

The final award is adopted following the termination of the arbitration procedure. The award shall be elaborated and formulated in such a way to become enforceable in countries in which its

enforcement is requested. When the award is adopted by the arbitration council, it is adopted unanimously, or by the majority of votes, in the hearing not open to public and attended only by arbitrators and the note taker. The records on discussion and voting are kept and signed by all arbitrators. The final award is adopted within 60 days from the day of the final oral hearing, i.e. from the day of the last session of the arbitration council which is not open to the public. Parties may reach the settlement before the arbitration council, i.e. before the sole arbitrator.

The Presidency of the International Commercial Arbitration Court examines the award before signing it. The examination may point to some formal drawbacks and arbitration practice regarding certain legal issues. In addition, the Presidency of the International Commercial Arbitration Court may draw attention to some reasons for annulment of the award, or may not enforce it.

Arbitration award is final and is not a subject to appeal. It has the validity of the final and enforceable judgement of the ordinary court. By agreeing on the jurisdiction of the International Commercial Arbitration Court, parties oblige themselves to enforce its award.

### **Amicable Labour Dispute Resolution**

The procedure of amicable labour dispute resolution is initiated and conducted in accordance with the Law on Amicable Labour Dispute Resolution (Official Gazette of the Republic of Montenegro 16/07). Labour disputes may be collective and individual. The collective dispute is the one which may arise in the procedure of conclusion of collective agreements, when the employer does not apply certain provisions of the collective agreement to all employees, or from exercising the right to form a union, or from realizing the right to strike. The individual labour dispute is related to employee and his rights within the area of work.

Conciliator participates in the procedure of amicable collective labour disputes, whereas the arbitrator participates in the individual labour disputes. The conciliator is a person who helps the parties in collective labour disputes to reach a settlement. Its role is similar to that of a mediator, under the Law on Mediation. Principles of reconciliation are identical to the principles of the mediation procedure (voluntariness, equality of parties, exclusion of public, confidentiality, data secrecy, independence and impartiality). The arbitrator in the individual labour disputes is a person who conducts the dispute, and decides on the subject matter. Conciliator, i.e. arbitrator is obliged to conduct the procedure objectively, conscientiously, and without extension, taking into account the interests of parties in the dispute.

Parties in a dispute decide voluntarily on trying the amicable dispute resolution, and have equal rights. At the request of parties, each pleading, document or other paper used in the procedure, shall be returned without keeping copies. Conciliator, i.e. arbitrator is obliged to act independently and impartially, with the aim of reaching amicable dispute resolution.

For the purpose of performing professional activities related to amicable labour dispute resolution, the Government of Montenegro established the Agency for Amicable Labour Dispute Resolution. This Agency performs professional activities related to amicable collective and individual labour dispute resolution, keeps records on conciliators and arbitrators, decides on their challenge, keeps records on amicable labour dispute resolution procedures.

Conciliator, i.e. arbitrator shall be a Montenegrin national, with the university degree and at least five years of working experience in the field of labour legislation and who has successfully completed the training course and technical upgrading for a conciliator, i.e. arbitrator, and who has not been sentenced for a criminal offence to the minimum effective imprisonment of six months, or for a criminal offence which makes him unsuitable for performing the duty of a conciliator, i.e. arbitrator.

The procedure of appointment and dismissal is conducted by the Commission established by the Director of the Agency for Amicable Labour Dispute Resolution. The decision on the appointment of conciliators, i.e. arbitrators is adopted by the Agency Director, at the proposal of the Commission. Conciliator, i.e. arbitrator is appointed for a five year period, with the possibility of re-appointment. Following the appointment decision, the Agency Director adopts the rule on entrance into the register, which enables one to act as the conciliator, i.e. arbitrator. This opportunity is lost after deletion from the register.

When the proposition for the amicable labour dispute resolution is submitted by one party in a dispute, the Agency delivers the proposition and documentation to the other party and invites it to declare on whether it agrees with the amicable dispute resolution. If the procedure is initiated by the the joint proposition of the parties, a conciliator, i.e. arbitrator is agreeably appointed by consulting the records kept by the Agency.

The hearing, which is set down for the resolution of collective labour dispute, is opened and conducted by a conciliator. The conciliator has the right to collect information out of hearing, as well as to collect any other data from the representatives of parties in the dispute. Following the termination of conciliation procedure, the conciliator closes the hearing, and with parties in the dispute adopts the recommendation on the dispute resolution. Recommendation is given in written form along with the elaboration. Both parties in the disputes and the conciliator shall vote for the recommendation. If the recommendation is not adopted in this way, within the prescribed time limit, the conciliator may propose a recommendation to parties in the dispute. The party which does not adopt the recommendation, shall provide reasons for such a decision. If both parties in the dispute adopt the recommendation, they conclude the agreement on dispute resolution. When the subject matter of the dispute is the collective agreement, the agreement becomes its constituent part. In the case of individual agreement between employee and employer, the agreement has the effect of the court settlement.

Individual labour dispute may be solved before the arbitrator. If there is an ongoing court procedure, parties in the dispute may agree on the initiation of reconciliation procedure before the arbitrator at any level of the procedure. The arbitrator is obliged to set down a hearing after the receipt of the submitted proposition and documentation on the subject matter of the dispute, and to notify the parties in the dispute. The hearing is held in the presence of the arbitrator and parties in the dispute. If one of the party does not appear without good reason, the arbitrator may hold the hearing in its absence, bearing in mind the documentation the party has submitted. The hearing is open to public, unless otherwise agreed by parties. The arbitrator conducts the hearing, takes statements of parties in the dispute and other persons in the procedure, presents evidence, and takes care that all facts relevant for adopting decision are stated during the procedure. Parties in the dispute have the right to declare on the subject matter and respond to allegations of the counter-party. In this procedure, the arbitrator may engage a forensic expert. Parties in the dispute have the right to give closing arguments at the hearing. If the subject matter is heard, i. e. if parties in the dispute agreed on the subject matter so that arbitrator may adopt a decision, the arbitrator closes the hearing.

The arbitrator adopts decision on the subject matter within the time limit, starting from the day of the opening of hearing. The decision is not subject to appeal, but an action for annulment may be filed. The decision may be annulled solely by court, if the party proves that:

- the agreement of arbitrator's appointment has not been concluded, or has not been lawful;
- the dispute has been decided by the arbitrator who had to be challenged;
- the party in the dispute was not able to conclude the agreement on the arbitrator's appointment;
- it has not been duly notified of the initiation of the reconciliation procedure before the arbitrator, or it has unlawfully been prevented from appearing before the arbitrator;
- the decision refers to a dispute which is not provided by the agreement.

#### **Procedure before the Arbitration Committee for Extra-Judicial Consumer Dispute Resolution**

Consumer Protection Law (Official Gazette of the Republic of Montenegro 26/07) establishes the fundamental rights of consumers who purchase goods and services as well as the way of realizing and protecting their rights. This Law prescribes that, in case of violation of consumer rights, extra-judicial protection shall be exercised through the Arbitration Committee for Extra-Judicial Consumer Dispute Resolution. The Arbitration Committee is a part of the Chamber of Commerce, for the purpose of mutual and agreeable dispute resolution between the trader and consumer (consumer dispute). The Arbitration Committee for Extra-Judicial Consumer Dispute Resolution is

an independent body which takes decisions autonomously, has 20 members, including the president and the vice president of the Arbitration Committee. Members are appointed by the Chamber of Commerce and the Consumer Organization, in the same ratio, i.e. ten members respectively. They are appointed for a three-year period, with the possibility of reappointment. They are obliged to conduct the procedure independently and impartially, and may not act as representatives of parties to the dispute, nor receive or ask for instructions. In addition, the members of the Arbitration Committee for Extra-Judicial Consumer Dispute Resolution are obliged to keep as secret all data disclosed in the course of the procedure.

The Arbitration Committee for Extra-Judicial Consumer Dispute Resolution decides on disputes in the panel constituted of three members, appointed by the President of the Arbitration Committee. Exceptionally, parties may agree on having one member of the Arbitration Committee who decides on the dispute resolution. The members of the Committee are entitled to a fee. If the member of the Arbitration Committee has personal or other interests in the dispute, or is related to any of the parties in the dispute, he may not be the member of the council for dispute resolution.

The procedure before the Arbitration Committee may be initiated, provided that the dispute settlement with the seller (trader) has previously been tried. The consumer, or consumer organization initiates the procedure by filing a complaint. The decision of the council may be obligatory or it may just be a recommendation. It is obligatory if, after filing the complaint or announcement of the decision, the trader has declared the decision as obligatory. This kind of a decision is enforceable. The decision of the council is considered a recommendation if the trader has declared the decision as not being obligatory. A procedure against the decision of the council may be initiated before the competent court within the time limit, starting from the day of the receipt of the decision. The Arbitration Committee follows the enforcement of obligatory decisions of the council. If the trader fails to enforce the obligatory decision of the council within the prescribed time limit, the consumer or consumer organization that initiated the procedure, may initiate the procedure for enforcement before the competent court.

## **71. How does your legislation solve conflicts of law for contractual and non-contractual obligations?**

The law on resolving the conflict of laws with the regulations of other countries regulates the issue of applicable law, and authority for contractual and other relations. This Law is based on the rule that the law applicable to agreement is the one which is chosen by the parties, unless it is differently regulated by this Law or by the international agreement.

Restriction of the will of parties, within the meaning of this Law, refers to real estate agreements, thus prescribing exclusive application of the law of the country on which territory the real state is found.

If the contractual parties did not chose the applicable law and special circumstances do not direct to another law, the applicable law shall depend on the type of contract, while the applicable law for other agreements shall be the one depending on where the habitual residence was, i.e. the seat of the seller at the time of receiving the offer. According to type of agreement, the applicable law shall be determined as follows:

- for agreements of sale of movable property - the law of the place where the habitual residence, i.e. the seat of the seller was at the time of receiving the offer;
- for services agreements, i.e. construction agreements – the law of the place where the habitual residence, i.e. the seat of the constructor was at the time of receiving the offer;
- for power of attorney – the law of the place where the habitual residence, i.e. the seat of the attorney was at the time of receiving the offer;
- for mediation agreements – the law of the place where the habitual residence, i.e. the seat of the commissioner was at the time of receiving the offer;

- for shipping agreements – the law of the place where the habitual residence, i.e. the seat of the lessee was at the time of receiving the offer;
- for loan agreements – the law of the place where the habitual residence, i.e. the seat of the lender was at the time of receiving the offer;
- for loan for use agreement – the law of the place where the habitual residence, i.e. the seat of the provider of services was at the time of receiving the offer;
- for deposit agreements – the law of the place where the habitual residence, i.e. the seat of the depositary was at the time of receiving the offer;
- for warehousing agreements – the law of the place where the habitual residence, i.e. the seat of the warehouseman was at the time of receiving the offer;
- for transport agreements – the law of the place where the habitual residence, i.e. the seat of the transporter was at the time of receiving the offer;
- for insurance agreements – the law of the place where the habitual residence, i.e. the seat of the insurer was at the time of receiving the offer;
- for copyrights agreements – the law of the place where the habitual residence, i.e. the seat of the author was at the time of receiving the offer;
- for donation agreements – the law of the place where the habitual residence, i.e. the seat of the donor was at the time of receiving the offer;
- for stock exchange businesses - the law of the seat of the stock exchange;
- for autonomous bank guarantees agreements – the law of the place where the habitual residence, i.e. the seat of the provider of guarantee was at the time of concluding the agreement;
- for technology transfer agreements (licenses, etc.) – the law of the place where the habitual residence, i.e. the seat of the receiver of technology was at the time of concluding the agreement;
- for property claims from employment agreements – the law of the country where the work is carried on, or was carried on;
- for other agreements – the law of the place where the habitual residence, i.e. the seat of the tenderer was.

In the relations between the contractual parties, unless otherwise agreed between the parties, the applicable law of agreement shall be the determination of the very moment from which the acquirer, i.e. the party to assume the movable property has the right to products and fruits of property, as well as the determination of the moment from which the acquirer, i.e. the party to assume the movable property assumes the risk related to the property.

The law of the place where the property is delivered shall be applied, unless otherwise agreed between the parties, to the manner of delivery and measures to be undertaken, in the case of failure to collect the property.

In case of cession of claiming or assuming the debt towards the debtor, i.e. creditor who did not participate in the process of cession, the applicable law on claiming or assuming the debt shall be applied.

The law of the principal legal work, unless otherwise prescribed, shall be applied to legal transactions. For unilateral legal affair the applicable law of the country of debtor's residence, i.e. the seat, shall be applied. As far as groundless acquisition is concerned, the applicable law for legal relation due to which the acquisition occurred shall be applied. For the management without authority, the applicable law of the place where the action of manager has been carried out shall be applied. For the obligations arising from the usage of property without management, and other non-contractual obligations that do not arise from the liability for damages, the law of the place where the facts resulting in the obligation have occurred shall be applied. For non-contractual liability for damage, unless otherwise prescribed for certain cases, the applicable law of the place where the action or the consequence occurred, depending on which of these two laws is more favourable for the injured party, shall be applied. For the unlawfulness, the applicable law of the



place where the act or consequence has occurred shall be applied, and if the act has been committed or the consequence occurred in more than one place, it is sufficient that the act is unlawful according to the law of one of those places. If an event resulting in an obligation for compensation of damages has occurred on a ship, on the open sea, or aircraft, as the law of the place where the facts resulting in the obligation for compensation of damages shall be considered, the law of the country to which the ship belongs, i.e. the law of the country in which the aircraft is registered.

**72. How are foreign judicial and extrajudicial documents received and served? How are your country's judicial and extra-judicial documents transmitted when they have to be served abroad?**

Receiving and serving foreign judicial and extra judicial acts is performed in accordance with international agreements, and the Law on Civil Proceedings. International agreements provide receiving and serving through the central communication body or via diplomatic channels, and exceptionally through indirect cooperation among judicial authorities, which is for instance provided by the Agreement on Legal Aid in Civil and Criminal Matters between Montenegro and the Republic of Serbia.

In communication via diplomatic channels, the Ministry of Foreign Affairs shall submit the letters rogatory for receiving and serving foreign judicial and extra judicial documents to the Ministry of Justice, while extra judicial acts shall be submitted to administrative authorities.

In case of communication via central authority of Montenegro is in question, the central authority shall be the Ministry of Justice when the majority of international agreements are in question by which cooperation in civil matters is prescribed. The Ministry of Justice submits the letters rogatory for serving judicial acts to the competent court which performs serving acts to people who they refer to, or who are indicated as receivers, or to the administrative body competent for acting under the extrajudicial act. The serving of acts requested by foreign court is performed in the manner prescribed by the national law. The action which is the subject of the request of a foreign court may be executed in the manner requested by the foreign court, if such procedure is not contrary to public policy.

If there is no international agreement and the condition of mutuality is met, the national law is applied - the Law on Civil Proceedings. The law provides diplomatic communication, therefore, it prescribes that national courts shall act on requests for legal aid to foreign courts, only if they are submitted via diplomatic channels, and if the request and enclosures are in the official language of the court, or if the certified translation in that language is enclosed. According to this law, the letters rogatory for legal aid addressed to national courts are submitted to foreign courts via diplomatic channels, with the request and enclosures written in the language of the requested country, or with the enclosed certified translation.

The letters rogatory for serving judicial acts are served by the national court to the Ministry of Justice, which is then forwarded to the Ministry of Foreign Affairs, which again delivers the letters rogatory to the national diplomatic and consular body if the serving refers to domestic nationals. In case the serving of the letter rogatory is to be performed in the requested country to the nationals of the requested country, the letter rogatory is served to the Ministry of Foreign Affairs of the requested country when it comes to diplomatic way of communication. In communication via the central authority, national court delivers the letters rogatory to the Ministry of Justice, which forwards it to the Ministry of Justice of the requested country, which is then forwarded to the body competent for the service, in accordance with the legislation of the requested country.

Extra-judicial acts of national administrative bodies that are to be served abroad are submitted at the Ministry of Foreign Affairs, which serve them via diplomatic channels to the competent body for the proceeding in the requested country.

## **Judicial co-operation in criminal matters**

**73. Is it possible for parties involved in civil litigation in your country but not present in it, to ask for legal aid in the country of their habitual residency? If so, how are these requests received and dealt with by your country? Is the same possibility available to parties present in your country who are involved in litigation abroad? If so, how are these requests presented and then transmitted abroad?**

See answer to Question 69.

**74. Which alternative dispute resolution methods are available in your country, and how are they organised? How is their quality ensured?**

Refer to the answer to question No. 70.

**75. Please provide information on legislation or other rules governing this area and their adherence to relevant international conventions.**

Alternative dispute resolution methods which are provided for and regulated by Montenegrin legislation are as follows: mediation; judicial settlement; arbitration; procedure before the Foreign Trade Arbitration; amicable settlement of labour disputes; procedure before the Arbitration Board for out-of-court settlement of consumer disputes.

### **Mediation**

The rules for mediation procedure in civil disputes, including disputes arising from family, commercial and other property relationships of natural persons in which the parties may freely dispose of their claims are prescribed by the Law on Mediation (Official Gazette of the Republic of Montenegro 30/05).

The following international instruments and documents have been taken into account in the drafting of the Law on Mediation:

- Convention for the Protection of Human Rights and Fundamental Freedoms;
- Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes;
- Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes;
- Council Directive 2002/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes;
- Green Paper on alternative dispute resolution in civil and commercial law (COM/2002/0196 final);
- Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- Council of Europe, Committee of Ministers: a) Recommendation No. R (84) 5 on the principles of civil procedure designed to improve the functioning of justice; Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts; Recommendation No. R (98) 1 on family mediation; Recommendation No. R (2002) 10 on mediation in civil matters;

- UNCITRAL Rules, 1976;
- UNCITRAL Model Law on International Commercial Arbitration, 1985;
- UNCITRAL Conciliation Rules, 1980;
- Washington Convention, 1965;
- ICC - Rules of the International Chamber of Commerce in Paris;
- Mediation Rules of the Brussels Business Mediation Center;
- CIDRA Mediation Rules;
- UNIFORM MEDIATION ACT, 2001;
- American Arbitration Association Commercial Mediation Rules;
- Mediation Rules of the SCC Mediation Institute;
- UNCITRAL Model Law on International Commercial Conciliation, 2002.

### **Judicial settlement**

Judicial settlement is another alternative dispute resolution method. It is regulated by the Law on Civil Proceedings (Official Gazette of the Republic of Montenegro 22/04 and 76/06). During the drafting of this Law special attention was paid to international conventions, recommendations, international standards, including *inter alia*:

- Independence and Impartiality of Justice - international standards;
- The Rules of Procedure of the Court of First Instance of the European Communities;
- Recommendations of the Council of Europe: No. R (84) 5 on the principles of civil procedure designed to improve the functioning of justice; No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts.

The parties may conclude settlement concerning the subject-matter of the dispute at any time during the civil proceedings (during litigation). Settlement may concern the whole claim or a part of the claim. The settlement cannot be concluded concerning the claims the parties cannot dispose of.

### **Arbitration**

The Civil Procedure Law (Official Gazette of the Republic of Montenegro 22/04 and 76/06) regulates the procedure before arbitration bodies based in Montenegro. Procedure before arbitration bodies based in Montenegro was developed, primarily, in accordance with UNCITRAL rules in this field. During the drafting of the Civil Procedure Law, documents deriving from the *acquis communautaire*, such as the Green Paper on alternative dispute resolution in civil and commercial law (COM/2002/0196 final), were, *inter alia*, taken into consideration.

### **Procedure before the Foreign Trade Arbitration**

An independent court of arbitration - Foreign Trade Arbitration - operates at the Chamber of Commerce of Montenegro. This Arbitration carries out conciliation and resolves disputes arising from international trade relations when its jurisdiction has been agreed to. The parties may agree to apply the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) on the proceedings conducted before the Foreign Trade Arbitration.

### **Amicable settlement of labour disputes**

The procedure for the amicable settlement of labour disputes is initiated and conducted in accordance with the Law on Amicable Settlement of Labour Disputes (Official Gazette of Montenegro 16/07). The introduction into our labour legislation of amicable settlement of labour disputes represents an important step forward in terms of quality in the reform of our labour legislation and its harmonisation with the *acquis communautaire* (institutionalised services for

amicable settlement of labour disputes exist e.g. in the United Kingdom, Belgium, Hungary) and recommendations of the International Labour Organisation.

### **Procedure before the Arbitration Board for out-of-court settlement of consumer disputes**

The Law on Consumer Protection (Official Gazette of the Republic of Montenegro 26/07) stipulates basic rights of consumers when purchasing goods and services, as well as the manner of exercise and procedure for the protection of their rights. This Law prescribes that in case of violation of the rights of consumers, out-of-court protection is exercised through the Arbitration Board for out-of-court settlement of consumer disputes. The Arbitration Board has been established at the Chamber of Commerce for consensual settlement of disputes between traders and consumers (consumer litigation) as an independent body autonomous as regards its decision-making.

The starting points in the adoption of the Law on Consumer Protection were main commitments in this field adopted in modern comparative law and the EU law. International rules in this field, and in particular the preliminary programme of the European Economic Community for consumer information and protection of 1975 and the United Nations General Assembly Resolution A/RES/39/248 of 1985, were first to be consulted.

Numerous directives and recommendations of the European Union have been taken into account, and in particular: Directive 67/548/EEC, Directive 84/450/EEC, Directive 85/374/EEC as amended by Directive 1999/34/EC, Directive 85/577/EEC, Directive 87/102/EEC, Directive 89/552/EEC, Directive 93/13/EEC, Directive 94/47/EC, Directive 1997/7/EC, Directive 98/6/EC, Commission Recommendation 98/257/EC and Commission Recommendation 2001/310/EC, Directive 1998/27/EC, Directive 1999/44/EC, Directive 1999/45/EC, Directive 2000/35/EC, Directive 2001/83/EC, Directive 2001/95/EC, Directive 2002/65/EC, Directive 2003/33/EC.

### **76. What kind of foreign judicial decisions in criminal matters are recognised and enforced and what is the procedure for recognising and enforcing them?**

In Montenegro final and enforceable foreign judicial decision in criminal matters can be enforced if that is prescribed under an international agreement or if there is reciprocity and if the criminal sanction has been imposed by a domestic court as well. Foreign judicial decisions which may be enforced in Montenegro are defined under international agreement(s) and the Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 4/08) ([Annex 175](#)) does not provide for limitations regarding the kind of foreign judicial decision in criminal matters that may be recognised and enforced.

The Convention on the Transfer of Sentenced Persons of 1983 with the Additional Protocol to the Convention on the Transfer of Sentenced Persons of 1997 (Official Gazette of the Federal Republic of Yugoslavia - International Treaties 4/01) has been the most common basis for the recognition and enforcement of foreign judicial decisions in practice to date. Furthermore, a legal basis for the recognition of a foreign judicial decision in criminal matters may also be a bilateral agreement; Montenegro concluded agreements on mutual enforcement of criminal judgments with Austria, the Czech Republic, Denmark, Bosnia and Herzegovina and Serbia.

The procedure for ratification of the European Convention on the International Validity of Criminal Judgments is currently ongoing in Montenegro, thus a proposal for a Law on Ratification of the European Convention on the International Validity of Criminal Judgments has been adopted by the Government.

The Law on Courts (Official Gazette of the Republic of Montenegro 5/02, 49/04 and 22/08) prescribes that high courts have jurisdiction to provide international legal assistance in criminal matters, while the procedure for the recognition of a foreign judicial decision is prescribed by the Law on International Legal Assistance in Criminal Matters.

The competent court passes the judgment on recognition in a panel of three judges without presence of parties. In the operative part of the judgment, the court will insert full wording of the operative part and the name of the court from the judgment of the foreign court and impose the sanction. In the particulars of judgment, the court will state reasons it took into account when pronouncing the sanction and refer to the reasons of the foreign court whose judgment is enforced. If the foreign court imposed criminal sanction which is not prescribed by domestic law, the competent domestic court will impose criminal sanction which is most similar to the criminal sanction imposed by a foreign court by type and severity.

Public prosecutor and the sentenced person or his/her defence counsel may file an appeal against the judgment.

Pursuant to the Law on Enforcement of Criminal Sanctions (Official Gazette of the Republic of Montenegro 25/94, 29/94, 69/03 and 65/04) a foreign judgment which has been previously recognised is enforced.

### **77. How are foreign judicial documents received and served? How are your country's judicial documents transmitted when they have to be served abroad?**

The service of documents upon a letter rogatory of a foreign judicial authority through diplomatic channels is a usual form of communication with the countries with which an international agreement has not been signed or there is no reciprocity and it is regulated by the Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 4/08).

The Law prescribes that the Ministry of Justice is a central communication authority receiving foreign letters rogatory, transmitted through diplomatic channels or through a central communication authority of a foreign country.

In case there is a bilateral agreement with a certain country or a multilateral agreement such as e.g. European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (Official Gazette of the Federal Republic of Yugoslavia - International Treaties 10/01) is in force in relation to that country, the provisions of the agreement stipulating that the Ministry of Justice is a central communication authority through which the letters rogatory are forwarded, will apply.

When the instruments of ratification of the above-mentioned Convention were deposited a declaration was made that the service of a summons on an accused person who is in its territory will be carried out only if the summons is transmitted to the competent judicial authority no later than 30 days before the date set for appearance (Article 7 paragraph 3). As for the application of Article 15 paragraph 2 of the Convention, a declaration was made that a copy of the request for legal assistance is to be delivered to the Ministry of Justice and that within the meaning of Article 24 of the Convention the courts and public prosecutors' offices will be deemed judicial authorities.

In case of urgency, as an exception, certain agreements provide for the possibility of direct communication between judicial authorities, such as agreement with France and Cyprus, while most agreements provide for the possibility of service of documents through International Criminal Police Organisation (INTERPOL).

The Agreement of 29 May 2009 between Montenegro and the Republic of Serbia on legal assistance in civil and criminal matters provides for direct communication between the judicial authorities of two countries as a rule concerning general forms of legal assistance. The above-mentioned Agreement is subject to ratification but it provisionally applies from the date of signature.

Pursuant to the provisions of the Law on Courts (Official Gazette of the Republic of Montenegro 5/02, 49/04 and 22/08), high courts – in Podgorica and Bijelo Polje – have the jurisdiction to act upon requests for international legal assistance in criminal matters.

Letters rogatory of **domestic** judicial authorities are delivered to the Ministry of Justice of Montenegro which is a central communication authority. In cases where there is no international agreement or reciprocity, the Ministry of Justice transmits and receives letters rogatory through

diplomatic channels. In cases when this is provided for under an international agreement or where there is reciprocity, the Ministry of Justice transmits letters rogatory to the central communication authority of the foreign state (most frequently it is a ministry of justice).

Notwithstanding the above, if provided for under an international agreement, domestic judicial authority may transmit the request for service to the competent foreign judicial authority directly and receive the request for service from a foreign judicial authority directly (Article 4 paragraph 2 of the Agreement between Montenegro and the Republic of Serbia on legal assistance in civil and criminal matters of 29 May 2009).

It is a generally accepted rule that the judicial documents may be served on own nationals through a competent diplomatic consular mission of Montenegro in a foreign country, or that judicial documents may be served on foreign nationals who are in the territory of Montenegro by a competent diplomatic consular mission of their country, which is regulated under numerous agreements.

**78. How and on which legal basis do you deal with requests from other countries to take evidence? How and on which legal basis are your country's requests for taking evidence abroad transmitted?**

The Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 4/08) prescribes that international legal assistance is provided in accordance with an international agreement, and if there is no international agreement or if certain issues are not regulated under an international agreement, international legal assistance is provided in accordance with the law.

The permissibility and manner of taking the action which is the subject matter of the letter rogatory of a foreign judicial authority will be determined by a high court in accordance with domestic law and international agreement. Domestic judicial authority may, upon the request of a foreign judicial authority, allow the presence of a foreign official person who has legal interest in taking the action requested by the letter rogatory.

Most agreements contain provision that the requested authority shall act in accordance with domestic legislation when legal assistance is provided, however, if a letter rogatory requests explicitly for a particular form, the requested authority may grant such request provided that such action is not contrary to the legal order of the requested state.

In cases where there is no international agreement or reciprocity, the requests of domestic judicial authorities for taking evidence abroad are transmitted through diplomatic channels on the basis of the Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 4/08).

In accordance with international agreement, requests for international legal assistance are transmitted through the Ministry of Justice as a central communication authority, while in case of urgency it is possible to address the letters rogatory directly pursuant to Article 15 paragraph 2 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, or through INTERPOL.

Certain bilateral agreements prescribe direct communication between judicial authorities as an exception, in case of urgency.

Pursuant to the Law on International Legal Assistance in Criminal Matters, procedural action undertaken by a foreign judicial authority in accordance with its law will be deemed equal to the relevant procedural action undertaken by a domestic judicial authority within the criminal proceedings, unless this is contrary to the principles of domestic legal system and generally accepted rules of international law.

**79. Is State compensation to victims of crime available? If so, how is it organised?**

State compensation to crime victims by Montenegro is regulated by the Law on Obligations (Official Gazette of Montenegro 47/08). This Law prescribes the liability of the State for damage arising from acts of terrorism, public demonstrations or events, types of damage that are compensated and the group of persons who are not entitled to compensation (the so-called negative definition).

The State compensates damage incurred as a result of death, bodily injury or damaging or destruction of property of a natural person, caused by acts of terrorism, public demonstrations and events.

In the above-mentioned cases, the strict liability for damage lies with the State, bearing in mind the obligation of state bodies of Montenegro to prevent in its territory damage arising from acts of terrorism, public demonstrations or events.

Besides, the strict liability for damage done by its bodies lies with the State.

Whether or not the wrongdoer was identified, criminally prosecuted or found guilty does not affect the liability of the State and the obligation to compensate damage.

In accordance with legal theory and case law of Montenegro, an act of terrorism is deemed to be an act of violence perpetrated as a rule for a political goal with the aim of instilling fear, terror and personal insecurity of citizens.

Organisers, abettors and aiders in the acts of terrorism, public demonstrations or events directed at undermining constitutional order are not entitled to compensation.

Compensation will include material and non-material damage incurred by a victim in case of death or bodily injury. Compensation for material damage is given in a form of annuity, for life or for a certain period of time, while the costs of treatment, salary lost due to inability to work etc. will also be compensated.

Besides material damage, a victim has also the right to compensation for non-material damage for suffered physical and mental pain, pain due to impaired life activity, disfigurement, death of a close person, fear suffered etc.

The compensation is obtained in civil proceedings and the court will award damages in the amount necessary to restore the financial situation of the victim to the state in which it would have been had there been no harmful act, taking into consideration also the circumstances occurring after the damage was caused.

In case of death, the State has a duty to compensate the usual funeral costs as well.

If the victim suffered a bodily injury he/she will be entitled to be reimbursed for the costs of treatment for injuries suffered and other necessary costs related to treatment as well as the salary lost due to inability to work.

Person financially maintained or supported regularly by the person killed, and the person who is entitled to request maintenance from the deceased in accordance with the law, has the right to compensation for damages he/she incurs by loss of maintenance or support. This damage is compensated by payment of annuity whose amount is determined by taking into account all circumstances of the case and may not be greater than that the victim would have received had the deceased stayed alive.

If due to bodily injury, full or partial incapacity to work of the victim occurred or the prospects for his/her career advancement are lost or diminished, the State is obliged to pay certain annuity as compensation for such damage.

Judicial decision on compensation awarded may, on a request of the victim, be amended by increasing the annuity, while on a request of the state, the annuity may be reduced or terminated if

the circumstances which the court bore in mind when determining the annuity have changed substantially.

The right to damages awarded in the form of annuity due to death of a close person or due to bodily injury may not be transferred to another person.

Montenegro is obliged to compensate the victim for damage incurred as a result of damage to or destruction of property of a natural person, caused by acts of terrorism and during public demonstrations and events, as an actual value of the thing damaged or destroyed.

The Action Plan for the Implementation of the Strategy for the Reform of Montenegrin Judiciary (2007-2012) provides for ratification of the European Convention on the Compensation of Victims of Violent Crimes by the end of 2009, which will create specific legal framework for the development of the system for compensation of victims of violent crimes, in particular if the criminal offender is unknown or lacks the necessary means to compensate the victim.

### **80. How does your legislation solve conflicts of jurisdiction in criminal matters?**

The Criminal Procedure Code (Official Gazette of Montenegro 71/03 and 47/06) regulates the issue of conflict of jurisdiction in criminal matters.

The court has a duty to be cautious of its subject-matter jurisdiction and territorial jurisdiction and as soon as it becomes aware that it lacks jurisdiction it will issue a decision that it lacks jurisdiction and refer the case to the competent court. Until the conflict of jurisdiction between the courts is resolved, each of the courts is obliged to take those actions in the proceedings with respect to which a delay poses a risk.

If after the opening of main hearing the court finds that a lower court has jurisdiction over the trial, it will not transfer the case to the lower court but conduct the proceedings on its own and take decision.

The procedure for resolution of conflict of jurisdiction is initiated by the court to which the case has been referred as to the competent court but which considers that some other court has jurisdiction over the case in question. When a second instance court renders a decision upon appeal filed against the decision of a first instance court by which it declared itself to lack jurisdiction, this decision will also bind, as to the jurisdiction, the court to which the case has been referred. This is subject to the condition that the second instance court is competent to resolve the conflict of jurisdiction between the courts involved.

The court immediately superior to the courts involved resolves the conflict of jurisdiction between the courts. Prior to rendering a ruling on a conflict of jurisdiction, the court will request the opinion of the competent public prosecutor representing prosecution before that court when the criminal proceedings are conducted upon the request of the public prosecutor. The ruling on a conflict of jurisdiction is not subject to appeal.

When deciding on the conflict of jurisdiction, the court may, at the same time, render *ex officio* a decision on the transfer of subject-matter jurisdiction: if the court designated by law may designate another court having subject-matter jurisdiction to conduct the proceedings in its territory; if it is obvious that the proceedings will be conducted more easily; if there are other important reasons. The court may render a ruling on this issue on the motion of the investigating judge, single judge or the presiding judge, or on the motion of the competent public prosecutor.

The Criminal Procedure Code also prescribes that the conflict of jurisdiction between public prosecutors is resolved by their immediately superior public prosecutor.

New Criminal Procedure Code (Official Gazette of Montenegro 57/09) will start to apply on 26 August 2010 (one lesser part of provisions will start to apply before the expiry of the mentioned period). This Code regulates the conflict of jurisdiction in the same manner as the Criminal Procedure Code currently in force the solutions of which we have previously described.



**81. Which procedures are available in the field of mediation in criminal matters?**

Settlement is an out-of-court arrangement between the victim and the suspect for the compensation for damages (by apology, payment, work or in some other manner), in order to rectify the detrimental consequences of the criminal offence wholly or partially. Settlement is reached by employing the technique of mediation between the victim and the suspect. The aim of settlement is to reconcile the victim and the suspect and to establish social peace.

New Criminal Procedure Code (Official Gazette of Montenegro 57/09) regulates mediation in criminal matters within the institute of postponed criminal prosecution. These provisions of the new Criminal Procedure Code apply from 26 August 2009 (unlike most provisions which will apply as from 26 August 2010). The public prosecutor may postpone the criminal prosecution for criminal offences punishable by a fine or imprisonment for a maximum term of five years, when he/she finds that it would not be opportune to conduct criminal proceedings, taking into account the nature of the criminal offence and circumstances under which the offence was committed, previous conduct of the offender and his/her personal characteristics. Thus, the public prosecutor may postpone the criminal prosecution if the suspect accepts to: rectify detrimental consequence caused by the criminal offence or to compensate the damage caused or to honour maintenance obligations that have become due, or other obligations imposed by a final and enforceable judicial decision. Before taking the decision on postponement of criminal prosecution, the public prosecutor may, with the assistance of specially trained persons – mediators, carry out mediation between the victim and the suspect which is regulated, *mutatis mutandis*, by the provisions of the Law on Mediation (Official Gazette of the Republic of Montenegro 30/05). If the suspect fulfils the obligation, public prosecutor will dismiss the criminal complaint. The suspect is obliged to fulfil the obligation assumed within a time-limit which may not be longer than six months.

With respect to juvenile offenders, the Criminal Code (Official Gazette of the Republic of Montenegro 70/03 and 47/06 and Official Gazette of Montenegro 40/08) prescribes that a court may impose one or more diversion orders on a juvenile criminal offender for the criminal offence punishable by a fine or imprisonment for a term of up to five years. According to the Criminal Code, one type of diversion orders is a settlement with the victim to rectify the detrimental consequences of the offence, wholly or partially, by apology, work or in some other manner. Here the court has a role of a mediator, conciliator, between the juvenile offender and the victim.

As regards juvenile offenders, the Criminal Procedure Code (Official Gazette of Montenegro 71/03 and 47/06) prescribes that the public prosecutor may decide not to request initiation of the criminal proceedings for criminal offences punishable by imprisonment for a term of up to five years or a fine, although there is evidence that a juvenile committed the criminal offence, if he/she assesses that it would not be opportune to conduct the criminal proceedings against a juvenile, taking into account the nature of the criminal offence and circumstances under which the offence was committed, previous conduct of the minor and his/her personal characteristics. In that case, the public prosecutor carries out the procedure of settlement between the victim and a juvenile suspect. The procedure of settlement is carried out with the assistance of specially trained persons (mediators). The new Criminal Procedure Code (Official Gazette of Montenegro 57/09) provides for enactment of a separate law which will regulate the proceedings against juveniles and other issues related to the position of juvenile criminal offenders.

**82. How does your legislation regulate extradition? Is extradition of Montenegrin nationals permitted? To which relevant international conventions (U.N. Council of Europe, others)**

The Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 4/08) regulates the conditions and procedure for extradition in cases when there is no international agreement or certain issues are not regulated under an international agreement. Thus, in regard to the countries with which there is no international agreement, the extradition procedure follows the Law on International Legal Assistance in Criminal Matters which prescribes conditions for extradition and procedure for extradition. The Constitution of Montenegro prescribes that a

Montenegrin national may not be expelled or extradited to another country unless in accordance with the international obligations of Montenegro.

In accordance with the Constitution and relevant international conventions the Law lays down conditions for extradition:

- that a national of Montenegro may not be extradited;
- that the offence motivating the request for extradition was not committed in the territory of Montenegro, against Montenegro or its national;
- that the offence motivating the request for extradition is a criminal offence both under the domestic law and under the law of the country in which it was committed;
- that the criminal prosecution or enforcement of criminal sanction has not been barred by lapse of time;
- that the person claimed has not been already convicted for the same criminal offence;
- that the identity of the person claimed has been established.

The extradition is not allowed for a political criminal offence, an offence connected with a political criminal offence or a military criminal offence within the meaning of the European Convention on Extradition. If the law of the requesting state prescribes death penalty for the offence for which the extradition is requested, extradition may be granted only if that state gives assurance that the death penalty will not be imposed or carried out.

The procedure for extradition is initiated upon the letter rogatory of the foreign state supported by relevant documents. The Ministry of Justice delivers the request for extradition to the investigating judge of the high court in whose territory the person claimed is. The investigating judge will issue the order to detain the person claimed (however, in practice it happens frequently that the person claimed has already been deprived of liberty according to an international wanted person's notice). Detention ordered within the extradition procedure may last until the completion of that procedure but no longer than six months. On a reasoned request of the requesting state, detention may be extended for additional two months in justified cases. A panel of judges of the competent court establishes whether the conditions for extradition are met. If the court finds that the conditions for extradition have not been met, it will pass a ruling rejecting the request for extradition.

If the court finds that the conditions for extradition are met, it will confirm this by passing a ruling. This ruling is subject to appeal. If the court of second instance upholds the ruling, or if the appeal has not been lodged against the ruling, the case will be delivered to the Minister of Justice, in order to make decision whether to grant extradition.

The Minister passes the decision granting or refusing extradition. The Minister of Justice will not grant the extradition of the person who enjoys the right of asylum in Montenegro or where it can be reasonably assumed that the person claimed will be subjected to prosecution or punishment because of his/her race, religion, nationality, belonging to a specific social group or for his/her political beliefs, or that his/her status would be made more difficult for one of these reasons. The requesting state will be notified of the decision concerning extradition request.

Within the meaning of Article 22 of the European Convention on Extradition of 1957, the provisions of the Law on International Legal Assistance in Criminal Matters apply to the procedure of extradition and temporary detention, unless otherwise provided by the Convention.

Montenegro is a party to the European Convention on the Suppression of Terrorism of 27 January 1977, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005, as well as of the UN Conventions - The Single Convention on Narcotic Drugs of 1954, with the Protocol of 1972, United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, United Nations Convention against Transnational Organised Crime of 2000 and its Protocols, International Convention for the Suppression of the Financing of Terrorism of 1999, United Nations Convention against Corruption, International Convention for the Suppression of Terrorist Bombings of 1997.

Montenegro is a party to the European Convention on Extradition of 1957, including the Additional Protocol of 1975 and the Second Additional Protocol of 1978 (Official Gazette of the Federal Republic of Yugoslavia - International Treaties 10/2001). When the instruments of ratification of the European Convention on Extradition were deposited, a reservation was made as to Article 6 of the Convention that the extradition (Article 6 paragraph 1 a) and the transit of own nationals (Article 21 paragraph 2) will be refused.

There are several bilateral agreements on extradition (Austria, Belgium, France, the Netherlands, Italy, Germany, USA, Spain, Switzerland, Turkey and the United Kingdom), and a number of bilateral agreements on legal assistance in civil and criminal matters containing provisions on extradition (Algeria, Bulgaria, the Czech Republic, Greece, Iraq, Hungary, the former Yugoslav Republic of Macedonia, Mongolia, Poland, Romania, Russia), however, neither of them provides for the obligation to extradite own nationals.

The Agreement of 29 May 2009 between Montenegro and the Republic of Serbia on extradition, which applies from the date of signature, does not provide for the obligation to extradite own nationals either.

**83. How does your legislation regulate mutual assistance in criminal matters? Are direct contacts between prosecutorial/judicial authorities experienced? Is there a legislative framework on video-conferencing? To which relevant international conventions (U.N. Council of Europe, others)**

International legal assistance in criminal matters is provided pursuant to the Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 4/08) if there is no international agreement between Montenegro and the foreign country or if certain issues are not regulated under the international agreement, international legal assistance is provided in accordance with domestic legislation.

Letters rogatory submitted on the basis of an international agreement will be executed in accordance with the provisions of the international agreement, while domestic legislation is also subsidiarily used in practice, and on an explicit request from the requesting party-country, letter rogatory may be executed according to such request, unless that is contrary to the principles of the domestic legal system and generally accepted rules of the international law.

The rule is that the requests for international legal assistance are transmitted to the Ministry of Justice, as a central communication authority, while the possibility of direct communication between domestic and foreign judicial authorities is provided for under Article 15 of the European Convention on Mutual Assistance in Criminal Matters of 1959 and the provisions of individual bilateral agreements on mutual assistance in criminal matters, in case of urgency, or as a rule for general forms of legal assistance under the Agreement of 29 May 2009 between Montenegro and the Republic Serbia on legal assistance in civil and criminal matters which applies from the date of signature.

Direct contacts between prosecutorial authorities take place on the basis of bilateral agreements concluded between the Supreme Public Prosecutor of Montenegro and the Prosecutor General of the Russian Federation, Prosecutor General of Ukraine, Public Prosecutor of Bosnia and Herzegovina, Public Prosecutor's Office of the Republic of Croatia, Public Prosecution Office of Macedonia, Public Prosecution Office of the Republic of Serbia, Office of the War Crimes Prosecutor of the Republic of Serbia, Office for Suppression of Corruption and Organised Crime of the Republic of Croatia, and EULEX mission and the competent prosecution office of Kosovo. Furthermore, direct communication between prosecutorial and judicial authorities is also possible on the basis of international conventions providing for such form of communication to which Montenegro is a party.

Hearing through video-conferencing is provided for by the Law on International Legal Assistance in Criminal Matters of 2008. The High Court in Podgorica is technically equipped for this form of legal assistance which has been used several times over the past period.

European Convention on Mutual Assistance in Criminal Matters of 1959, which entered into force in relation to our country on 29 December 2002, and its Additional Protocol of 1978 (Official Gazette of the Federal Republic of Yugoslavia - International Treaties 10/01) and its Second Additional Protocol of 8 November 2001 (Official Gazette of Montenegro - International Treaties 5/08) has been a legal basis for requesting and provision of legal assistance in most cases. Additionally, Montenegro is a party to numerous UN Conventions and Council of Europe Conventions, such as International Convention for the Suppression of the Financing of Terrorism of 1999, European Convention on the Suppression of Terrorism (1977), Convention on Convention on the Physical Protection of Nuclear Material (1979), International Convention against the Taking of Hostages (1979), Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), Convention on offences and certain other acts committed on board aircraft of 1963, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971, United Nations Convention against Transnational Organised Crime of 2000 and its Protocols, Criminal Law Convention on Corruption (1999), Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 2005, United Nations Convention against Corruption.

The procedure for the ratification of the Convention on Cybercrime (2001) and of the Additional Protocol to this Convention is underway.

Furthermore, bilateral agreements on mutual legal assistance are in force with the following countries: Algeria, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, the Czech Republic, France, Greece, Croatia, Cyprus, Hungary, the former Yugoslav Republic of Macedonia, Mongolia, Poland, Romania, Russia, Germany, Turkey and Spain.

#### **84. How does your legislation regulate the transfer of sentenced persons? To which relevant international conventions (U.N. Council of Europe, others)**

The Law on International Legal Assistance in Criminal Matters provides for the possibility of extradition or delivering a sentenced national of Montenegro from a foreign country to Montenegro to continue enforcement of the imprisonment sentence and of a foreigner to the country of domicile, in accordance with international agreements.

Montenegro is a signatory of the Convention on the Transfer of Sentenced Persons and its Additional Protocol, and in accordance with the declaration made it applies the procedure prescribed by Article 9 of the Convention, which means that a domestic court previously has to render a judgment recognising the judgment of the foreign court.

The Agreement between the Socialist Federal Republic of Yugoslavia and the Republic of Austria on Mutual Enforcement of Judicial Decisions in Criminal Matters of 1 February 1982 (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 6/1983), the Agreement between the Socialist Federal Republic of Yugoslavia and Czechoslovakia on Mutual Transfer of Sentenced Persons to Continue Serving Prison Sentences of 23 May 1989 (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 6/1990), the Agreement between the Socialist Federal Republic of Yugoslavia and the Kingdom of Denmark on the Mutual Transfer of Sentenced Persons for the Purpose of Serving their Sentence of 28 October 1988 (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 5/1989), the Agreement between Serbia and Montenegro and Bosnia and Herzegovina on Mutual Enforcement of Judicial Decisions in Criminal Matters (Official Gazette of Serbia and Montenegro - International Treaties 6/05), which apply in Montenegro on the basis of the Decision on Declaration of Independence of the Republic of Montenegro of 3 June 2006, as well as the Agreement of 29 May 2009 between Montenegro and the Republic of Serbia on Mutual Enforcement of Judicial Decisions in Criminal Matters, are legal basis for the extradition or delivery of Montenegrin nationals who serve prison sentence abroad and of sentenced foreign nationals to the country of domicile.

**85. Is time spent in foreign pre-trial detention deducted from the final sentence?**

The time spent in foreign pre-trial detention is deducted from the final sentence in accordance with Article 51 of the Criminal Code and Article 33 of the Law on International Legal Assistance in Criminal Matters.

Article 51 of the Criminal Code prescribes that the time spent in pre-trial detention, as well as any other deprivation of liberty in relation to a criminal offence will be deducted from the pronounced sentence of imprisonment, juvenile imprisonment, community service and a fine.

Article 33 of the Law on International Legal Assistance in Criminal Matters prescribes that if the person extradited had been held in pre-trial detention in a foreign country for the criminal offence for which he was extradited, the time spent in pre-trial detention will be deducted from the imprisonment sentence.

**86. Under what conditions can a person be judged in his/her absence?**

Article 312 of the Criminal Procedure Code prescribes that the defendant may be tried *in absentia* only if he/she is on the run or is otherwise beyond the reach of state authorities, and there are particularly important reasons to try him/her although he/she is inaccessible.

Particularly important reasons for trial *in absentia* according to the case law are as follows: danger of criminal prosecution becoming time-barred; co-perpetrators are held in prison; protection of the victim's rights.

The ruling to hold trial *in absentia* is rendered by a panel of judges on a motion of the prosecutor – Article 312 of the Criminal Procedure Code.

Pursuant to Article 412 of the Criminal Procedure Code, the criminal proceedings in which a person was convicted *in absentia* will be reopened if the sentenced person and his/her defence counsel file a motion to reopen the proceedings within six months from the day it becomes possible to try the sentenced person in his/her presence.

When delivering the judgment in the retrial, the court is bound by the prohibition to modify judgment to the detriment of the accused – Article 421 of the Criminal Procedure Code.

**87. Does your legislation allow for alternatives to imprisonment sentences, e.g. supervision measures, probation period and conditional release?**

The Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08) and the Law on Enforcement of Criminal Sanctions (Official Gazette of the Republic of Montenegro 25/94, 29/94, 69/03 and 65/04) prescribe alternatives to imprisonment sentences. Criminal Code prescribes criminal sanctions of community service and warning measures, suspended sentence and judicial admonition.

Community service may be imposed for criminal offences punishable by a fine or imprisonment for a term of up to three years. Community service may not be shorter than 40 hours or longer than 240 hours and is imposed for the period of time that may not be shorter than thirty days or longer than six months. This punishment is pronounced with the consent of a criminal offender and may not be longer than forty hours during one month. If a criminal offender does not perform the community service, this punishment will be replaced by imprisonment sentence, in a way that each forty hours of community service started will be replaced with one-month imprisonment.

Suspended sentence may be imposed only if the prison sentence has been determined. When imposing a suspended sentence, the court determines a prison sentence to a criminal offender and at the same time it orders that it will not be enforced provided that the convicted person does not commit another criminal offence for a period of time determined by the court, which may not be shorter than one year or longer than five years (probation period). Suspended sentence may be imposed when the imprisonment for a term of up to two years has been determined to the offender. Suspended sentence may not be pronounced for criminal offences punishable by imprisonment for a term of ten years or a more severe punishment. Suspended sentence may not be pronounced unless more than five years have elapsed from the day when the offender's sentence punishing him/her for an intentional criminal offence became final and enforceable.

The court may order that the offender who has been subject to a suspended sentence be placed under protective supervision for a certain period of time during the probation period. Protective supervision is ordered by the court in the judgment by which it imposes the suspended sentence and orders the measures of protective supervision, their duration and manner of their implementation.

Protective supervision may include one or more of the following obligations:

- 1) reporting to a competent authority in charge of enforcement of protective supervision within the time limits specified by that authority;
- 2) training of the offender for a particular profession;
- 3) accepting job appropriate to the abilities and affinities of the offender;
- 4) fulfilment of the obligation to support family, care for and bring up children and perform other family obligations;
- 5) refraining from visiting certain places, bars or events if that may present an opportunity or incentive to repeat criminal offence;
- 6) timely reporting the change of residence, address or job;
- 7) refraining from drug and alcohol abuse;
- 8) medical treatment in an appropriate medical institution;
- 9) visiting specific professional and other counselling services or institutions and following their instructions;
- 10) rectifying or mitigating the damage caused by the criminal offence in question, and in particular reconciliation with the victim.

Judicial admonition may be pronounced for criminal offences punishable by imprisonment for a term of up to one year or a fine which have been committed under such extenuating circumstances that they render them particularly minor. For certain criminal offences and under conditions prescribed by law, judicial admonition may be pronounced even in case of offences punishable by imprisonment for a term of up to three years.

The Law on Enforcement of Criminal Sanctions prescribes that the director of the Institution for Enforcement of Criminal Sanctions has the right to conditionally release a convicted person who behaves exemplary, tries in work activities and participates actively in other useful activities, up to six months before the expiry of sentence, if he/she has already served three quarters of the sentence.

The Criminal Code prescribes that the convict who has served two thirds or, in exceptional circumstances, half of the imprisonment sentence or of the forty-year prison sentence can be conditionally released if in the course of serving the sentence he/she has improved so that it is reasonable to expect that he will behave well while at liberty and, in particular, that he will refrain from committing criminal offences until the end of term for which the imprisonment sentence had been imposed. When making assessment on whether or not to conditionally release a person, his/her conduct during the period of serving the sentence, performance of work duties taking into account his/her working abilities, as well as other circumstances indicating that the purpose of punishment has been achieved, will be taken into consideration. If the conditional release is not revoked, the convicted person will be considered to have served the sentence. The Commission for Conditional Release which is formed by the Minister of Justice decides on conditional release. The Commission which has a chairperson and six members is composed of the representatives of: Supreme Court of Montenegro, Public Prosecution Office, Ministry of Interior and Public Administration, Ministry of Health, Minister of Justice and director of the Institution for Enforcement of Criminal Sanctions. The decision on conditional release is taken on the proposal from the

director of the Institution for Enforcement of Criminal Sanctions, petition of the sentenced person or a member of his/her immediate family. In case of rejection of the proposal or the petition for conditional release, new proposal or petition may not be filed before the expiry of three months in case of imprisonment for a term of up to two years or before the expiry of six months in case of longer imprisonment sentence from the date of adoption of the decision rejecting the proposal or petition.

**88. Is there a minimum threshold for pre-trial detention? If yes, what is the threshold? (Pre-trial detention can as a main rule only be decided for crimes which can be punished with imprisonment above a certain duration, for ex. 1 year or more, which is the case in some MS)**

Pre-trial detention is a measure securing the presence of the accused in the criminal proceedings. Pre-trial detention is regulated by the Criminal Procedure Code (Official Gazette of Montenegro 71/03 and 47/06). We will also mention here some provisions of the new Criminal Procedure Code (Official Gazette of Montenegro 57/09) as these provisions, to a certain extent, regulate pre-trial detention differently from the Criminal Procedure Code currently in force. The provisions on pre-trial detention contained in the new Criminal Procedure Code will apply from 26 August 2010.

According to the Criminal Procedure Code currently in force, pre-trial detention may be ordered only if there is a reasonable suspicion that a person has committed a criminal offence and:

- a) if the person is in hiding or his/her identity cannot be established, or if there are other circumstances indicating a risk of flight;
- b) if there are circumstances indicating that he/she will destroy, conceal, alter or falsify evidence or traces of criminal offence or indicating that he will hinder the criminal proceedings by influencing witnesses, accomplices or accessories;
- c) if there are circumstances indicating that he/she will repeat the criminal offence or complete the attempted offence, or perpetrate the criminal offence he/she threatens to commit;
- d) in case of criminal offences punishable by imprisonment for a term of ten years or a more severe punishment, if that is justified due to particularly grave circumstances of the offence;
- e) if a duly summoned defendant obviously evades appearance at the main hearing.

The new Criminal Procedure Code introduces certain changes in items a, b, d and e while item c remains the same in relation to the new Criminal Procedure Code.

- a) Pre-trial detention ordered only because it is not possible to establish the identity of the person lasts until the identity is established.
- b) In case there are circumstances indicating that the person will destroy, conceal, alter or falsify evidence or traces of criminal offence or indicating that he will hinder the criminal proceedings by influencing witnesses, accomplices or accessories, pre-trial detention will be revoked as soon as the evidence on the ground of which pre-trial detention was ordered is secured.
- d) Under new Criminal Procedure Code this ground for ordering pre-trial detention has been reworded in a way that pre-trial detention may be ordered if the following conditions have been cumulatively fulfilled: the criminal offence in question is punishable by imprisonment for a term of ten years or a more severe punishment; criminal offence is of particularly grave nature due to the manner in which the crime was committed or the consequences of the crime; there are exceptional circumstances indicating that release would pose a serious threat to law and order. All these conditions must exist to order pre-trial detention in this case.
- e) Pre-trial detention ordered on the ground that a duly summoned defendant obviously evades appearance at the main hearing may last no longer than one month. According to the new Criminal Procedure Code, pre-trial detention ordered on this ground may last until the judgment is delivered.

**89. How does your legislation regulate cooperation for purposes of confiscation? To which relevant international conventions (U.N. Council of Europe, others)**

Cooperation for purposes of confiscation is regulated by the Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 4/08). There are no bilateral agreements in place on this issue, however, by way of declaration of succession deposited on 23 October 2006 with the Secretary-General of the United Nations, Montenegro acceded to the United Nations Convention against Transnational Organised Crime and other relevant instruments developed under the auspices of the United Nations to which the State Union of Serbia and Montenegro was a signatory or a party. Furthermore, in July 2006, Montenegro sent a declaration of succession with respect to all conventions of the Council of Europe to which the State Union of Serbia and Montenegro was a signatory or a party. This declaration was accepted by the Council of Europe regarding all conventions open to non-member states. Following the membership in the Council of Europe, the declaration of succession was also accepted for the conventions open only to member states.

Montenegro is a party to numerous conventions in the field of international legal assistance. Some of the most important agreements in this field are as follows: European Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols, European Convention on Extradition and its two Additional Protocols, Convention on the Transfer of Sentenced Persons and its Additional Protocol, European Convention on the Transfer of Proceedings in Criminal Matters, United Nations Convention against Transnational Organised Crime, United Nations Convention against Corruption, Criminal Law Convention on Corruption, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

The Law on International Legal Assistance in Criminal Matters regulates the conditions and procedure for international legal assistance in criminal matters. The Law prescribes that international legal assistance is provided in accordance with international agreement(s). In case where there is no international agreement or certain issues are not regulated under an international agreement, international legal assistance is provided in accordance with domestic legislation. Furthermore, there needs to be reciprocity or that it could be expected that a foreign state would execute the request for international legal assistance of a domestic judicial authority.

International legal assistance includes: the extradition of the accused and sentenced persons, transfer and assuming of criminal prosecution, enforcement of foreign criminal judgments, service of documents, written materials and other items relating to the criminal proceedings pending in a foreign state, as well as taking of certain procedural actions such as: hearing of the accused, witnesses and experts, crime scene investigation, search of premises and persons and temporary seizure of items and proceeds from crime etc.

International criminal assistance may be provided if the offence for which the provision of international legal assistance is requested is a criminal offence both under the domestic law and under the law of the foreign state whose judicial authority presented the request for international legal assistance. The courts and the public prosecution service are competent to provide international legal assistance. Domestic judicial authority may also proceed upon the letter rogatory if the letter rogatory was transmitted electronically or by some other means of telecommunication providing delivery receipt, if its authenticity is verifiable and if the foreign judicial authority is prepared to deliver the original of the letter rogatory within a specified time limit. Domestic judicial authority transmits and receives the requests for international legal assistance through the Ministry of Justice. In case where there is no international agreement or reciprocity, the Ministry of Justice transmits and receives the requests for international legal assistance through diplomatic channels.

Notwithstanding the above, if provided for under an international agreement, domestic judicial authority may transmit to a competent foreign judicial authority and receive from it request for international legal assistance directly, however it is obliged to deliver a copy of the request to the



Ministry of Justice. In case of urgency, on the condition of reciprocity, a request for international legal assistance may be transmitted and received through the INTERPOL National Central Bureau. In case the letter rogatory requests confiscation of items or material gain, the permissibility and manner of taking the action which is the subject matter of the letter rogatory of a foreign judicial authority are determined by the court in accordance with domestic law and international agreement. Domestic judicial authority may, upon the request of a foreign judicial authority, allow the presence of a foreign official person and person who has legal interest in the taking of action requested by the letter rogatory. When the presence is allowed, domestic judicial authority sends notice to the foreign judicial authority of the place and time of taking the action requested by the letter rogatory.

Procedural action undertaken by a foreign judicial authority in accordance with its law will be deemed equal to the relevant procedural action undertaken by a domestic judicial authority within the criminal proceedings, unless this is contrary to the principles of domestic legal system and generally accepted rules of international law.

International legal assistance may be refused if the letter rogatory of the requesting state concerns political criminal offences or if the execution of the letter rogatory of the requesting state is likely to prejudice the sovereignty, constitutional order, security or other essential interests of Montenegro, and if the offence which is the subject matter of the letter rogatory is not punishable under the domestic law.

Domestic judicial authority may delay provision of international legal assistance if this is necessary for criminal prosecution or conduct of criminal proceedings which is pending before domestic judicial authorities, and which is related to the letter rogatory submitted. The domestic judicial authority will notify the requesting state of the delay and state reasons for delay. The costs of provision of international legal assistance, on the condition of reciprocity, are borne by the state to which the request for international legal assistance is addressed, unless otherwise provided by an international agreement or law.

## **Police cooperation and fight against organised crime**

### **90. Please provide information on legislation or other rules governing the police and police cooperation, and their adhesion to relevant international conventions.**

According to the Decision on Declaration of Independence of Montenegro (Official Gazette of the Republic of Montenegro 36/06) Montenegro has committed to apply and adhere to international treaties and agreements that the State Union of Serbia and Montenegro was party of and that relate to the Republic of Montenegro and are in conformity with its legal order. Accordingly, in the area of work of the police and international police cooperation, the following Conventions are applied in Montenegro:

United Nations Conventions:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 47/70);
- International Covenant on Civil and Political Rights (Official Gazette of the Socialist Federal Republic of Yugoslavia 07/71);
- International Convention against the Taking of Hostages (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 09/84);
- UN Convention on Illegal trade in Narcotic Drugs and Psychotropic Substances (Vienna Convention), (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 14/90);

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 9/91);
- UN Convention against Trans-national Organised Crime with Accompanying Protocols (Official Gazette of the Federal Republic of Yugoslavia 6/01);
- Criminal Law Convention on Corruption (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 02/02 and Official Gazette of the Republic of Montenegro 18/05);
- International Convention for the Suppression of the Financing of Terrorism (Official Gazette of the Federal Republic of Yugoslavia 07/02);
- International Convention for the Suppression of Terrorist Bombings (Official Gazette of the Federal Republic of Yugoslavia 12/02);
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Official Gazette of Serbia and Montenegro - International Treaties 02/04);
- Convention on the Marking of Plastic Explosives for the Purpose of Identification (Official Gazette of Serbia and Montenegro-International Treaties 11/05);
- United Nations Convention against Corruption (Official Gazette of Serbia and Montenegro-International Treaties 11/05);
- International Convention for the Suppression of Acts International Terrorism (Official Gazette of Serbia and Montenegro-International Treaties 02/06);
- International Convention for the Suppression of Acts of Nuclear Terrorism (Official Gazette of Serbia and Montenegro-International Treaties 2/06);
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 14/89);
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementary to the UN Convention against Trans-national Organised Crime (Official Gazette of Serbia and Montenegro - International Treaties 11/05).

**Council of Europe Conventions:**

- The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Official Gazette of the Federal Republic of Yugoslavia 01/92);
- European Convention on Extradition with the Additional Protocols (Official Gazette of the Federal Republic of Yugoslavia 10/01);
- Convention on the Transfer of Sentenced Persons with the Additional Protocol (Official Gazette of the Federal Republic of Yugoslavia 04/01);
- European Convention on the Suppression of Terrorism (Official Gazette of the Federal Republic of Yugoslavia 10/01);
- European Convention on the Transfer of Proceedings in Criminal Matters (Official Gazette of the Federal Republic of Yugoslavia 10/01);
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Amended with Protocols I and II (Official Gazette of Serbia and Montenegro - International Treaties 09/03);
- European Convention on Mutual Assistance in Criminal Matters with the Additional Protocol (Official Gazette of the Federal Republic of Yugoslavia 10/01 and Official Gazette of Serbia and Montenegro - International Treaties 2/06);
- European Convention on the International Validity of Criminal Judgments with Appendixes (Official Gazette of the Federal Republic of Yugoslavia - International Treaties 13/02 and 02/06);

- Agreement on Cooperation in Prevention and Fight against Trans-border Crime (Official Gazette of Serbia and Montenegro- International Treaties 05/03);

Montenegro has ratified the following Conventions and Protocols of the Council of Europe:

- Civil Law Convention on Corruption (Official Gazette of Montenegro - International Treaties 1/08);
- Council of Europe Convention on Action against Trafficking in Human Beings (Official Gazette of Montenegro - International Treaties 4/08);
- Council of Europe Convention on the Prevention of Terrorism (Official Gazette of Montenegro - International Treaties 5/08);
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Official Gazette of Montenegro - International Treaties 5/08);
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Official Gazette of Montenegro - International Treaties 5/08);
- Council of Europe Convention on Cyber-crime (The Law on Verification of this Convention was adopted by the Parliament of Montenegro, on 13 October 2009);
- Additional Protocol to the Council of Europe Convention on Cyber-crime (The Law on Verification of this Protocol was adopted by the Parliament of Montenegro, on 13 October 2009);
- Strategic cooperation Agreement between Montenegro and the European Police Office (Official Gazette of Montenegro-International Treaties 2/09).

The area of police cooperation is also governed by the following Montenegro Laws:

- Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 13/04 and 47/06 and Official Gazette of Montenegro 40/08);
- Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03, 7/04 and 47/06);
- Criminal Procedure Code of Montenegro (Official Gazette of Montenegro. 57/09) – entered into force on 26 June 2009 and shall apply from 26 June 2010;
- Law on Misdemeanours (Official Gazette of the Republic of Montenegro 25/94, 29/94 and 48/99);
- Law on Police (Official Gazette of the Republic of Montenegro 28/05);
- Law on Border Control (Official Gazette of the Republic of Montenegro 72/09);
- Law on Public Gatherings (Official Gazette of the Republic of Montenegro 31/05);
- Law on Road Traffic Safety (Official Gazette of the Republic of Montenegro 72/05 and 27/06);
- Law on Foreigners (Official Gazette of Montenegro 82/08);
- Law on Protection of Data on Individuals (Official Gazette of Montenegro 79/08), and
- Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 04/08).

These Laws are in accordance with the relevant Council of Europe and the United Nations Conventions.

Regional police cooperation in fight against international trans-border crime is carried out in accordance with the Police Cooperation Convention for Southeast Europe (Official Gazette of Montenegro 1/08). Legal basis for international border cooperation encompassing activities of foreign police services on the territory of Montenegro or the Police Directorate on the foreign country territory, as well as the cooperation with foreign security services and exchange of liaison officers is determined by the Law on Border Control (Official Gazette of Montenegro 72/09). This cooperation is realised by agreements which the Government of Montenegro concludes with other

countries and which define the manner and conditions of cooperation of border services with the aim of preventing, suppressing and detecting criminal offences and their perpetrators.

The Decree on Police Representatives (Official Gazette of Montenegro 25/09) defines the status, selection and the way of appointment of police liaison officers and police attaches.

With regard to the harmonisation of other legislation with the international legal acts, Article 9 of the Constitution of Montenegro provides for that the ratified and published international treaties and generally accepted rules of international law shall make an integral part of the internal legal order, and shall have the supremacy over the national legislation and are applied directly when regulating relations differently from the national legislation solution.

**91. How are the law-enforcement agencies organised (ministries responsible, structure, manpower, horizontal co-operation structures, budget)? What are the laws, regulations and administrative rules incumbent on the police and the exercise of police functions?**

Bodies competent for the implementation of law in the area of security and related affairs are: the Ministry of Interior and Public Administration, Ministry of Finance, Police Directorate, Customs Administration, Administration for Prevention of Money Laundering and Financing Terrorism and Tax Administration.

**Ministry of Interior and Public Administration** in the area of security, in addition to other matters, performs administrative affairs concerning the following: analytical monitoring of conditions and strategic planning in the area of fight against crime, development and control supervisory role in the area of police work and actions. Administrative control of the work of the Police Directorate is performed by the Department for Security, Protection and Control, established by the Act on Internal Organisation and Job Description of the Ministry of Interior and Public Administration. Police Directorate activities are relocated from the Ministry of Interior and Public Administration and entrusted to an independent body –Police Directorate.

Police Directorate activities, the scope of work of the Police Directorate, organisational structure of the Police Directorate in its headquarters and in regional organisational units, statistical data on human resources structure of the Police Directorate including data on qualification and other structure of employees is given in answers to questions No. 95 and 96 within this Chapter

Organisational units in the headquarters of Police Directorate and regional organisational units are established for performing affairs under the competence of Police Directorate according to the line functional model. Within the Police Directorate in the headquarters, the following are established: five Departments, three Divisions, two Centres, Special Police Unit and Special Anti-Terrorist Unit. Organisational units in headquarters are established in such manner that, under the line principle, they are connected to appropriate regional organisational units or perform activities from their scope of work on the entire territory where the Police Directorate is competent.

Police Directorate Regional Units are established for a territory of one or more municipalities as follows: eight (8) Regional Units and thirteen (13) Local Units.

Financial resources for Police Directorate activities are allocated from the Budget of Montenegro. The Budget of the Police Directorate in 2008 amounted to EUR 84 297 512.59. From the total financial resources allocated for the work of Police Directorate, most resources are spent on: the payment of gross salaries of employees and employer's contributions – EUR 30 950 322.74; expenditures for material and services – EUR 13 480 808.00; capital expenditures – EUR 6 088 218.73 and other personal income – EUR 5 573 817.00.

Horizontal cooperation and structure of this cooperation between organisational units of the Police Directorate are determined by guidelines and instructions for coordination and guidance of police work and Rulebook on Internal Organisation and Job Description of the Police Directorate.

**Ministry of Finance**, in addition to other affairs, performs affairs concerning the following: development and implementation of customs and tax policy; development of public internal financial control in accordance with international standards; proposal and monitoring of implementation of

regulations from the area of state property; proposal of regulations and other acts from the area of public procurement, performing administrative supervision of the work of the Customs Administration, Tax Administration, Administration for Prevention of Money Laundering and Financing Terrorism and Public Property Administration.

Affairs concerning the determination, collection and control of taxes on the central level are performed by the **Tax Administration** as an administration body. Tax Administration is organised into 9 organisational units as follows: Headquarters and 8 Regional Branch Offices.

Tax affairs, the scope of work of the Tax Administration, organisational structure in the Headquarters and Branch Offices, statistical data on human resources structure and data on qualification and other structures of employees are provided in answers to questions No. 23, 25 and 30 within Chapter 16 – Taxation.

**Customs Administration** is an administration body competent for implementation of customs policy. The scope of work of this Administration, organisational structure, administration capacities, number of employees and their structure, including gender structure, are described in detail in the answer to question No. 29 in the Chapter 29 – Customs Administration.

Financial resources for the work of the Customs Administration are allocated from the Budget. Budget of Customs Administration for 2008 amounted to EUR 8 109 205.50. From the total financial resources allocated for the work of Customs Administration, the most resources are spent on: payment of gross salaries of employees and employer's contributions – EUR 4 834 152.01; expenditures for material and services – EUR 1 334 500.00; capital expenditures – EUR 1 268 000.00 and other personal income – EUR 334 753.00.

Horizontal cooperation and structure of this cooperation between organisational units of are determined by guidelines and instructions for coordination of customs service on certain lines of work and Rulebook on Internal Organisation and Job Description of the Customs Administration.

**Administration for Prevention of Money Laundering and Financing Terrorism** is an administration body, established as a financial and intelligence service of administrative type which gathers, processes and analyses data and information obtained from obliged persons, state bodies and foreign financial and intelligence services. Processed case, up to the level of existence of grounds for suspicion that a criminal offence of money laundering or financing of terrorism or some other criminal offence is committed, is submitted to the Police Directorate and to the Public Prosecution Office.

The scope of work of this **Administration**, organisational structure, administrative capacities, number of employees and their structure are described in detail in the answer to question No. 22 in Chapter 4 – Free Movement of Capital.

Financial resources for the work of this Administration are allocated from the Budget of Montenegro. Budget of the Administration for 2008 amounted to EUR 536 013.49 (EUR 491 440.2 + EUR 444 573.27 for current budget reserves). From the total financial resources allocated for the work of Police Directorate, the most resources are spent on: the payment of gross salaries of employees and employer's contributions – EUR 220 510.45; expenditures for material and services – EUR 204 655.38; ongoing maintenance – EUR 20 405.02; capital expenditures – EUR 64 875.36 and other personal income – EUR 8 657.05.

### **Public Prosecution Office**

Public Prosecution Office is a unique and independent state body which performs the function of prosecuting perpetrators of criminal offences and other offences determined by the law. For criminal offences prosecuted *ex officio*, Public Prosecutor is competent to: conduct a pre-trial proceeding; request that an investigation be carried out and direct the course of preliminary proceeding; issue and represent an indictment or indicting proposal before the competent Court. In accordance with the new Criminal Procedure Code (Official Gazette of Montenegro 57/09 from 18 July 2009), the implementation of which will begin on 16 July 2010, the Public Prosecutor is obliged to conduct an investigation, perform urgent evidence gathering procedures in inquiry and conclude an agreement with the perpetrator on the confession of guilt.

Within the Public Prosecution Office the following are organised:

- Supreme Public Prosecutor's Office for the territory of Montenegro, with its seat in Podgorica which proceeds before the Supreme Court of Montenegro, Appellate Court of Montenegro, Administrative Court of Montenegro, other courts and other state bodies;
- Two High Public Prosecutor's Offices – in Bijelo Polje, which proceeds before the High Court in Bijelo Polje and Commercial Court in Bijelo Polje; and in Podgorica which proceeds before the High Court in Podgorica and Commercial Court in Podgorica; and
- 13 Basic Public Prosecutor's Offices, which proceed before Basic Courts.

Within the Supreme Public Prosecutor's Office, the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes which proceeds before High Courts is established for activities of suppressing organised crime, corruption, terrorism and war crimes.

In the Public Prosecution Office, 86 Public Prosecutors and Deputy Public Prosecutor perform the prosecutorial function, and 140 civil servants, state employees and trainees (three secretaries, 19 professional associates, 77 state employees and 41 trainees) are employed.

In 2010, the increase in the number of prosecution function holders is planned (in relation to the existing state) by appointing 35 Deputy Public Prosecutors and increase of the number of civil servants and employees to a number of 80 civil servants and employees. The increase in numbers is planned considering that the implementation of the new Criminal Procedure Code will begin in 2010, which will introduce prosecution inquiry and thus significantly expand competences of Public Prosecution Office and increase the workload.

Under the Law on Budget, Supreme Public Prosecutor's Office prepares and plans the programme budget. Prosecutorial Council determines the proposition of dividing the budget for financing the work of Public Prosecution Office and Prosecutorial Council. Ministry of Finance, on the basis of the program budget set out, prepares draft Law on Budget for the following fiscal year and submits it to the Government of Montenegro to be considered. The Law on Budget is adopted by the Parliament of Montenegro, and the Supreme Public Prosecutor manages budget resources in the Public Prosecution Office.

Financial resources for the work of Public Prosecution Offices and Prosecutorial Council are allocated from the Budget of Montenegro. Budget amounts to EUR 4 982 150.53 and after the rebalance it amounts to EUR 4 538 776.14. For financing the work of Public Prosecution Offices and Prosecutorial Council in 2009, Supreme Public Prosecutor's Office planned the budget resources in the total amount of EUR 8 596 553.50. Resources are planned within three programmes, as follows: administrative programme in the amount of EUR 2 420 687.50, prosecution programme EUR 5 877 066.00 and Prosecutorial Council programme in the amount of EUR 298 800.00.

### **Horizontal Cooperation**

The Law on State Administration, Criminal Procedure Code, Law on General Administrative Procedure, Law on Prevention of Money Laundering and Financing Terrorism, as well as other system laws provide general framework for cooperation between state administration bodies.

Procedures and conditions of horizontal cooperation between competent state administration bodies in detecting and preventing criminal offences are precisely determined by the Criminal Procedure Code. In accordance with that, Public Prosecution Office, in exercising its function, cooperates with the Police Directorate, courts, other bodies and legal persons.

All bodies participating in the pre-trial proceeding are obliged to inform, before every action undertaken, the competent Public Prosecutor, except in cases of emergency. Police Directorate and other state bodies competent for detection of criminal offences are obliged to act on every request of the competent Public Prosecutor.

All state bodies, local government bodies, public companies and institutions are obliged to report criminal offences prosecuted *ex officio* of which they have knowledge or have learned about in some other way. And for that purpose to indicate evidence known to them to the Public Prosecutor and undertake measures to preserve traces of the criminal offence, the objects upon which or by

means of which the criminal offence was committed as well as other evidence (Article 227 of the Criminal Procedure Code).

If there are grounds for suspicion that a criminal offence prosecuted *ex officio* has been committed, Police Directorate is obliged to undertake necessary measures aimed at detecting the perpetrator, preventing the perpetrator or accomplice from fleeing or hiding, detecting and securing traces of the criminal offence and objects which may serve as evidence as well as gathering of all information which could be useful for successful conducting criminal proceedings and to create a criminal report, on the basis of information gathered, stating the evidence in their possession and submit it to the Public Prosecutor (Article 230 of the Criminal Procedure Code).

If the Public Prosecutor is unable to estimate, on the basis of the crime report itself, whether it is credible, or if the information do not provide enough grounds for a decision on whether the starting of an investigation should be requested, or if only rumours reach the Public Prosecutor that a criminal offence has been committed, and particularly if the perpetrator is unknown, the Public Prosecutor shall, either by himself or through other bodies, collect necessary information. For that purpose, the Public Prosecutor may summon the person who filed the report, the reported person and any other person who, according to his/her judgement, can provide information relevant for a decision on the crime report to supplement the report. If the Public Prosecutor is unable to gather necessary information by himself/herself and undertake other measures in order to discover the criminal offence, he/she is authorised by the Police Directorate to request these actions to be undertaken. Public Prosecutor may always request the Police Directorate to inform him/her on the measures it has undertaken and the obligation of the Police Directorate is to respond to the Prosecutor with no delay (Article 243, items 2-5 of the Criminal Procedure Code).

The Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes, under the plan for detecting criminal offences for the prosecution of which it is competent in accordance with the provisions of the Criminal Procedure Code and Law on Public Prosecution, cooperates with: Police Directorate, Customs Administration, Administration for Prevention of Money Laundering and Financing Terrorism, Tax Administration and financial institutions.

Administration for Prevention of Money Laundering and Financing Terrorism is obliged to, when it estimates, in relation to a transaction or a person, that there are grounds for suspicion that money laundering, financing terrorism or other criminal offence prosecuted *ex officio* is involved, to inform, or submit the information in writing to competent authorities, Prosecution Office and Police Directorate, or other competent bodies. The Administration is an intermediary between financial and non-financial sector on one side and Prosecution Office and Police Directorate on the other.

Banks and other persons obliged are bound to submit to the Administration for Prevention of Money Laundering and Financing Terrorism the information on each cash transaction in the amount of EUR 15 000 or more "suspicious transactions" immediately, and not later than three working days since the transaction took place, as well as on every suspicious transaction regardless of the amount and type.

State administration bodies are obliged to, upon the request of the court, submit records and information in the manner and within time limits determined by laws regulating the procedure before court.

In performing police duties, the Police Directorate implements the following laws:

Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 13/04 and 47/06 and Official Gazette of Montenegro 40/08);

Criminal Procedure Code of Montenegro (Official Gazette of the Republic of Montenegro 71/03, 7/04 and 47/06);

Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03)

Law on State Administration (Official Gazette of the Republic of Montenegro 38/03 and Official Gazette of Montenegro 22/08)

Law on Misdemeanours (Official Gazette of the Republic of Montenegro 25/94, 29/94 and 48/99)

Law on Police (Official Gazette of the Republic of Montenegro 28/05);  
Law on Border Control (Official Gazette of the Republic of Montenegro 72/09);  
Law on Foreigners (Official Gazette of Montenegro 82/098 and 72/09);  
Law on Public Gatherings (Official Gazette of the Republic of Montenegro 31/05);  
Law on Public Peace and Order (Official Gazette of the Republic of Montenegro 41/94)  
Law on Road Traffic Safety (Official Gazette of the Republic of Montenegro 72/2005 and 27/2006)  
Law on Protection of Persons and Property (Official Gazette of the Republic of Montenegro 29/05)  
Law on Detective Activities (Official Gazette of the Republic of Montenegro 9/05)  
Law on Prevention of Money Laundering and Financing Terrorism (Official Gazette of Montenegro 4/07 and 4/08-corrigendum) – ([Annex 171](#));  
Law on Protection of Data on Individuals (Official Gazette of Montenegro 79/08);  
Law on Data Secrecy (Official Gazette of Montenegro 4/08) and  
Law on Weapons (Official Gazette of the Republic of Montenegro 49/04 and Official Gazette of Montenegro 9/08).

Secondary legislation for performing the tasks under the competence of the Police Directorate is the following:

Police Code of Ethics (Official Gazette of the Republic of Montenegro 1/06);  
Decree on the Uniform, Insignia, Armament and Equipment of Police Officers (Official Gazette of the Republic of Montenegro 2/07);  
Decree on the Ranks of Police Officers (Official Gazette of the Republic of Montenegro 7/06);

Rulebook on conditions and the manner of providing assistance to state bodies, local administration and legal persons in the procedure of enforcement of their decisions (Official Gazette of the Republic of Montenegro 7/06);

Rulebook on the manner of performing certain police tasks and use of police powers in performing those tasks (Official Gazette of the Republic of Montenegro 5/07);  
Rulebook on conditions that detention premises for detention of persons deprived of their liberty, have to fulfil (Official Gazette of the Republic of Montenegro 57/06);  
Rulebook on establishing the integrity of persons for performing police tasks (Official Gazette of the Republic of Montenegro 60/06);  
Rulebook on the conditions and manner of selection of a police officer sent to work abroad (Official Gazette of the Republic of Montenegro 23/07);  
Rulebook on disciplinary procedure (Official Gazette of the Republic of Montenegro 38/07);  
Rulebook on the design and type of material, manner of wearing and duration of the uniform of a police officer (Official Gazette of the Republic of Montenegro 12/07);  
Rulebook on internal organisation and job descriptions of the Police Directorate No. 03-11/07-9 of 03 January 2007, No. 01-011/8-36461 of 15 October 2008 and No. 01-011-12797 of 13 May 2008;



**92. Are all police authorities in the country under the same command? Do the powers of individual police authorities overlap? Please describe the procedures for co-operation and co-ordination between the different bodies involved.**

In Montenegro, there is one police organisation which is simultaneously the national/state police. In accordance with this organisational model, Police Directorate is a unique centralised state administration body performing police work on the entire territory of Montenegro. Centralised and unique organisation of police work and actions ensures that the employees in Police Directorate are under the same command.

Powers of the police, as an instrument for performing police activities, in accordance with the Criminal Procedure Code, Law on Police and other laws defining police powers, whether preventive or repressive, are undertaken solely by police officers. Police activities are performed solely by the Police Directorate or its employees, which excludes the possibility of overlapping of police powers.

In the organisation of the Police Directorate, line and functional model of organisation is applied which is characterised by the hierarchy of authorities and line character of commanding and control which represents a line system of communication in performing the tasks set out. This system of communication ensures determining of competences regarding the assignment of tasks to subordinates and control of their execution, which precisely means the following:

Police Directorate is governed by Police Director who is accountable, for his/her work, to the Minister of Interior and Public Administration and to the Government. The following persons govern the work of organisational units and are accountable to:

- 1) Police Director – Deputy Directors for the work of Departments governed by them;
- 2) Deputy Directors – Heads of smaller organisational units which are formed within a Department;
- 3) Head of the regional police administration – Heads of smaller organisational units which are formed in the regional unit;

Police activities are conducted by uniformed and non-uniformed police officers exercising police powers. Police activities are conducted with aim and in the manner which ensures equal protection of safety, rights and freedoms, implementation of the law and support of the rule of law to each person. Performance of police activities is based on the principles of professionalism, cooperation, legality in work and proportionality in exercising police powers, as well as on the principle of subsidiarity, or work with the least harmful consequences.

Minister of Interior and Public Administration prescribes the manner of conducting police activities and provides guidelines and necessary instructions for their performance. Regulations must be in accordance with the law, and guidelines and instructions in accordance with the regulations. Police officer submits, to his/her direct superior officer, in writing, information he/she learned while performing police activities, exercising police powers or in another way. Pursuant to the Law, police officers are responsible for performing duties and negligence in their work.

#### Cooperation and coordination

Pursuant to the Law on State Administration, state administration bodies are obliged to cooperate on a mutual basis and to inform each other of their work, especially with regard to matters of great significance to their work, to perform affairs jointly, if the Government decides so, or if it results from their prescribed obligation. In the course of preparation and adoption of regulations, ministries are obliged to mutually cooperate, or obtain opinions from other related ministries.

Pursuant to the Law on Police, Police Directorate provides assistance to state bodies, local administration bodies and legal persons in the procedure of enforcement of their decisions, if during the procedure physical resistance is expected or exercised. Police Directorate is obliged to undertake measures necessary for protection of life and health of people, and elimination of immediate danger to people and property, should such measures not be undertaken in due time by other competent authorities as well as to provide assistance to state administration bodies, local self-government bodies, legal and natural persons, in the case of general danger caused by natural disasters and epidemics (Articles 6 and 7).

Law on Customs Service (Official Gazette of the Republic of Montenegro 7/02 and 29/05) prescribes authorisation of customs officers to temporarily restrict the freedom of movement (detention), until prescribed customs activities are performed, but not longer than six hours. Should the reason for detention be the attempt or performance of an offence or criminal act, except offences committed in respect of customs provisions, the body competent for internal affairs is notified with no delays. If a customs officer, while performing customs control, finds weapons, other dangerous items or narcotic drugs, the officer is obliged to temporarily restrict the freedom of movement of the persons in possession of those items, as well as the drivers of transportation means, and immediately notify the body competent for internal affairs. Police officer is obliged to provide assistance to an authorised customs officer in performing customs control, if physical resistance is expected or exercised. All state authorities and holders of public powers, which by performing activities under their scope of work, determine that customs and other regulations, the implementation of which falls under the scope of the customs service, have been violated, or that they are likely to be violated, they are obliged to inform Customs Administration of their knowledge, with no delay (Articles 23, 24 and 29).

All state administration bodies are obliged to provide legal assistance to each other which is exercised on the basis of an official letter rogatory and in the manner determined by the Law on General Administrative Procedure. Under the official letter rogatory, the requested body acts without delay, not later than 15 days since the day the letter rogatory is received. Provision of legal assistance to foreign bodies is exercised in accordance with conditions prescribed by an international treaty, and if the treaties are not concluded, the principle of reciprocity is applied. In case of doubt related to the existence of reciprocity, the opinion given by the Ministry of Foreign Affairs is valid. State administration bodies provide legal assistance to foreign bodies in the manner determined by the law. State administration body will withhold legal assistance should the performance of action, in contradiction to the legal order, be requested. An action, subject to the request of a foreign body may also be performed in a manner requested by a foreign body, provided that such a procedure is not in contradiction to the public order. Mutual cooperation and coordination is also realised by agreements on mutual cooperation concluded between the Police Directorate and Tax Administration or the Police Directorate and Customs Administration. These agreements define the conditions and manner of exchange of information on persons related to whom there are grounds for suspicion that they committed criminal offences of organised crime and corruption, exchange of experience on modus operandi and new forms of performing criminal offences, provision of human resources, technical and other types of mutual assistance in suppressing organised crime related criminal offences.

Police Directorate is obliged, as well as all state administration bodies, to ensure cooperation with non-governmental organisations which is realised by: consultations with the non-governmental sector on legal and other projects and regulations which determine the manner of exercising rights and freedoms of citizens; ensuring participation in working groups for considering issues of joint interest and: organising joint public debates, round tables, seminars and other forms of joint activities and other appropriate forms; informing on the contents of the work programme and work reports of state administration bodies.

Procedures and mechanisms of cooperation between state bodies are described in detail in the answer to question No. 91 within this Chapter.

**93. Which administrative and/or judicial control bodies and procedures exist? How is (a) internal and (b) judicial oversight organised and enforced?**

The Law on Police provides for the developed structure of the police accountability to the legislative, executive and judicial power. As standards, three forms of control have been adopted: parliamentary, civil and internal control.

External control over the legality of policing is performed by the Parliament of Montenegro, through a competent body, which competences and the organisation is being determined by the act of the Parliament. Pursuant to the Article 41 of the Rules of Procedure of the Parliament of Montenegro (Official Gazette of the Republic of Montenegro 51/06 and 66/06) the Committee for Security and Defence performs parliamentary control over the Police Directorate work, and examines the exercise of freedoms and rights of a person and a citizen, guaranteed by the Constitution in exercising police powers, it assesses proposals for laws, other regulations and general acts, the strategy and other issues in the area of security and defence of Montenegro and its citizens; evaluates proposals for appointment of the Police Director. Information and reports discussed at the Committee meeting are considered confidential. The Committee conclusions and reports are communicated to the Government. The Chief of the Police, at least once a year, submits to the working body the report on police work and the report may be submitted as appropriate, or upon the request of the Committee (Article 90 of the Law on Police).

Control over the work is also performed through the questions of the Members of Parliament. A Member of Parliament has a right, in order to obtain necessary information on certain issues related to the Government work, i.e. to the implementation of the established policy, to pose a parliamentary question to the Government, i.e. the competent Ministry and to receive an answer to it (Article 187 of the Parliament's Rules of Procedure).

By submitting interpellation, one more control mechanism is ensured, which enables Members of Parliament to assess the legality of work of the state authorities, regardless to whether they are elected, appointed by the Government i.e. elected or appointed by the Parliament. The Interpellation to examine certain issues regarding the work of the Government may be submitted by minimum 27 Members of the Parliament in writing, and it has to be argued. The Government has to submit an answer within thirty days from the date of receipt of interpellation (Article 108 of the Constitution of Montenegro).

External type of control is also performed through the Council for Civil Control over the Work. The Parliament of Montenegro states the conclusion of the procedure of appointment of the Council members and constitutes the Council. Within the meaning of Article 93 of the Law on Police, the Council assesses the exercise of police powers in order to protect human rights and freedoms. Citizens and police officers may address to the Council, which provides higher level of cooperation and trust between the public and police. At the request of the Council, the provides necessary information and notifications.

**(a) Internal oversight**

Internal control over police work is performed by the separate organisational unit of the - Division for Internal control and control of use of police powers, being responsible for conducting investigations in accordance with the charges for the committed criminal offences, corruption and unlawful police actions, as well as for developing the strategy and the tactics aiming at prevention and suppression of the unlawful actions of police officers.

When the internal control procedure reveals that unlawful actions or excessive use of powers have the elements of a criminal offence, the head of the Division for internal control and control of police powers submits the report with the findings to the Police Director and to the competent public prosecutor.

If the excessive use of powers has the elements of a disciplinary violation, the disciplinary procedure is initiated against a police officer. The disciplinary measures for serious disciplinary violations are imposed by the Police Director.

Appeal may be lodged against the decision on imposed disciplinary measure for serious disciplinary violation to the Minister of Interior, within eight days following the date of the receipt of the decision.

All natural and legal persons may lodge appeal if they believe that police officer has, while performing police affairs, violated some of their rights or inflicted damage to them - not later than 30 days since the action was committed. In accordance with the complaint filed, after the procedure of examination of the allegations (Article 96 of the Law on Police), Division for internal control and control of use of police powers shall respond to allegations to the submitter in writing, within 60 days from the date of the receipt of the appeal.

Pursuant to Article 6 of the Law on the State Administration, the work of state administration bodies is subject to control. The control over the work of state administration bodies is performed through administrative and other types of oversight, judicial control and other types of control, in compliance with law.

The oversight of the lawfulness of work of the administrative authorities shall be performed by the Ministries. The Ministry, which is to perform the oversight over the lawfulness of the work of state administration authority, is determined by act on the establishment of state administration authority. The administrative oversight of the work is to be conducted by the Ministry of Interior and Public Administration (Article 25 of the Law on State Administration).

Pursuant to the Article 24 of the Decree on Government (Official Gazette of Montenegro 80/08), the Government of Montenegro may revoke a regulation of a Ministry which is in contradiction with the Government regulation, which violates freedoms and rights of natural and legal persons, as well as in other cases regulated by the law. The action for annulment or abolition of the regulation may be initiated by Prime Minister or a Government Member.

actions are therefore under the oversight of the legislative and the executive power, meaning that the police officers are obliged to submit oral and written reports on dealing with citizens, and upon the requests of these authorities, other special reports as well.

#### (b) Judicial control

Article 554 of the Criminal Procedure Code stipulates the right to compensation of damages for unjustifiable conviction. This right shall have a person against whom a criminal sanction was imposed by a final decision, or who was pronounced guilty but whose punishment was remitted, and subsequently, upon an extraordinary legal remedy, the new proceeding was finally discontinued, or the convicted person was acquitted by a final and enforceable judgement, or the charges were rejected.

The Ministry of Justice makes decisions on the compensation of damages on the request of a certain person (Article 556). If the request for the compensation of damages is not accepted, or if an administrative body does not decide on it within a term of three months from the date of submission of the request, the injured party may bring a civil action for the compensation of damages with the competent Court. If a settlement was only reached on one part of the claim, the injured party may bring a civil action regarding the rest of the claim.

While the procedure referred to in Article 556 is pending, the statute of limitations referred to in Article 555 of the Criminal Procedure Code shall not run.

A civil action for the compensation of damages shall be filed against Montenegro with the competent Basic Court.

Within the meaning of Article 558 of the Criminal Procedure Code, the following persons shall be entitled to compensation of damages:

1) a person who was detained, but criminal proceeding was not instituted or was discontinued by a final ruling, or who was acquitted by a final and enforceable judgment, or the charge was rejected;

- 2) a person who served the sentence of imprisonment and upon the request for retrial, request for the protection of legality, or request for a review of the legality of a final and enforceable judgment, and was pronounced a shorter imprisonment sentence in new criminal proceedings than the sentence served, or non - custodial criminal sanction was pronounced, or he/she was pronounced guilty but the punishment was remitted;
- 3) a person who, due to an error or an unlawful action of authorities, was deprived of liberty without legal grounds, or kept in detention or penitentiary institution for a longer time period;
- 4) a person who spent in detention longer term than he/she was convicted of.
- 5) a person who, pursuant to Article 232 of the Criminal Procedure Code was deprived of liberty by an authorised police officer, if any of the grounds for ordering a detention existed.

Judicial control of the police work is also performed in a civil proceeding by a claim for compensation of damages caused by unlawful actions of police officers.

Judicial control of police work is conducted in the civil procedure by a claim for compensation of damages which arose as a consequence of illegal actions of police officers. Law on Obligation Relations (Official Gazette of Montenegro 47/08) prescribes the conditions for exercising the right to compensation of material and non-material damages.

The person who was materially damaged due to the public false allegations on the past, knowledge, capability of the other person, or regarding some other matters by another person who new or must have known that these allegations were false has the right to compensation of material damages in cases of violating the honour and spreading of false allegations

Right to the compensation of non-material damages is exercised in two manners: by announcing the verdict or correction and by awarding righteous monetary compensation.

In cases of violating the right of personality, the court will order, on the expense of the person incurring the damage, the publishment of the verdict or the correction, or order the person incurring the damage to withdraw the allegation which incurring the damage or some other actions, which will accomplish the purpose achieved by the compensation.

The Court will award a righteous monetary compensation to any person who suffered physical pain, mental pain due to which vital activities of that person are reduced, mental pain due to marring and violating reputation, honour, freedom and right of personality, death of a close person, as well as for fear, if it is determined that the circumstances of the case, and especially the degree of pain and fear and their duration justify it. This monetary compensation is awarded regardless of whether the right to compensation of material damages is exercised. In the process of deciding upon the claim for compensation of non-material damages, as well as on its amount, the court will take into consideration the significance of damaged goods and the purpose for which the compensation is awarded, but also it will be considered that the compensation awarded is not used for purposes which do not correspond to its nature and social purpose.

## **94. What powers does the police have:**

### **a) In terms of preventing potential threats?**

Pursuant to the Law on Police, the Police Directorate:

- collects, processes and uses personal data of citizens, in order to prevent and detect criminal offences and misdemeanours, and detect perpetrators of the offences and misdemeanours. This power is limited by an obligation of erasing data from the records when established that entered data is incorrect, i.e. upon cessation of the reasons due to which the records were kept. Persons that the records have been kept on, have the right of insight into the records, upon cessation of the reasons that resulted in its keeping, whereby the police protects the identity of the person who supplied the information (Articles 18 to 23 of the Law on Police).
- secures the scene of crime until the arrival of the investigating judge, searches the scene in order to find and secure prints and articles which might serve as evidence, and collects information regarding the criminal offence or event, i.e. the perpetrator, when learnt about the commission of a criminal offence or occurrence of another event, which requires the establishment or clarification of the facts by direct action;
- until the arrival of the investigating judge or other authorised body, but not longer than six hours, keeps in police detention any person thought to be able to offer information relevant for clarification of the criminal offence or the event or for undertaking the rescue activities, if it is likely that such information could not be obtained later on, or that the presence of the person who should be able to undertake rescue activities could not be provided;
- in order to protect the interests of criminal proceedings, police officer is authorised to forbid photo taking of the scene of crime (Article 24 of the Law on Police);
- warns and orders a person whose behaviour, acting or a failure to act, may pose risk to their own safety or safety of other persons or property, disturb the public peace and order or jeopardize the road traffic safety, or when it is justifiably expected that such person might commit or encourage another person to commit a criminal offence or misdemeanour (Article 25 of the Law on Police);
- gives orders, for the purpose of eliminating the risk to life and personal safety of citizens and to their property, maintaining of public peace and order and other potential threats (Article 26 of the Law on Police);
- deprives of liberty a person upon issuance of the court order on detention, order on bringing a person before the court, a wanted notice or when there are grounds for suspicion that a person has committed a criminal offence, for which detention is required by law. Exceptionally, in pre-trial procedure, the police is authorised to keep these persons in detention up to 48 hours maximum, from the moment of depriving him/her of liberty, or from the moment the person obeyed the summons for the purpose of gathering information, as well as the persons summoned to act in the capacity of a suspect. Exceptionally, there is a possibility to deprive a person of liberty for the purpose of establishing his/her identity, for violating public peace and order, when public peace and order could not be otherwise established. This deprivation of liberty may last up to six hours and exceptionally, for the reasons regulated by law, up to 12 hours (Articles 25-27 of the Law on Police). The procedure of deprivation of liberty is in conformity with international standards, which provide for an obligation of a police officer to inform a person in his/her native language about the reasons for his apprehension, instruct him/her on the fact that he/she is not bound to make a statement, right to inform the family about his/her deprivation of liberty and on his right to a defence attorney. At the same time, the procedure provides for that the decision on police detention is to be passed, with the right to appeal and obligation of investigating judge to decide on the appeal within four hours, which is in compliance with Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms – security and freedom of person;
- uses a transportation means or means of communication of other person if otherwise transportation could not be done or communication established, and is limited to the case of

capturing the perpetrator directly chased or transporting of injured person being a victim of criminal offence, traffic accident, natural disaster etc.

The owner of the transportation mean or means of communication, who may be a legal or a natural person, is entitled to compensation of costs and any real damage caused by their use (Article 51 of the mentioned Law);

- uses means of coercion, physical force, truncheon, facial bandage, devices for forced stopping of motor vehicles, police dogs, chemical agents for temporary incapacitation, special vehicles, special types of weapons, explosive devices and firearms (Article 30 of the law on Police). In order to use force in the most effective way, protecting at the same time one of the fundamental human rights, the Law on police regulates in detail an issue of use of coercive means, especially of the firearms. Coercive means are properly used if three basic principles are fulfilled: necessity, proportionality and legality. The Law on Police, within Article 15, introduces a principle of proportionality which provides for that exercise of police powers must be proportionate to the need, which caused those powers to be undertaken as well as that, between various police powers, the police officer exercises the power which achieves the purpose with minimum adverse consequences. It means that the use of coercive measures must be proportionate to the danger to be averted, and "with the minimum adverse consequences for the person against whom the means of coercion is being used". Police officer who used, or ordered the use of firearms and other means of coercion is bound to inform his/her superior on that immediately. If his/her superior estimates that the means of coercion were used in an unlawful manner, the superior shall take measures for determining responsibility of the police officer who used or ordered the use of means of coercion, not later than within three days following the date of the information (Article 48 of the law on Police).

- protects the damaged party, witnesses and other persons who may provide information of relevance for criminal proceedings, being therefore threatened by perpetrators of criminal offences or other persons. Information obtained in this manner, especially the data on the identity of the person who provided the information, is considered an official secret. This power secures provision of protection to a witness out of the criminal proceedings (Articles 52 and 53 of the stated law);

- publicly offers rewards for information (through media or in any other appropriate manner) for the purpose of finding a missing person, detecting and locating a person suspected to have committed a criminal act punishable by five-year term or a more serious punishment (Article 56 of the above-mentioned Law);

- takes photo and publish the photo for the purpose of finding a missing person or a person against whom the order on conducting an investigation was issued for the purpose of establishing his/her identity, with the prior consent of an investigating judge or in other cases in which the interests of criminal proceedings demands so. (Article 57 of the mentioned Law);

- subjects a person to a polygraph testing only when the written consent of the person being tested in this way is secured (Articles 58 and 59 of the law on Police);

- records in public places by performing video and audio surveillance over public places with the prior public announcement on the implementation of the measure (Article 60 of the mentioned Law).

## **b) In terms of criminal investigation?**

The Criminal Procedure Code provides for the police powers for undertaking actions in criminal investigation. Pursuant to Article 230 of the Criminal Procedure Code, police authorities are bound to undertake necessary measures aimed at detecting the perpetrator, preventing the perpetrator or accomplice from fleeing or hiding, detecting and securing traces of the criminal offence and objects, which may serve as evidence, as well as gathering all information which could be useful for successful conduct of the criminal proceedings.

In order to fulfil the duties referred to in Article 230, the Police authorities may:

- seek information from citizens;

- apply polygraph testing;
- conduct voice analysis;
- perform anti-terrorist inspection;
- restrict movement of certain persons in a certain area for required period;
- request from a legal person providing telecommunication services, to check telecommunication addresses which were online at the given period;
- undertake necessary measures regarding the establishing of the identities of persons or objects;
- take a sample for DNA analysis;
- issue a search warrant for persons and objects searched for;
- carry out an inspection of certain facilities and premises of state authorities, enterprises, companies and other legal entities, review their documentation and seize it, when appropriate;
- establish an identity of a person and identify an object (identity check may be done against the person who is to be deprived of liberty, detained or referred to a competent body, being subject of the inspection or search, or other measures and actions being undertaken pursuant to law, a person found in another person's apartments, facility or another premises, or a transportation mean which has been subjected to inspection or search, a person found in the area with restricted freedom of movement, if an identity check is needed; a person reporting criminal offence or misdemeanour, a person who by his/her behaviour raise suspicion that he/she might have been a perpetrator of a criminal offence or misdemeanour or that he/she intends to commit it, or who, by his/her appearance looks like a wanted person, a person found at the scene of crime or misdemeanour, or found in the place where due to the security reasons it is necessary to establish the identity of all persons or the majority of them, a person without ID documents or with the documents of a suspicious validity);
- search a person, exclusively upon the court order (Article 76 of the Criminal Procedure Code) when required for detecting traces and objects of importance for criminal proceedings. This power may exceptionally be exercised without a written order, only if there are grounds for suspicion that person is in possession of offensive weapons or tools appropriate for an attack, or if there is suspicion that they will dispose of, conceal or destroy the objects which are to be confiscated from them as evidence in the course of criminal proceedings (Article 79 of the Criminal Procedure Code). Exceptionally, police officer is authorised to hold a person until the search warrant is provided, if there are grounds for suspicion that person is in a possession of objects that may serve as evidence in criminal or misdemeanour procedure. The use of this power may exceptionally last for six hours maximum. Also, within this power an obligation to inform a person who is to be searched on the right to have a defence attorney has been given, as well as that the search can be postponed for three hours, until the arrival of the defence attorney, if his/her presence is demanded by a person against whom these powers are being exercised;
- search an apartment and other premises (upon the court order in order to detect persons, objects or prints, preceded by summon to a person against whom a warrant has been issued to voluntary hand over the wanted person or objects. As a rule, search is conducted only during the daylight, in the presence of two witnesses, or when conducting a search of premises of state authorities a head of such authorities shall witness the search. A record on search shall be made, listing the objects and documents to be seized, and police officer shall issue a receipt on the seized documents (Article 77 of the Criminal Procedure Code);
- means of transportation, passengers and baggage (it is conducted in order to detect objects used, intended for or produced by committing a criminal offence or misdemeanour, or which serve as an evidence in the proceedings before the competent body). When conducting a search, police officer may use technical means and official dogs, as well as force in order to open a locked transportation mean i.e. object being in possession of a passenger (Article 79 of the Criminal Procedure Code);
- conduct inspection of facilities and premises (if police is in possession of information indicating the grounds for suspicion that in business facilities and premises there are persons and objects



that have been searched for, i.e. if there are traces related to a criminal offence that is prosecuted *ex officio*, search of the facilities and premises is conducted);

- temporary seize objects (police may seize objects used, intended for or produced by committing a criminal offence or misdemeanour i.e. which serve as an evidence in the proceedings before the competent body, or which may be used to attack, flee or injure themselves. A person is to be issued a receipt on seized objects (Article 81 of the Criminal Procedure Code);

- deprive a person of liberty if any of the grounds for ordering detention referred to in Article 148 of the Criminal Procedure Code exist, and they shall be bound to bring that person together with the criminal charged before the competent investigative judge without delay, except in the case referred to in Article 234 of the Criminal Procedure Code. When the person deprived of liberty is brought before the investigative judge, the authorised police officer shall inform the investigative judge on the reasons and time of deprivation of liberty;

- send a person, found at the crime scene, to the investigative judge or hold him/her until the judge arrival, if this person may disclose facts important for the criminal proceedings, and if it is likely that his/her interrogation at later stage might be impossible, or might entail considerable delays or other difficulties. These persons shall not be held at the place of commission of a criminal offence for more than six hours (Article 236 of the Criminal Procedure Code);

- enter a person's apartment, other premises and facilities, without a search warrant (a police officer may enter another person's apartment, other premises and facilities, without a search warrant, provided that the tenant or other person call for help; or in order to execute a warrant of detention or apprehension; to deprive of liberty the perpetrator of the crime that is prosecuted *ex officio* and punishable by more than three years of imprisonment sentence who is on the run, or in order to remove serious threat to the life or health of the people or to property of significant value. (Article 79 of the Criminal Procedure Code),

- obtain information from citizens in order to obtain information of importance for detecting a criminal offence and the perpetrator of the criminal offence, whereby police officers may not examine citizens in the capacity of a defendant, witness or expert witness, except in the case referred to in Article 231;

- summon a person in the capacity of a suspect, when there are grounds for suspicion that he/she is the perpetrator of the criminal offence, or if against that person the police undertakes actions in the pre-trial procedure. The summons shall contain information that the suspect is entitled to retain a defence attorney (Article 231 of the Criminal Procedure Code);

- produce or file a criminal charge stating the evidence provided on the basis of information collected. The objects, sketches, photos, reports, records on measures and actions undertaken, official notes, statements and other material which may be useful for successful conducting of the proceedings is to be attached to the criminal charge. If the police after filing the criminal charge discover new facts, evidence or prints of the criminal offence, it is bound to collect necessary information and to deliver the report on this to the public prosecutor, as a supplement to the criminal charge (Article 231 of the Criminal Procedure Code);

- conduct secret surveillance measures (secret surveillance and technical recording, i.e. recording of means of remote technical communication and private conversations held in private or public premises or outdoors; secret photographing and visual recording in private premises; simulated purchase of objects or persons, and simulated giving and taking of bribe; surveillance of the transportation mean, and delivery of objects of crime; recording conversation after informing and obtaining a prior consent of one of the participants in the conversation; use of an undercover investigator and collaborator (Articles 237 and 240 of the Criminal Procedure Code).

In accordance with the Plan for the implementation of the Criminal Procedure Code (Official Gazette of Montenegro 57/09) a new Law on Police will be adopted (envisaged for 2010) which will contain provisions on the new role of Police Directorate in inquiries and investigations, as well as in the procedure of issuing warrants and notifications.

**95. What are the competencies of the different forces (legal and administrative, geographical organisation, cross-regional co-operation, etc.)?**

The Law on Police (Official Gazette of Montenegro 28/05) governs police duties, police powers and tasks, status of police officers and control over the work of the police.

The Police Directorate, as administration body competent for policing, within the meaning of this law, performs the following police affairs:

- 1) protection of security of citizens and constitutionally guaranteed rights and freedoms;
- 2) protection of property;
- 3) prevention and detection of criminal offences and misdemeanours;
- 4) detection and location of perpetrators and their bringing before the competent authorities;
- 5) maintenance of public peace and order;
- 6) securing public assemblies and other gatherings of citizens;
- 7) securing VIPs and facilities;
- 8) supervision and control of traffic safety;
- 9) state border surveillance and exercise of border control;
- 10) control of movement and stay of foreigners;
- 11) provision of conditions for smooth functioning of courts, maintenance of order, protection of people and property;
- 12) other tasks as provided for by the law.

Pursuant to the Decree on category of jobs, criteria for internal organisation and job descriptions, nomenclature of jobs and approximate number of employees in state administration bodies (Official Gazette of the Republic of Montenegro 54/04) adopted pursuant to the Law on State Administration (Official Gazette of the Republic of Montenegro 38/03), Departments are established as organisational units for performing duties falling under the core tasks of the authority from one or more related administrative fields, or for performing certain functions of the administration authorities.

Organisational structure of the Police Directorate consists of: Departments, Regional Police Units, Local Police Units, Divisions, Special Anti-Terrorist Unit, Special Police Unit, Operational Communication Centre and Forensic Centre.

Departments are the following: General Police Department, Criminal Police Department, Department for Human Resources, Legal Issues, Information and Telecommunication Systems, Department for Security of Persons and Facilities and Border Police Department. Departments are headed by Deputy Director.

General Police Department performs activities related to operational instructions, inspections and other tasks in the area of public peace and order, traffic safety, duties related to organisation, coordination and allocation of tasks to different line of work related to community policing, and undertakes preventive measures at the level of the Department; as well as the tasks related to the direct planning, directing and inspecting work in regard to activities arising from the Strategy on National Security of Montenegro, Law on Police, Law on Protection of Persons and Property (Official Gazette of the Republic of Montenegro 29/05) and the Law on Detective Services (Official Gazette of the Republic of Montenegro 29/05).

Criminal Police Department performs duties related to undertaking measures and activities for prevention and detection of criminal offences; detection and apprehension of perpetrators of criminal offences; criminal- intelligence affairs aiming at collection of crime-related information, as well as the other tasks related to the following and analysis of the crime rate.

Within Criminal Police Department, the Section for Fighting Organised Crime and Corruption is established, the activities of which are based on co-ordination with the Special Prosecutor's Office for fight against Organised Crime and Corruption.

Border Police Department performs duties of protection of the state border; prevention of illegal immigration; control of movement and stay of foreigners of all categories, control of certain activities performed by foreigners; control of travel documents at the entry into and exit from the country, and other activities pursuant to law.

Department for Human Resources, Legal Issues, Information and Telecommunication Systems performs affairs of representing Police interests in property and legal issues, cooperation with courts and prosecution service for the purpose of efficient, legal and cost - effective dispute settlement before the judicial authorities; disciplinary prosecution of the perpetrators of serious disciplinary violations; human resources planning and selection; issues related to labour relations rights and duties; Police Directorate information system development; development, implementation and maintenance of transmission systems and the related equipment; securing functional networks in emergency situations and actions and other tasks.

Department for Security of Persons and Facilities performs activities related to protection of persons, subjects of protection measures, protection of foreign very important persons, subjects of protection measures; organisation of counter-terrorism protection and electronic-technical protection; protection of the facilities of the state administration authorities; protection of facilities in which persons, subjects of protection measures, live and work; protection of Diplomatic-Consular Missions in Montenegro and other duties.

Within the Departments, the Sections are set up, as lower level organisational units, within which the Groups are established.

Divisions are established for performing tasks in specific administrative field, i.e. for executing certain functions of the state administration authorities. Therefore, within the Police Directorate, there are three (3) divisions established: Division for International Police Cooperation and European Integration, Division for Internal Control and Control of Use of Police Powers and Division for Planning, Development and Analytics.

The Division for International Police Cooperation and European Integration is responsible for international police cooperation, as well as INTERPOL National Central Bureau, which is organisationally positioned within the Criminal Police Department. International police cooperation is also developed within the scopes of work of the Border Police Department.

The Division for International Police Cooperation and European Integration performs tasks related to strategic cooperation of the Police Directorate with police services of the countries in the Region, the EU member states and third countries. International police cooperation, at bilateral level, consists of the procedure of initiating and harmonising agreements and memoranda (protocols) on international police cooperation. The Division is also responsible for international police cooperation, also based at multilateral level, through the participation of the police representatives in the work of international organisations and institutions, as well as in the projects related to international police cooperation. The Division for International Police Cooperation and European Integration develops cooperation with police liaison officers and police attaches, as well as with diplomatic representatives, in charge of the security related issues. This organisational unit is responsible for coordination of cooperation with international organisations (United Nations, OSCE, Council of Europe, Interpol, Europol, SECI Centre and others).

INTERPOL NCB performs tasks related to: international police cooperation within the INTERPOL scope of work; implementation of main guidelines of the Government Security Policy in the field of international police cooperation, and in compliance with the police plan and programme; issues wanted notices for internationally wanted persons; extradition; international legal assistance in criminal matters; it participates in concluding bilateral agreements on international police cooperation; central record/record on persons and objects, participate in multilateral, regional and bilateral cooperation within the framework of cooperation with International Criminal Police Organisation INTERPOL and other NCBs.

Division for Internal Control and Control of Use Police Powers conducts activities in the field of internal control of the police work. Primarily it applies to the control of legality of performing police duties and control over the exercise of powers by the police officers, control over financial allocations and consumptions, counter-intelligence protection and processing the citizens complaints.

Division for Planning, Development and Analytics prepares and develops strategic and other planning documents of importance for police work and functioning, in general and per lines of work, takes care of the development of organisation and methodology of work, develops plans and action programmes, monthly and periodical, semi-annual and annual reports on police work and security status, information and statistics and analysis – information products, coordinates activities on application of the duties under the competences of the Police Directorate, specified in the Government's Programme of Work. The Division is also responsible for all other activities implemented pursuant to the Law on Free Access to Information, as well as for the interpretation services.

Operational Communication Centre monitors and registers cases and events on the territory of the country, assesses the level of importance of the events, organises and coordinates work of the police organisational units and regional operational on-duty services, when appropriate, undertakes urgent measures and actions in regard to important events and phenomena under the competence of the Police Directorate.

Forensic Centre conducts chemical and biological examinations; handwriting examinations, examinations of documents, securities and information technologies; fingerprints, mechanoscopic, ballistics examinations; establishing the causes of arson and explosions; it conducts activities of criminal intelligence techniques; it coordinates and conducts crime scene examination activities; forensic analyses; activities upon the request of the judicial authorities, customs and other relevant subjects; cooperation with similar centres in the country and abroad, scientific-technical institutions, as well as other activities.

Special Anti-Terrorist Unit performs activities related to: the most complex duties and tasks in the field of fight against terrorism; hostage taking situations; barricade by dangerous persons; arrest of criminal groups; solving situations with resistance involving firearms; providing assistance in fight against organised crime, as well as providing the assistance in rescue activities, aimed at protecting the security of the country and its citizens and other persons found under its jurisdiction, by respecting fundamental personal rights and freedoms.

Special Police Unit performs activities related to: fight against all types of terrorism and organised crime; re-establishing peace and order being violated to a wider extent; protection of public gatherings and manifestations of the highest security risk level; VIP protection and protection of the facilities of special importance to the country, and in cases of high security risks, prevention of potential attacks to the protected persons and facilities; providing assistance to other police organisational units in performing the most complex duties and tasks; providing support to the state institutions in recovering from the consequences of natural disasters and other disasters-rescue missions, participation in military-police and other missions in the crisis-hit areas and other affairs.

Regional Police Units are set up to conduct basic tasks under the police competences for the territory encompassing a number of municipalities. Within the Regional Units, branches, offices and sub-offices are established, when it is needed for performing tasks on the territory of a municipality.

Organisation of the eight (8) Regional Police Units and thirteen (13) Local Police Units is based on this structure.

Sections, as organisational units within Departments, monitor and coordinate work of the offices, i.e. sub-offices, which are, as organisational units, positioned within Regional Police Units and Local Police Units.

When it comes to the mutual cooperation, Regional Police Units and Local Police Units are bound to exchange information and other knowledge needed for conducting police tasks.

**96. How are the police staffed and equipped and how are they financed (quantitative overview of staff, buildings, equipment, communication tools, hard- and software, etc.). Is an integrated computer-based investigation system available? Is an integrated crime intelligence system available?**

With regard to the human resources structure of the Police Directorate, the total number of employees is 5 526, out of which 4 447 employees are employed on full time basis, and 1 079 are employed on part-time basis. Out of a total number of employees, 4 809 are police officers and 717 are civil servants and state employees.

As with regard to the structure of police officers number, the General Police is prevailing with 2 781 officers, then Border Police with 1 421 officers and Criminal Police with 607 officers. National police has a surplus of 337 employees, exceeding the number specified in the Act on Job Description (5189). Measures and activities currently being undertaken are aimed at decreasing the number of employees.

Out of total number of employees, 808 officers hold university diploma, 445 officers hold college diploma, 4 202 officers hold high school diploma, and 71 officers are with primary education completed. Out of the total number of employees, total number of women is 721 or 13.04%. Number of women employed with university diploma is 157, with college diploma 48, with high school diploma 451, while 65 of them have completed primary school.

Police Directorate is financed from the Budget of Montenegro, and the process of payment and registration of the expenditures provides for required financial reports on implementation of the established strategy, through the State Treasury. In the procedure of the Budget planning, Police Directorate submits the request for the current budget, defined as a programme for financing or development of the regular activities, and capital budget within which capital expenditures are to be rendered, which includes procurement and investment maintenance of financial and non financial property.

The programme budget is to be prepared and planned pursuant to the Law on Budget, and within the Police Directorate there are three programmes established: Fight against corruption and organised crime; Police and Administration.

Programme budget contains tasks and activities which are to be implemented aiming at more efficient financial resources management by proposed programmes.

Police Directorate, as per programmes, submits to the Ministry of Finance monthly plan of expenditures of the funds approved by the Budget, ten days from the date of adoption of the budget, at the latest. The financial resources specified by the Budget, Police Directorate uses in accordance with the dynamics specified by the Budget plan of expenditures, approved by the Ministry of Finance. If the planned funds are insufficient, Police Directorate prepares and proposes to the Ministry of Finance amendments to the resources. Police Directorate may arrange activities up to the amount of the funds approved by the expenditures plan of the Ministry of Finance. For the needs of the Police Directorate, Regional Police Units and Local Police Units, the Police Directorate makes use of the facilities at 21 locations, covering the area of 31 819.98m<sup>2</sup>.

For the needs of the Police Offices and Sub-Offices, as well as for the Border Police needs, the Police Directorate makes use of the facilities at 73 locations, covering the area of 14 026.20m<sup>2</sup>.

Based on the contracts on renting the facilities, Police Directorate makes use of the facilities for the needs of Police Offices and Sub-offices at 3 locations, covering the area of 814.51m<sup>2</sup>, and for the needs of the Special Anti-Terrorist Unit and the Special Police Unit at one location, covering the area of 4 500m<sup>2</sup>.

The average age of the facilities used by Police Directorate of Montenegro is 38 years. The facilities are of the medium quality, and some of the facilities require investments, especially investments into installations and equipment.

The final works on the new facility of the Police Directorate and the Regional Police Unit are ongoing. The facility is designed and constructed in accordance with European standards. Total area of this facility is 10.500m<sup>2</sup>.

Police Directorate has a complex network for data transmission which covers the entire territory of Montenegro, all more relevant populated areas and border crossing points.

The network can be divided into three logical segments: Transport network, MAN network and LAN networks within the Regional Police Units and Local Police Units in the cities on the territory of Montenegro.

Transport network includes transport routers, being installed in each town, as well as radio –relay links, connecting distant border crossing points with transport network. It is mainly based on the single mode –type optical cables, used for inter-cities data transmission. Active network equipment uses MPLS technology for reliable and secured data transport to the final destinations.

The network at the level of Podgorica consists of three different LAN networks: LAN network in the facility of the Ministry of Interior, LAN network in the facility of the Regional Police Unit Podgorica and LAN network in the police facility in Zagoric. All locations are inter-connected by the optical connection lines.

LAN networks, at the distant locations in the facilities of the Regional Police Units and Local Police Units of the Police Directorate, are cabled with FTP Cat 6 cables.

Transport part of the network includes all MPLS routers which are installed in the facilities and inter-connected by optical transport lines. Topology of the network depends on the availability of the optical transport lines and is designed with the aim to reach maximum resistance of the equipment and the network itself in case of a network breakdown. The network consists of two closed redundant rings which are connected in Podgorica. All routers in the transport part of the network are products of the company Riverstone Networks, type RS38000 and RS3100. For establishing connections between distant locations through the available single-mode optical fibre type 9/126µm modules Riverstone 1000BaseLX-LR GBIC are used, and therefore the transmission speed on all transport links is 1Gbps. All locations on the closed contours are MPLS nodes. MPLS has no support on the nodes in Herceg Novi, Ulcinj, Plav, Rožaje, Mojkovac. These nodes are connected by 802.1q links to the nearest MPLS node and VLANs are directly mapped to MPLS L2 VPN tunnels.

At the control level of the MPLS network, OSPF protocol has been installed which is executed on all nodes of the transport network and which replicates data on topology to MPLS layer for creating MPLS tunnels.

The network uses L2 MPLS VPN tunnels for data transmission between distant locations. This type of the tunnel is used because of its simplicity and high level of security. It means that all network users are connected to MPLS network which reacts as a second level device.

The network has several VPNs which are adjusted to the current use.

Police Directorate has several VPNs for internal use. Beside the Police Directorate, the network for transport of the data is currently being used by the Ministry of Interior and Public Administration and the Agency for National Security. Each of them has its own MPLS VPN L2 domain to which the data are transmitted.

Central part of the system consists of the servers, based on Intel Xeon Multicore processors (HP Rack servers, DL320 G5 and DL360 G5). According to their purpose, the servers are divided to: Domain Controller, Certification Authority servers, Application servers and Database servers.

At the hardware level there is full redundancy, at the levels of:

Certain servers

Redundant power supply

Redundant disks in RAID 1+ 0

Related server groups:

Failover Cluster on Database servers

Network Load Balancing on the level of Application servers

Storage system is HP EVA (Enterprise Virtual Array) system with the current capacity of 2 TB (Max 8 TB with the same disks or more, with the higher capacity disks).

System has an automated and robotised Backup device.

Operating system, on the basis of which the above mentioned servers work, is Windows Server, configured on each of them, depending on the actual purpose of the server.

The Software is developed as to satisfy the following basic principles: Reliability of work, Security of data, Modern Users Interface, Scalability of the system and simple and automatic maintenance of the users applications.

This has been achieved through implementation of the multi-layer applications, based on the familiar environment of the Windows system, i.e. on the NET technology.

As the PCs that are used, are of the new generation and have excellent hardware characteristics, it has been decided the users' applications to be Windows Forms applications. In this way the full division of the load among all levels has been achieved and the application servers, which are usually a bottleneck in a quasi-multilayer system, are disburdened, i.e. with WEB applications, when workstations are used only as WEB browsers. In the local memory, workstations store local datasets, i.e. fragments of the database needed for performing a particular work, in order to bring the communication with the data base to a minimum level needed, to disburden it.

Increase of the number of users, in this way does not significantly influence the performance and speed of the entire system response.

Applications (new software version) are installed automatically by using Click Once technology on Application servers, so that automatic application installation is made possible to the users, without elevation of their rights in the system.

User authentication is based on a Single Sign-On principle, meaning that log-in into the system is done once, and afterwards each application takes the data on the registered users directly from the system. In addition to that, continuous checks in Human Resources Application are also done on the current status of each individual user, and only the ones with active status are allowed to work.

Application servers, implemented in the Microsoft Internet Information Services, are responsible for:

Queries to the data base only through Stored Procedure. Ad-hoc use queries by the client applications are not allowed. As the client computers are not in the same network sub-net with the database servers, direct communication Client-Database server is not possible.

Implementation of business logic

Data access control

Data access registering

Data caching, which is often forwarded to client applications and their synchronisation with the database, only when needed.

Additional data encrypting, when needed.

Exchange of information with external sources (state bodies, Interpol, etc.)

Firewall devices placed in front of the application servers are very restrictively adjusted, i.e. only the use of HTTP(S) port is allowed, and any content which is not XML data format is examined and forbidden through context filtering. Any scripting, Java or VB is not allowed.

Database Servers, which are, as already mentioned, implemented in Failover Cluster regime, serve only for storing and fast data access. Database is implemented through Microsoft SQL Server.

Within the Information system of the Police Directorate currently there are 756 PCs, which are equipped with the appropriate supplementary devices (printers, scanners, etc.).

The Information system of the Police Directorate is being developed and maintained by the employees of the IT Section.

Communication system of the Police Directorate consists of radio communication and telephone systems.

Radio systems of the Police Directorate consist of VHF/UHF and HF systems.

Analogue radio system (VHF/UHF), which covers 90% of the territory of Montenegro, is based on the work of repeaters, located at 35 locations, with around 1 500 radio stations (hand held, mobile and stationed). The equipment is manufactured by Motorola.

HF system, manufactured by Harris, covers the entire territory of Montenegro and serves as a system for emergency situations. HF radio network consists of six stationed and one mobile data transceiver device.

Within the telephone system of the Police Directorate, there is a special telephone network, a branch exchange system and connecting leads system.

Special telephone system is a set of inter-linked analogue, telephone exchange systems, type Iskra SI 2000, with telephone terminals connected to them. Special system is not connected to the public network, and it is used for voice signals and telefax data transmission. System of analogue private branch exchange system, type Iskra SI 2000 and Panasonic, is used for communication to public telephone network.

With regard to the connection leads, leased transmission systems of the public operator are used.

Channels 64 Kb/s which are parts of linking routes of the operators are dominant in the traffic. Digital channels are converted to analogue transmitters of the private branch exchange system. Facilities of the Police Directorate (Regional Police Units, Local Police Units) are connected to the public operator's facilities with the optical links of an appropriate capacity.

For internal communication, as well as for communication with the users of the public mobile and land-line telephone system, Police Directorate leases close users group of the public mobile phone operator.

Police Directorate has five stationed and two mobile centres for state border surveillance on the sea and Skadar Lake on its disposal. Signals from the optoelectronic sensors (video cameras) from stationed centres are connected with surveillance communication centre by hired digital links.

Commercial software analytical tools i2 Analysts Notebook and i2Base have been used for a longer period of time in the process of criminal intelligence analysis. Their use has proved very useful while working on individual crime investigations. The main goal of this software is to give a graphic overview of the huge amount of information from different sources, which facilitates process of drawing a precise conclusion, based on the available information and making decisions on further direction of the crime investigations.

However, in order to support new model of work, which has currently been developed in the Police Directorate of Montenegro, under the title: Intelligence led Policing including higher scale problems, the need has been identified for a new centralized criminal-intelligence database with adequate processing software tools, which will provide for a greater application of the existing commercial analytical tools. To that end, in the beginning of 2009 the Working plan for development of IT support to the Model: Intelligence led Policing was produced. This plan includes all components (software and hardware) necessary for development of uniformed Criminal-Intelligence system of the Police Directorate of Montenegro (Crime Intelligence System - CrIS). According to the plan the Criminal Intelligence System will consist of the following subsystems:

1. Document Flow;
2. Entity management system;
3. Case management system;
4. Security system - PKI

In May 2009, the first step was taken, i.e. the first software model to entry and search of the intelligence and information in the central-base, assessed by 4x4 methods, became operational. This module is the first part of the subsystem for documents flow (Document Flow). Software was developed in Montenegro with financial support of the Swedish Agency (SIDA) and experts support



and supervision of the Swedish National Police Board. In the next period (2009-2010), through a development of the programme with Swedish Police, it has been planned to continue the work on the remaining modules belonging to:

1. Subsystem for Document flow (Document Flow)

This subsystem will make it possible to have all documents in the Police Directorate produced in computer system and disseminated further through the channels/routes defined in advance. The access to the documents will be regulated in accordance with the levels of access, defined in advance.

As the full implementation of the new model of work and development of entire Criminal-intelligence system require a longer period of time, in the beginning of 2009 Police Directorate applied to European Commission- IPA funds for 2010, for the continuation of this project.

Taking into consideration that implementation of the model Intelligence led Policing and further development of the Information system is a strategic goal of the Police Directorate of Montenegro, during 2010-2011 the remaining subsystems will be developed in order to wrap up Criminal Intelligence system as one unit.

2. Entity management subsystem (Entity management system)

This subsystem is specially used for data processing against persons, groups and facilities interesting from the security point of view, as well as for the analysis of their inter-relations.

3. Case management subsystem (Case management system)

This subsystem will be used for registration of all criminal offences and events, case (investigations) management, intelligence projects (researches) and for statistics reports development.

4. Security computer system - PKI

This system will allow the access to the computer network and to data bases of the Police Directorate only to the employees with smart cards. Implementation of the PKI system will include authentication and identification of the user, computer, service and network device, digital signature and encryption of the data.

**97. Please describe the training system for police officers. Which training facilities and training programmes exist (schools, training content, target groups, knowledge networks, special skills, assessment of on-going development training)?**

Based on the project on Montenegro Police Education Reform and on the Decision on establishment of Police Academy, education, training and professional development of the civil servants and state employees of the Police Directorate is conducted by the Police Academy. This is achieved through the implementation of different types of education programmes such as:

- Basic police education,
- Additional police training,
- Specialised training and professional development, and
- Police Management training.

The aim of the Basic police education programme is to provide the new police officers with the professional knowledge for policing. This education programme sets foundations for specialised and professional development and career development.

Pursuant to the Article 2 of the Decision on establishment of the Police Academy (Official Gazette of the Republic of Montenegro 25/06), upon the proposal of the Council for Professional education, the Ministry of Interior and Public Administration passed the Decision on publicly valid educational

programmes for the career as a police officer, lasting 10 and 18 months (Official Gazette of the Republic of Montenegro 59/06).

Educational programme for the career as a police officer, for the candidates who completed main studies, lasts for 10 months.

Educational Programme for the career as a police officer, lasting for 18 months, or 2 625 lessons, for the candidates who completed four-year high school. This programme is implemented through three modules:

- I module -12 months of theoretical and practical training at the Academy;
- II module - three months of practical training in Regional Police Units, and
- III module - three months of the additional theoretical, practical and simulation training at the Academy. Within the third module students take final exam.

Through the theoretical, practical and simulation training in the first module, students are trained in general education subjects, criminal-legal and other police related fields. There are 27 subjects in total, and the education is implemented through 1 779 lessons out of which 616 are theoretical lessons, 803 practical lessons and 360 lessons of simulation training. Principles of Bologna process are fully respected in the implementation of this programme (organisation of training, following engagement during the lessons, examinations, etc.). The exams are eliminatory, and therefore the students, who do not pass some of the exams within the given period of time, lose the status of the Police Academy student and the right to continue education at the Academy.

Second module consists of 580 lessons and is implemented in the Regional Police Units. During this module, students by being engaged in the process of work, get an overview of the organisation and learn about the way the police function, about security challenges at the level of Regional Police Units, and test and apply the knowledge and skills gained during the first module at the Academy.

Practical training in the second module is the training with assistance and support of mentors (one student – one mentor). Mentors are appointed by operational police departments, selected in accordance with special criteria, and then trained in mentoring at the Academy. In the process of their selection, professional and ethical criteria are to be respected, and communication skills, motivation, decision making skills, etc., are to be assessed. During the training, mentors gain knowledge from andragogy, teaching methods, facilitating skills, skills of giving feedback and criteria for assessment and evaluation of students.

Mentors follow and direct students work, evaluate their appearance, motivation, knowledge in certain fields and relation with citizens on daily basis, and provide objective feedback on the performance of each and every student, and take part in developing plan and programme for the third module.

Work of the mentors and students at the level of the Regional Police Units is supervised by the coordinators.

Evaluation of the students work is done on daily basis by police officers-mentors while the weekly and monthly evaluation is done together by mentor and coordinator.

Coordinators are managers from Regional Police Units who completed six-week trainer development course, organised by the Academy, in cooperation with the OSCE Mission to Montenegro. Professors and instructors from the Academy are also involved in the process of monitoring and coordination of the students practical training.

Final assessment of the students practical training is defined by mentor, coordinator and coordinator of the practical training at the Academy.

Third module consists of the additional and supplementary education, preparation for the final exam and taking of the final exam. It is organised based on the analysis of the evaluation of the training conducted in the first and second module. The aim is that students through practical and simulation training, practice certain police procedures and actions.

Through the implementation of the education in the third module, participants are to be prepared for the final exam.

The contents defined by the Basic police education programme are implemented by the professors and instructors from the Police Academy, and the guest lecturers (university professors, experts in certain fields from the Police Directorate, the Ministry of Interior and Public Administration and the Prosecution Service), while for some topics experts from international organisations, or from the police academies and criminalistics faculties from the region are invited.

Programme of the additional police training is organised for the employees already working in the Police Directorate, but who have not completed basic police education.

Namely, due to a very complex security situation during the period 1999 – 2001, a huge number of new police officers were employed under a term contract. Due to the limited capacities, it was not possible to organise education of these employees at one time. The Academy has prepared curriculum which anticipates training in 13 subjects, with the total number of 780 lessons, out of which 383 lessons of theoretical, 337 lessons of practical and 70 lessons of simulation training.

The aim of this training is to obtain basic police education (knowledge and skills) through getting acquainted with the organisation, affairs, tasks, duties and powers of the Police Directorate. Completion of this education is a necessary precondition for the police officer to be contracted or to get a full time job.

Programme of specialised training and professional development of the police employees is conducted based on the annual training programmes which are harmonised with, in the practice identified, educational needs of the police operational units. The needs are identified together by managers of the operational departments, Police Human Resources Section and Police Academy staff responsible for developing training programmes.

Through this type of education, the contents that represent preparation for implementation of the new legislation, strategies, action plans and particular projects are implemented. Through professional development, participants also gain professional knowledge, skills and competencies for a successful performance of policing in specific security conditions and for the efficient response to the new forms of organised and other crime (cyber crime, terrorism, conflict management, undercover investigator, etc).

Education, which represents practical training of the police officers for implementation of new and very important projects, such as Community Policing, School Resource Officer, Integrated Border Management, etc., is implemented under the Professional development programme.

Courses and seminars which fall under the area of specialised training and professional development are most often conducted in cooperation with international organisations (OSCE, ICITAP, Council of Europe, American Ministry of Defence, Swedish National Police Board, Austrian Police, Turkish TADOC Academy, International Training Centre from Hungary, etc.).

Police management training programme is aimed at development of management and leadership, i.e. knowledge and skill for leading organisational units in various security situations.

Through these training programmes police managers gain skills related to problem scanning in the organisation, planning organisation and coordination, changes and changes management, motivation, mentoring, decision making, etc.

Since 2007, constant training of Police Directorate officers is conducted through the programme of specialised development of civil servants and state employees adopted by the Human Resources Administration.

Trainings are organised through different thematic units which are necessary for civil servants and state employees regarding promotion and expanding their knowledge related to already acquired and new knowledge concerning current matters. These trainings are divided into 9 modules which refer to training of trainees and newly employed persons for work in state bodies, state administration and functioning system of state bodies, system of employees, fight against corruption in public administration, management/governing in state bodies, financial and budget

aspects of work of state bodies, general and related affairs in state bodies, communication in state administration and international cooperation and so-called European affairs.

Computer courses and foreign language courses are organised as well.

### **98. Is there training tailored to the fight against specific types of crime?**

In accordance with the defined Annual training programme, within specialised training and professional development, Police Academy organises courses and seminars aimed at development of knowledge and skills needed for more efficient suppression of the specific types of crime. Most often, these seminars are conducted with engagement of the experts from the international organisations and associations and police services of the European countries.

The following trainings have been implemented in cooperation with the American programme ICITAP: suppression of organised crime, economic crime, cyber crime, currency counterfeiting – preventive and repressive aspect, undercover training, special surveillance techniques, etc.

In cooperation with the OSCE Mission: suppression of drugs trafficking, border police training on suppression of trans-border smuggling, system of the state border protection from potential terrorist attacks, etc.

In cooperation with the International Training Centre from Hungary: crisis situation management, undercover investigator, blackmailing and kidnapping, tactical training, etc.

In cooperation with Austrian Development Agency: witness protection, forged documents identification, conducting interviews, trafficking in human beings, etc.

In cooperation with the American Ministry of Defence through programmes EXBS and DTRA: crisis situation response, WMD counter-proliferation and prevention of smuggling over state borders, etc.

In cooperation with the Council of Europe: conducting interviews, freedom of assembly, police and minorities, domestic violence, police and human rights, etc.

Some of the training programmes at the Police Academy are conducted by the lecturers from the Academy, the Police Directorate, Prosecution Service, Ministry of Interior and Public Administration, University of Montenegro and other institutions.

The most common training topics are: aspects of economic crime in relation to trade in securities, detection and suppression of cyber crime, fight against organised crime, cooperation of police services in the Region in suppression of organised crime, specific types of criminal offences related to drugs, suppression of corruption, identification of stolen vehicles and documents, trafficking in human beings - children exploitation, counter-diversion protection, handling informants, illegal migration, narcotic drugs and prevention of the drug addiction, investigations related to violations of original regulations.

Annual programmes of specialised and professional training of the civil servants and state employees of the Police Directorate are prepared and implemented by the Police Academy, based on the received requests from the operational departments of the Police Directorate. After the adoption, programme is jointly verified and the implementation calendar of the defined training contents is being decided. Civil servants and state employees are professionally developed in accordance with the Programme of professional development which is adopted by the Human Resources Administration. This Programme is designed for different target groups of civil servants and state employees, as well as for the leadership.

In order to reach the training goal, it is necessary to have a good quality planning and education of employees, especially in the priority areas of policing, and in that sense, systemic approach to human resources allocations-selection of the employees who will be participating in trainings. Human Resources Section defines strategic training framework, which is based on the identified needs and analysis resulted from the Police Directorate strategic goals and the work plan of its organisational segments.

**99. Is there functioning co-operation with liaison officers in third countries within the common framework? If yes, where do such liaison officers exist?**

International cooperation of the Police Directorate in the fight against crime is carried out in accordance with ratified conventions covering this area, bilateral agreements, valid national legislation, and the membership in international police organisations.

Particular cooperation with foreign liaison officers is developed on a daily basis through INTERPOL NCB (on the issues related to operational police cooperation and concrete police activities), and the Division for International Police Cooperation and European Integration (on the issues related to strategic police cooperation, negotiations and concluding bilateral agreements and management of the European integration process within the Police Directorate competences).

Police Directorate cooperation with the third countries is developed through the network of INTERPOL liaison officers and through the network of SECI Centre liaison officers. Cooperation with SECI Centre is developed on the basis of the Agreement on cooperation for prevention and fight against trans-border crime, signed on May 26 1999 in Bucharest, Romania. The Government of Montenegro has appointed a police liaison officer, who started working in November 2009.

*An overview of the cooperation with liaison officers of the third countries is as follows:*

- *United States of America* – Cooperation with ICITAP to Montenegro is developed through training and seminars for organisational units of the Police Directorate, as well as through donations which are significantly important for further development of the technical capacities. The Police Directorate has also established cooperation with legal attaches of the FBI office, located in Sarajevo, Bosnia and Herzegovina. Criminal Police Department, particularly Division for fight against drugs and smuggling, develops cooperation with the liaison officers of Drug Enforcement Administration (DEA), located in Italy. Cooperation related to education and equipment is also developed with the Office for political and military affairs, at the American Embassy in Podgorica.
- *Australia* – Cooperation with Australian Federal Police is developed through the liaison officer, located in the Australian Embassy in Belgrade. Memorandum of understanding between Montenegro Police Directorate and Federal Australian Police on fight against trans-national crime and the development of police cooperation is expected to be signed in the course of 2010. The Memorandum is being drafted.
- *Japan* – Cooperation with the Police of Japan is developed through the liaison officer, located at the Japanese Embassy in Belgrade.
- *Canada* – Cooperation with the Canadian Royal Mounted Police is developed through the liaison officer, located at the Canadian Embassy in Vienna.
- *Norway* – Cooperation with Norwegian police is developed through the liaison officer located at the Norwegian Embassy in Belgrade (note: liaison officer responsible for all Nordic countries, including Denmark, Finland and Sweden)
- *Israel* – Cooperation with Israeli Police is developed through liaison officer located at the Israeli Embassy to Turkey.
- *Russian Federation* – Cooperation with Russian Police is developed through liaison officer located at the Russian Federation Embassy in Podgorica. Cooperation is also developed based on the Agreement on cooperation between the Ministry of Interior and Public Administration and Ministry of the Interior of the Russian Federation, signed on 8 October 2008 in Saint Petersburg, Russia.

Police Directorate also cooperates with some other countries through their representatives in Diplomatic-Consular Missions in Montenegro.

**100. Describe the co-operation with neighbouring countries (also as regards border control and border surveillance). Which police cooperation agreements exist or are planned?**

Police Directorate of Montenegro has recognised the need of establishing relations with the neighbouring countries and establishing everlasting peace and stability in the South East Europe region, aimed at overcoming divisions and establishing stability through the dialogue and cooperation.

Regional cooperation that Police Directorate has established with the neighbouring countries has already given the concrete results in the area of justice, freedom and security. Key priorities of the Police Directorate in the fight against organised crime and corruption are implemented through strengthening regional cooperation.

Cooperation with the neighbouring countries also includes practical measures related to exchange of experience on border control issues, police training and exchange of intelligence and conducting joint actions.

Since Montenegro has established diplomatic relations with all countries in the Region, at the level of the Ministry of Interior and Public Administration and Police Directorate, aiming at further development of regional cooperation on more efficient border control, police cooperation and fight against all types of crime, the following bilateral agreements and protocols have been signed:

**Republic of Albania**

- Agreement between the Government of Montenegro and the Government of the Republic of Albania on cooperation in the fight against terrorism, organised crime, trafficking, as well as in other illegal activities, signed on 31 October, 2003 in Podgorica, Montenegro.

Pursuant to the Agreement, the cooperation is developed with the Ministry for Public Order of the Republic of Albania through joint actions on suppressing all forms of crime, especially trans-border and organised crime.

Police Directorate of Montenegro pays special attention to the implementation of the multilateral treaty, the Convention on Police Cooperation in South East Europe (PCC SEE), which was signed on 5 May, 2006 in Vienna, Austria, and presents a legal framework for enhancing border security systems, as well as the basis for more comprehensive police cooperation between the signatory countries.

Within the process of the Convention implementation, in February 2008, the following protocols were signed:

- Protocol between the Ministry of Interior and Public Administration of Montenegro and Ministry of Interior of the Republic of Albania on establishing joint patrols along the state border, signed on 15 January 2008. For purpose of the Protocol implementation, joint patrols have been established on the River Bojana and Skadar Lake, as well as on the green border between Montenegro and Albania.
- Protocol between the Ministry of Interior and Public Administration of Montenegro and Ministry of Interior of the Republic of Albania on organising meetings at national, regional and local level between the border services representatives, signed on 15 January 2008. During the meetings, participants assess the efficiency of the data exchange system, joint risk analysis, plan mutual support on the staff training and joint exercises, the exchange of data on illegal immigration, trafficking in human beings, smuggling of goods, seek for modalities for enhancing cross-border cooperation and timely information exchange.

**Bosnia and Herzegovina**

- Agreement between the Government of the Republic of Montenegro and the Council of Ministers of Bosnia and Herzegovina on cooperation in fight against terrorism, organised crime, illegal trafficking in narcotics, psychotropic substance and precursors, illegal immigration and other criminal offences, was signed in Budva, Montenegro on 7 September 2007.

Pursuant to the Convention on Police Cooperation in South East Europe, the following agreements and protocols have been signed:

- Protocol on establishing joint patrol along the joint state border, between the Ministry of Interior and Public Administration of Montenegro and Ministry of Security of Bosnia and Herzegovina, signed in Belgrade, Serbia on 6 March 2009. Implementation of this Protocol was launched by the training of the police officers who will work in joint patrols, and they are going to be established after the training, and after having created conditions for joint patrol functioning.
- Protocol between the Ministry of Interior and Public Administration of Montenegro and the Ministry of Security of Bosnia and Herzegovina on organising meetings at national, regional and local level, between the border service representatives, signed in Budva, Montenegro on 22 February 2008.
- Agreement between the Government of Montenegro and the Council of Ministers of Bosnia and Herzegovina on conducting joint checks at the border crossing points, signed in Belgrade, Serbia on 6 March 2009;

#### **Republic of Serbia**

- Protocol between the Ministry of Interior of the Republic of Serbia and Ministry of Interior and Public Administration of Montenegro on cooperation in fight against terrorism, organised crime, illegal trafficking in narcotics, psychotropic substances and precursors, trafficking in human beings, Illegal immigration and other criminal offences, as well as on cooperation in other fields falling under their competencies, which was signed in Belgrade, Serbia on 3 December 2003.

Good bilateral cooperation has been established with regard to the joint border security, in accordance with the Strategy on integrated border management and the Convention on police cooperation in South East Europe.

The following Protocols have been signed:

- Protocol between the Ministry of Interior and Public Administration of Montenegro and Ministry of Interior of the Republic of Serbia on organising meetings at national, regional and local level between the border service representatives, signed in Budva, Montenegro on 22 February 2008. At those meetings representatives of the respective countries exchange information related to border security, enhancement of the further cross-border cooperation, aiming at suppression of all forms of trans-border crime.
- Protocol on establishing joint patrols along the joint state border, between the Ministry of Interior and Public Administration of Montenegro and Ministry of Interior of the Republic of Serbia, signed in Belgrade on 6 March 2009.

#### **Republic of Croatia**

Trans-border cooperation between the Police Directorate and Ministry of Interior of the Republic of Croatia is developed in the light of common interests and within the framework of signed bilateral agreements:

- Agreement between the Ministry of Interior of the Republic of Montenegro and Ministry of Interior of the Republic of Croatia on police cooperation, signed on 22 November 2005 in Zagreb, Croatia.
- Protocol between the Government of the Federal Republic of Yugoslavia and the Republic of Croatia on temporary regime along the south border between the two countries, at the location of Prevlaka, signed on 10 December 2002. This protocol is the first example of the joint successful work of the border services in the Region. Border traffic has been established, border crossing points have been opened, and a part of the aquatorium along Prevlaka has been protected by joint Montenegrin –Croatian police teams.

#### **Republic of Kosovo**

Cooperation of Montenegrin Police Directorate and the Police Service of Kosovo is developed through joint actions in suppressing all types of crime, especially trans-border crime and organised

crime. Montenegro Border Police Department has very intensive cooperation with international security forces in Kosovo, and therefore regular meetings at command, coordination and local level are held, aiming at exchange of data relevant for the security of border line and for suppression of trans-border crime.

- Agreement on temporary operating procedures between the Ministry of Interior and Public Administration of Montenegro and KFOR (International security forces in Kosovo) – TOPA, signed on 15 December 2008. The Agreement stipulates establishment of efficient cooperation and coordination procedures among the parties involved in protection of the state border along the international border between Montenegro and Republic of Kosovo, as well as regular meetings at all levels, between the representatives of the Border Police Department of Montenegro and KFOR.
- Memorandum on understanding on police cooperation between the Government of Montenegro and the UN Mission Interim (UNMIK), signed in October 2003.

The cooperation has also been established with EULEX Mission to Kosovo. In the time to come, it is expected to start negotiation for signing the Agreement on Cooperation.

### **Republic of Macedonia**

A good cooperation in all areas of the fight against crime has been developed with the Republic of Macedonia, and it will be further developed in the future period, through establishment of communication on the expert level.

- Agreement between the Government of Montenegro and Government of the Republic of Macedonia on cooperation in fight against terrorism, organised crime, illegal trafficking in narcotics, psychotropic substance and precursors, illegal immigration and other criminal offences, signed on 10 June 2003 in Skopje, Macedonia.

### **Republic of Italy**

Police Directorate develops regular cooperation and communication with the representatives of the Italian Police through the police attaches office in the Embassy of the Republic Italy to Podgorica. The cooperation is developed through regular intelligence exchange, joint operations and other necessary police activities of interest to both parties.

## **101. Please describe the reforms of the police that have been implemented in recent years.**

A future vision of the Police Directorate and strengthening its professional capacities, depolitisation and efficient organisation, aimed at realising full protection of the state and its citizens, have been set by the Police, as the strategic foundation of the reform plan, in the process of security sector reform. Analysis of matters of special importance for future functioning of the police and its transformation into a service for citizens preceded the security sector reform.

For the purpose of launching the reform, on 21 April, 2002, the first document was produced, under the title Basis of the Strategy on Reform of the Ministry of Interior. The feasibility study in the Ministry of Interior was conducted and recommendations and guidelines for the development of the Ministry were formulated, i.e. the areas in which the reform was necessary. Strategic Action Programme was developed for the period 2003-2006, as the appendix to the Agenda – the Government Programme of Work. The establishment of the Unit for strategic planning provides support to the reform activities which were considered as the priority. Cooperation with the Royal Canadian Mounted Police (RCMP) resulted in development of the document “Strategic planning – Overview of the external and internal situation and trends” on 14 October 2003.

The Ministry of Interior and the Danish Institute for Human Rights (DIHR) signed an Agreement on cooperation, aimed at further development of the reform project, and to that end, development of the strategic document Vision, values, mandate, mission and challenges, which was published on 20 June 2005, in order to identify priorities, prepare reform and establish the capacities for its implementation. The OSCE Document Police Reform in Montenegro 2001-2005 - Assessment and



Recommendations was published on 22 April 2006. The Police has fulfilled most of the recommendations from the Report.

On 26 April 2005, the Parliament of the Republic of Montenegro adopted the Law on Police, followed by regulation of the Police as an independent administration authority, and its scope of work and competencies defined. The Law regulates the issues related to: police duties, police powers and tasks, status of police officers and control over the police work. The process of wrapping up of the legal framework – drafting and adoption of the legislation and strategic documents, which are linked to or influence the police work and harmonisation of the legislation governing this area, with international standards, being adopted and implemented by the European Union member states, has been initiated

The Law on Police precisely and transparently governs the use of the police powers, thus managing to reach the harmonisation with the principal documents and recognised international legal standards in the area of human rights and freedoms (International Pact on Civil and Political Rights and European Convention on Human Rights and Fundamental Freedoms), and it laid down the basis for creation of modern and efficient police organisation meeting the needs of the society.

The new Rulebook on internal organisation and job descriptions of the Police Directorate was adopted on 28 December 2006.

In the previous period, Montenegrin Police made important steps forward in many areas, among which opening of the Forensic Centre should be specially stressed out, being the most modern facility of that kind in the Region. Montenegrin Project on community policing was awarded as the best project in South East Europe in 2008.

The above-mentioned police reform activities have been recognised and consolidated through the National program on integration of Montenegro to the European Union, for the period 2008-2012.

According to the priority directions and reform areas, the goals and time framework for reaching them, as well as the concrete steps on how to reach those goals, have been defined. Therefore, by adoption of the new Law on Police, during the first six months of 2010, by adoption of the new and amendments to the current legislation under the competence of the Police Directorate (after the implementation of the new Criminal Procedure Code), Police Directorate and organisation of work will be restructured, in accordance with European Police standards and best practices, and according to the real needs and adaptation of all police structures to the new organisation. Furthermore, establishment of the system of assessment and control over the implementation of the EU standards in policing will secure the use of modern methods of work and functioning of the Police in Montenegro (implementation of the provisions of the international Conventions, Declarations, standards and guidelines of importance for police in all areas of work).

This primarily applies to the reached level of establishing and reinforcing the structural integrity of the Police service, achieved through: police accountability (professional standards and oversight), transparency (internal and external openness), operational independence (depoliticisation and professionalisation) and transformation (change from the classical and traditional model of work to the model of work close to the citizens and community, in which police serves the citizens). Building the structural integrity of the Police is also one of the main tools for building public confidence in the Police.

Within the reform of the security sector and Montenegrin society in general, police education reform was implemented. The basis for implementation of this reform was determination of the Government of Montenegro to have our own police education system, within which, through the modern education, police and other law enforcement agencies will harmonise their work with European standards, increase the level of legality, accountability, professionalism, sensitivity to human rights, cultural differences and ethics, respond efficiently to the security challenges, thus significantly influencing the improvement of the living standards of Montenegro citizens.

Project on police education reform in Montenegro was developed on the basis of this commitment, and during the public discussion, it was positively assessed by the Council of Europe, OSCE, ICITAP, Danish Institute for Human Rights (DIHR) and other relevant international organisations, and by the competent ministries (Ministry of Education and Science, Ministry of Interior, Ministry of

Justice, etc) University of Montenegro and NGO sector. The Project was adopted by the Government on 4 August 2005.

Based on the Project, the Government, at the session held on 23 March 2006 adopted the Decision on establishment of the Police Academy, by which Police High School phased out.

Newly established Police Academy, as the only law enforcement educational institution, conducts education, specialised training and professional development of the civil servants and state employees of the Police Directorate and the Ministry of Interior. Education is conducted through planning, organisation and implementation of:

- The basic police education, by the means of which future police officers become qualified for policing, obtain the basis for specialised and professional development and career development,
- Additional Police Training, for professional development of the police officers who already work in police, but without having completed basic police education,
- Specialised training and professional development, through which criminal police officers, border police officers and general police officers, as well as police officers from Special Anti-Terrorist Unit and Special Police Unit obtain professional knowledge and competencies for professional policing in specific areas (organised crime, terrorism, cyber-crime, WMD counter-proliferation, conflict situation management, trafficking in human beings, domestic violence, etc.),
- Police management training, aiming at development of leadership and management, problems scanning, motivation and mentoring, decision making, changes management, etc.;
- Education of the Customs Administration employees;
- Training of the personnel dealing with protection of persons and property and detective services;
- Training of the personnel of the Penitentiary institution;
- International police cooperation development in order to reach standards in implementation of the afore mentioned teaching contents;
- Publishing-library activities, research work in the field of security and criminalistics.

Basic police education, additional police training and specialised training and professional development and the Police management training are conducted in accordance with the new curricula and training programmes. New system of education is characterised by proactive theoretical –practical and simulation training, with the emphasise on good judgment, openness, communication skills, tolerance to stress, good understanding of the social, cultural and other community issues, respect and implementation of the rule of law, respect of the principle of equality of all citizens, gaining knowledge and skills for effective performance of all police activities.

Activities on the development of the Strategy of Development and Functioning of the Police Directorate for the period 2010-2014 are in progress. The Strategy will define priorities, goals and directions which are to be accomplished in the following five-year period as well as the measures to be undertaken for changes in the legal, institutional and other frameworks and which should promote the development and functioning of the Police.

## **102. What are the current and future priorities of the police? What is the method for assessing priorities?**

Within its competences, the Police Directorate focuses its activities primarily on the protection and enhancement of the overall security in the country, protection of citizens and property, prevention and detection of serious crimes and organised crime and corruption offences, preventive work and maintenance of the stable public peace and order, enhancement of the traffic safety situation, border security and harmonisation with security standards in external borders protection, VIPs protection and protection of vital facilities, provision of the conditions for efficient work of all organisational units, building integrity and specialisation and professional development of police

officers, implementation of the European standards and methodologies of work (best practices) in positioning police as the citizens service.

In order to prepare for faster progress towards the European integration, particularly in the field of fight against corruption and organised crime, international terrorism and positioning police into citizens service, Montenegrin police will in the period 2010 – 2014 implement several priorities, among which the following should be to:

1. re-structure the Police directorate and organisation of work in accordance with the police standards and real needs, and adjust all police structures to new organisation model;
2. finalise the activity on establishment and proper positioning of the crime –intelligence affairs and databases on crime;
3. reduce to the lowest possible extent all types of serious and organised crime;
4. implement commitments arising from international documents;
5. fully implement the strategic documents:
  - Innovated Action Plan for the implementation of the Programme for fight against organised crime and corruption for the period 2008-2009,
  - National strategic response to drugs (2008-2012) ([Annex 186](#)) and Action Plan for 2008-2009;
  - Strategy for integrated border management and Action Plan for its implementation for the period 2008-2012;
  - Project on enhancing the capacities of the Intelligence –led policing in Montenegro;
  - Project on community policing; and

The Police Directorate priorities in the future period will also be the following:

- Maintenance of favourable security situation (Vision, values, mandate, mission, and challenges),
- Fight against corruption and organised crime,
- Fight against drugs,
- Fight against international terrorism,
- Improvement of the traffic safety situation,
- suppression of trans-border crime,
- implementation of the police modern methods of work and introducing the system of monitoring and control of their implementation;
- further strengthening of human resources, technical and other capacities.

The defined priorities will also be implemented through:

- adoption of the new Law on Police in the first six months of 2010, adoption of new and amendments to the current legislation and secondary legislation, falling under the police scope of work;
- adoption of the new and amendments to the current strategic documents.

The priorities in all areas of work have been defined based on the overview of the situation, recognised trends, analysis and assessment of the scope and importance of the work - issues, needs, competences, strategy and working plans proposals, estimated problems Government Programme of work, Montenegro National security strategy, Action plan for implementation of the programme of fight against organised crime and corruption, recommendations of the European Partnership, Action plan for implementation of the European partnership, National programme for integration of Montenegro in the European Union (NPI) for the period 2008-2012, Stabilisation and association agreement, Montenegro progress report by European Commission.

**103. Does a code on police ethics exist? How is it enforced?**

Police Code of Ethics (Official Gazette of the Republic of Montenegro 1/06), as a set of principles on ethical performance of police officers, is based on the principles of international and domestic legislation. The Code represents a set of principles on the performance of police officers and it obliges all police officers and other persons, pursuant to the law, to take part in performing Police tasks.

Police Code of Ethics was drafted to reflect the needs and aspirations in developing the Police Directorate into modern police organisation, aiming at adoption and implementation of modern police standards and increase police accountability to the highest level possible. The Code has been harmonised with the principles of the European Code of Police Ethics, which was adopted on 19 September 2001 by the Council of Europe Committee of Ministers (Recommendation Rec (2001)10).

Ethical Committee was established in February 2006 and consists of seven members out of whom, four members are police employees, and the other three members being from the NGO sector, Police Academy and the Ministry of Interior and Public Administration.

The President of the Ethical Committee convokes the Committee members, when appropriate. Ethical Committee assesses ethical behaviour of police officers. To that end, it evaluates the cases, provides opinions and submits them the disciplinary prosecutor if a disciplinary procedure is initiated against a police officer. In 2008, the Ethical Committee examined 34 cases, in 26 of which it gave an opinion and submitted them to the disciplinary prosecutor. In the period from 1 January to 1 October 2009, the Committee examined 41 cases, out of which in 40 it gave its opinion and submitted them to the disciplinary prosecutor.

Police Directorate, in cooperation with the OSCE Mission to Montenegro, printed and published the Code of Police Ethics in Montenegrin and English language, and disseminated it to all police officers.

**104. What is done in the field of crime prevention? How is this linked to the threat assessment model and identified priorities?**

The issues, scope and rate of crime is assessed based on the statistics and other data on criminal offences, structure, the modus operandi and place of commission of criminal offences, perpetrators of criminal offences and consequences within the related time period, intelligence and other data collected by police officers, data obtained through the cooperation with other authorities, through international cooperation, conducted research activities and other open sources information.

The analyses of situation and trends of crime provide a precise definition of the issues and the scope of crime at the relevant area, at a certain time, identify potential crime focal points, actions of the individuals and criminal groups, international connections, and other data relevant for organised and efficient policing in the field of crime suppression.

Obtained data, as a result of the analytical overview of the situation and issues and police performance in all areas of work, provide for efficient management and planning of the police measures and actions in suppressing criminal offences. To that end, the Police Directorate pays special attention to prevention and proactive work in preventing of all types of crime.

Prevention and suppression of crime by the Police Directorate is conducted at the central, regional level and local level. Organisational structure of the Police Directorate is given in answers to questions No. 95 and No. 96.

Priority tasks with regard to the crime prevention fall under the competence of the Criminal Police Department and its specialised organisational units - sections: General Crime Suppression Section, Economic Crime Suppression Section, Section for Fighting Organised Crime and Corruption, Section for Fighting Drugs and Smuggling, Special Verifications Section, Witness

Protection Unit and INTERPOL NCB Podgorica, Regional police units and Local police units through the activities conducted by the criminal police.

All other organisational units of the Police Directorate are involved in crime prevention related activities.

Monitoring and crime prevention is performed by applying operational-tactical and technical measures and actions, with the use of special investigative techniques (MTN) and introducing territorial and line type of work.

The assessments of the threats and challenges are drawn up based on the overview of the issue in the country, identified trends, issues in the region, identified global security issues and conducted research.

The priorities in detecting and suppressing crime have been identified in compliance with the crime rate, threat assessments, commitment of the Government of Montenegro, Recommendations of the European Partnership, Action Plan for the Implementation of the Program for the Fight against Corruption and Organised Crime and National Strategic Response to Drugs 2008-2012.

Determination of priorities is conducted on a monthly, quarterly and annual level, and work plans for the following period are adopted accordingly.

In 2005, the Government of Montenegro adopted the Program for the Fight against Corruption and Organised Crime, and on 24 August the Government adopted Action Plan for its implementation, i.e. Innovated Action Plan, adopted on 29 May 2008. The National Commission for monitoring the Action Plan for implementation of the Programme for the Fight against Corruption and Organised crime was established on 15 February 2007 by the Government Decision. In its previous work, the National Commission has adopted the total of six reports on the implementation of measures from the Innovated/Action Plan for implementation of the Program for the Fight against Corruption and Organized Crime.

In October 2009, the Government established the Commission for the development of the new Program for fight against organised crime and corruption and the Action Plan for its implementation for the period 2010-2012. The Commission consists of the representatives of the Government and civil sector.

In continuing the reform process, Police Directorate implements a new model of "Community Policing" since 2004, in cooperation with the OSCE, which is applied on the territory of the state since 15 June 2008.

Thus, the project includes all cities in Montenegro, and 116 contact police officers and 66 Heads of Police Directorate from the General Police Affairs Department. Centre for Democracy and Human Rights (CEDEM), at the beginning of the implementation of the pilot project and in later stages, conducted research which indicated an increase in confidence of the public in work of the Police Directorate.

At the end of 2008, the Project was expanded to the Criminal and Border Police Departments.

In December 2008, in accordance with the Community Policing Project, Criminal Police Department, within its competence, determined further development directions of this Project and its implementation, especially in the area of suppressing juvenile delinquency. The initial phase of the development of the juvenile delinquency prevention within the Project is implemented in Podgorica, Bijelo Polje and Bar.

For the purpose of the Project implementation, plans of work have been developed related to: a family as a primary group, schools, centres for social work, health care organisations, and to the use of the youngsters free time.

Office for suppression of juvenile delinquency within the Criminal Police Department coordinates activities related to implementation of the Project. Educational institutions, social and health care institutions, courts, prosecution offices, etc., are partners in further work.

When criminal offences related to drugs and drug abuse are concerned, Police Directorate officers conduct activities by implementing planned activities directed towards early identification of

perpetrators of these criminal activities as well as undertaking measures in preventing and suppressing these instances, and especially related to the distribution of drugs among school children and university students, as the population which has to be specially protected by the preventive work.

Regarding the prevention of drug-related crimes, intensive cooperation is carried out with educational, medical and other institutions, as well as with municipality offices for drugs prevention. Through these, mainly educational activities, preventive measures are implemented, specified in the National Strategic Response to Drugs, adopted in May 2008.

These activities, as well as the constant presence on the spot and intelligence work of the officers specialised in the narcotic drugs suppression, contribute to the prevention of creating open "narco-scenes", i.e. locations at which it would potentially be possible to come into possession of drugs in fast and easy way.

However, in addition to the above-mentioned, further development of the prevention system is required, through implementation of the National Strategic Response 2008-2012 and the Action Plan for the implementation of the National Strategic Response to Drugs 2008-2010, and strengthening prevention related capacities and professional development of the officers specialised in drugs suppression, juvenile delinquency suppression, as well as further development of the Community Policing Project.

At the end of 2007, in partnership with the Police of the Kingdom of Sweden, the Police Directorate initiated the reform of the process of work, by implementing the model Intelligence Led Policing.

The new model of work means that all strategic and operational activities are planned and dominantly focused on proactive work, i.e. prevention and suppression of the issues and threats.

Further development of the Project during 2008/09 is based on strengthening administrative capacities and sustainable development in the field of training for collecting, processing and analysis of the intelligence data, drafting the manual: Intelligence Led Policing, development of information technologies as the support to the intelligence work, and implementation of the model through pilot project which is currently implemented on the central and local level (Bar i Budva).

The above-mentioned project will end by the mid of 2010. In 2009, the Police Directorate applied for continuation of the Project implementation to the European Commission - IPA funds 2010, referring to development of the strategic Police documents and additional training of the officers with expert support of the EU countries, primarily in developing security strategies, including security assessments, strategic and operational planning, analyses development, identifying risk factors and indicators and development of the statistic analysis of the situation and crime trends and continuations development of the crime intelligence police system and increasing security standards.

In cooperation with the Police Academy, a regular training programme for Police officers is conducted on the activities of qualifying persons to undertake measures in prevention of crime.

**105. Which co-operation exists with international police co-operation bodies? How is this co-operation organised?**

The Police Directorate actively participates in cooperation with the following international organisations for police cooperation:

**ICPO INTERPOL**

**(International Criminal Police Organisation INTERPOL)**

On 19 September 2006 at the 75<sup>th</sup> General Assembly session, held in Rio de Janeiro, Brazil, Montenegro was officially admitted as a fully fledged member of the International Criminal Police Organisation – INTERPOL, being the 185 member state. INTERPOL National Central Bureau in Podgorica was established accordingly within the Police Directorate - Criminal Police Department. INTERPOL NCB at full capacity performs the activities of the international police cooperation with

other countries, members of INTERPOL, through INTERPOL secure communication link I-24/7. INTERPOL NCB has 17 employees, trained for conducting INTERPOL cooperation related tasks and duties.

By the Decision of the Government of Montenegro of 23 July 2009, a police representative - liaison officer in INTERPOL has been appointed and started working in November.

### **EUROPEAN POLICE OFFICE - EUROPOL**

On 23 July 2009, the Parliament of Montenegro adopted the Law on Confirmation of the Agreement on strategic cooperation between Montenegro and EUROPOL (Official Gazette of Montenegro – International Treaties 2/09). The procedure of electing and training the staff which will undertake the affairs in the newly formed NB EUROPOL have been initiated. In cooperation with EUROPOL, in July 2009 in Montenegro, workshop for the representatives of the middle management of the Police Directorate was organised (including future employees of the NB EUROPOL as well), within which the mission, goals and activities of the EUROPOL, key functions, data bases and manner of functioning were presented.

By entering into force of the Agreement on strategic cooperation of Montenegro and EUROPOL (when the EUROPOL informs the Ministry of Interior and Public Administration of Montenegro that they have received the notices on the notification of the Law on Confirmation of the Agreement), legal conditions will be created for the beginning of the process of establishing EUROPOL Office in Montenegro. Having that in mind, the Police Directorate has initiated the activities on amending the existing Rulebook on Internal Organisation and Job Description.

The exchange of information with EUROPOL will be enabled by entering into force of the Agreement on strategic cooperation with EUROPOL, and by establishing secure communication link.

### **SECI – (Southeast European Cooperative Initiative)**

#### **Southeast European Cooperative Initiative**

Within the SECI initiative, the Police Directorate takes active role in work of the following task forces: for suppression of trafficking in human beings, for suppression of terrorism and for customs frauds.

Montenegro was admitted as a full member of the SECI Centre on 23 July 2009. By the Government Decision of 23 July 2009, a police representative –liaison officer was appointed and started working in November.

### **ALL (Adriatic-Ionian Initiative)**

Adriatic-Ionian Initiative (ALL) was launched by Italy in 1998, aiming at closer mutual cooperation and contribution to the good neighbour relations, stability and security of the Adriatic and Ionian area, and was accepted by Montenegro, positioning itself as an important partner in the project. Member states of the Adriatic-Ionian Initiative (ALL) are Italy, Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Albania and Greece.

The cooperation covers several areas, among which, from the police prospective, cooperation in the fight against all types of crime is considered the most relevant one. In 2004, ALL was chaired by Montenegro, when within the roundtable for the fight against organised crime in November 2004, it organised the meeting with the representatives of the police services from other ALL member states, at which the priorities of Montenegro were presented: prevention and suppression of the criminal offences: trafficking in human beings; illegal immigration; production, circulation and smuggling of narcotic drugs, as well as of all types of organised chain of smuggling in excise and other high value goods.

### **IOM – International Organization for Migration**

The Police Directorate has a continues cooperation with the Mission of the International Organisation for Migrations (IOM) in Podgorica, through joint activities in the field of strengthening Montenegrin Police capacities for the suppression of illegal immigrations. Memorandum of

Understanding for the implementation of the project “Support in Managing Migrations in Montenegro” was signed on 25 September 2009.

Project on Strengthening Montenegrin Police capacities in suppressing illegal immigration and trans border organised crime was implemented from May to June 2009, in two phases: Training of the police officers on trans border crime suppression (4 training courses conducted) and provision of the equipment for one of the border crossing points, and its connection to the INTERPOL database. Provision of the part of equipment for the needs of INTERPOL NCB is ongoing.

### **The OSCE Mission to Montenegro**

The Ministry of Interior and Public Administration and the Police Directorate carry out an intensive cooperation with the OSCE Mission, from 2004, when the first Agreement on cooperation was signed. Further cooperation is carried out by signing the memorandums dealing with these areas on an annual basis.

OSCE Mission provides an overall assistance to reform process carried out by the Police Directorate, with special focus being put on the legal framework implementation, police education, fight against corruption and organised crime, border police development work of the police in the community, strategic planning, etc. The Mission implements its activities in the following six areas: strategic planning and development, fight against organised crime and terrorism, border police development, community policing, education and police development and police accountability.

### **The Regional Cooperation Council (RCC)**

The mission of the RCC focuses on the following priority areas:

1. Justice and home affairs;
2. Security cooperation, and
3. Human resources development.

Montenegro confirmed the Treaty between the Council of Ministers of Bosnia and Herzegovina and the Governments of other member states of the South East European Co-operation Process, the United Nations Interim Administration Mission in Kosovo, on behalf of Kosovo, pursuant the United Nations Security Council Resolution 1244, on host country arrangement for establishing RCC Secretariat.

### **RACVIAC-Regional Arms Control Verification and Implementation Assistance Centre-Centre for Security Cooperation**

Montenegro was admitted to RACVIAC on 21 March 2007, as a full member. RACVIAC is established in 2000 as the Regional Arms Control Verification and Implementation Assistance Centre, with the aim of providing arms control training, promoting confidence and security building measures and broadening cooperation in South Eastern Europe.

Major agreements and conventions supported by RACVIAC are Sub-regional Arms Control Agreement, the Vienna Document 99 and Open Skies Treaty. There are also some English language courses in arms control terminology and various seminars (Disaster Management in South East Europe) being organised. Seminars are organised not only for the military staff, but also for civilian representatives. Topics for the seminars are as follows: military contacts and cooperation in South East Europe, regional dialogue, defence planning and military budget, democratic control of armed forces to improve stability in SE Europe, Confidence and Security Building Measures (CSBMs) in establishing stability and security in South East Europe, regional cooperation in combating illicit trade in small arms and light weapons, disaster assistance and procedures, border control and management and conversion of the military facilities and the personnel.

### **DCAF – The Geneva Centre for the Democratic Control of Armed Forces**

Beginning from 2003, the Ministry of Interior and Public Administration and the Police Directorate carry out an extensive cooperation with the DCAF within the Legal Group for the reform of border safety. Law on State Border Surveillance from 2005 and the new Law on Border Control from 2009



were developed with the support of the DCAF. Cooperation in developing secondary legislation for the implementation of the Law on Border Control is planned for the following year.

With the aim to foster human resources capacities and overall Montenegro border security system, the Border Police Department in cooperation with DCAF, has implemented a great number of projects.

**ENFSI** (European network of Forensic science institutes)

At the Conference held in Ankara, Turkey, from 25 to 29 May 2009, the Forensic Centre of the Police Directorate was admitted as a full member.

**FRONTEX** (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union)

Working arrangement between the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and Montenegrin Police was signed on 19 June 2009 in the headquarters of the organisation in Warsaw, Poland.

**SEPCA** (Southeast European Police Chiefs Association)

Southeast European Police Chiefs Association was founded on the initiative of the Royal Canadian Mounted Police within the Canadian Regional Training and Support Project (CRTSP), and it was officially established on 20 January 2002 in Valbandon, Croatia, by signing the Resolution on establishment. The organisation has ten member states: the Republic of Albania, Republic of Bulgaria, Bosnia and Herzegovina – Federation, Bosnia and Herzegovina – Republic of Srpska, Montenegro, Republic of Croatia, Republic of Macedonia, Moldova, Romania and Republic of Serbia. The Association has five sub-boards: organised crime sub-board, community policing sub-board, education sub-board, legislation sub-board and sub-board for projects. Montenegro chairs sub-board for projects. The Police Directorate has designated a national coordinator and communication officer for cooperation with the Association.

**CESP - The European Council of Police Unions**

At the CESP Congress held from 15 to 16 May 2009 in Sarajevo, Bosnia and Herzegovina, the Police Union of Montenegro was admitted in the Police Organisation of the European Unions, and has become a full member of the largest Police organisation in the world.

**UNODC** (United Nations Office on Drugs and Crime)

On 23 October 2006, Montenegro acceded to the principal UNODC conventions.

**AEPC – The Association of European Police Colleges**

At the Annual Governing Board Meeting of the Association of European Police Colleges (AEPC), held on 9 July 2007 in Nicosia, Cyprus, the Police Academy was officially admitted as a full member in this international institution. The Academy has become 44<sup>th</sup> member of the European Police Colleges network from 36 countries, and since then it has been playing an active role in all activities being undertaken by the Association member states with the aim to develop police education and training. Montenegro was the host to AEPC in September 2009. On this conference, experiences on modalities of practical and simulation training of the Police were exchanged.

**CORTE (Confederation of Organisations in Road Transport Enforcement)**

Montenegro is a member of CORTE from 28 May 2009. The objective of the Organisation is to provide professional assistance to interested countries and institutions with the aim of promoting safety in road transport.

**106. Which international instruments regarding police are adhered to and implemented (Council of Europe, UN, Interpol Convention etc.)?**

In exercising police powers and performing police duties, police officers implement the following international instruments:

**United Nations Conventions**

- Universal Declaration on Human Rights;
- International Pact on Civil and Political Rights (Official Gazette of the Socialist Federal Republic of Yugoslavia 07/71);
- Protocol to the International Pact on Civil and Political Rights (Official Gazette of the Federal Republic of Yugoslavia – International Treaties 4/01);
- Second optional protocol to the International Pact on Civil and Political Rights, on the abolition on death penalty (Official Gazette of the Federal Republic of Yugoslavia - International Treaties 4/01);
- Convention on Offences and Certain Other Acts Committed on Board Aircraft (Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 47/70);
- International Convention against the Taking of Hostages (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 09/84);
- UN Convention on Illegal trade in Narcotic Drugs and Psychotropic Substances (Vienna Convention), (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 14/90);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 9/91);
- UN Convention against Trans-national Organised Crime with Accompanying Protocols (Official Gazette of the Federal Republic of Yugoslavia 6/01);
- Criminal Law Convention on Corruption (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 02/02 and Official Gazette of the Republic of Montenegro 18/05);
- International Convention for the Suppression of the Financing of Terrorism (Official Gazette of the Federal Republic of Yugoslavia 07/02);
- International Convention for the Suppression of Terrorist Bombings (Official Gazette of the Federal Republic of Yugoslavia 12/02);
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Official Gazette of Serbia and Montenegro - International Treaties 02/04);
- Convention on the Marking of Plastic Explosives for the Purpose of Identification (Official Gazette of Serbia and Montenegro-International Treaties 11/05);
- United Nations Convention against Corruption (Official Gazette of Serbia and Montenegro-International Treaties 11/05);
- International Convention for the Suppression of Acts International Terrorism (Official Gazette of Serbia and Montenegro - International Treaties 02/06);
- International Convention for the Suppression of Acts of Nuclear Terrorism (Official Gazette of Serbia and Montenegro-International Treaties 2/06);
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 14/89);

- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementary to the UN Convention against Transnational Organised Crime (Official Gazette of Serbia and Montenegro - International Treaties 11/05).

After being admitted to a full membership in the Council of Europe (11 May 2007), Montenegro committed itself to signing, taking over or ratifying and implementing the following international Conventions related to police and police cooperation.

Montenegro also confirmed the Convention on Cluster Munitions (Official Gazette of Montenegro – International Treaties 4/09) and the Additional Protocol to the Criminal Legal Convention on Corruption (Official Gazette of Montenegro – International Treaties 11/07).

**Council of Europe Conventions:**

- Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);
- Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);
- Protocol No 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);
- Protocol No 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);
- Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);
- Protocol No 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);
- Protocol No 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);
- Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);
- Protocol No 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Official Gazette of Serbia and Montenegro - International Treaties 09/03-7 and 5/05-31);
- Protocol No 1 to Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Official Gazette of Serbia and Montenegro - International Treaties 09/03-7);
- Protocol No 2 to Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Official Gazette of Serbia and Montenegro - International Treaties 09/03-7 and 5/05-31);
- Protocol No 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);

- Protocol No 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);
- Protocol No 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);
- Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia and Montenegro – International Treaties 9/03-16 and 5/05-31);
- The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Official Gazette of the Socialist Republic of Yugoslavia 01/92);
- European Convention on Extradition with the Additional Protocols (Official Gazette of the Socialist Republic of Yugoslavia 10/01);
- Convention on the Transfer of Sentenced Persons with the Additional Protocol (Official Gazette of the Socialist Republic of Yugoslavia 04/01);
- European Convention on the Suppression of Terrorism (Official Gazette of the Socialist Republic of Yugoslavia 10/01);
- European Convention on the Transfer of Proceedings in Criminal Matters (Official Gazette of the Socialist Republic of Yugoslavia 10/01);
- Agreement on Cooperation in Prevention and Fight against Trans-border Crime (Official Gazette of Serbia and Montenegro - International Treaties 05/03);
- European Convention on Mutual Assistance in Criminal Matters with the additional Protocol (Official Gazette of the Socialist Republic of Yugoslavia 10/01 and Official Gazette of Serbia and Montenegro – International Treaties 2/06);
- European Convention on the International Validity of Criminal Judgments with Amendments (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 13/02 and 02/06);

Montenegro has ratified the following Conventions and Protocols of the Council of Europe:

- Civil Law Convention on Corruption (Official Gazette of Montenegro - International Treaties 1/08);
- Council of Europe Convention on Action against Trafficking in Human Beings (Official Gazette of Montenegro - International Treaties 4/08);
- Council of Europe Convention on the Prevention of Terrorism (Official Gazette of Montenegro - International Treaties 5/08);
- Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism (Official Gazette of Montenegro - International Treaties 5/08);
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Official Gazette of Montenegro - International Treaties 5/08);
- Convention on Cyber Crime (Official Gazette of Montenegro – International Treaties 4/09).
- Additional Protocol to the Convention on Cyber Crime concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed through Computer Systems (Official Gazette of Montenegro – International Treaties 4/09)

### **107. What is the current state of play in relations to Europol?**

Strategic agreement on cooperation between Montenegro and EUROPOL was signed on 9 September 2008. The Law on Ratification of the Strategic Agreement was adopted by the Parliament of Montenegro on 23 July 2009.

By ratifying the mentioned Agreement, formal conditions have been created for the process of establishing the EUROPOL Office in Montenegro, within the Police Directorate, as defined by the Agreement, through the Police reorganisation, thus by amending the exiting act on job description within the Police, legal conditions will be created for establishing EUROPOL National Bureau. The activities on establishing Europol National Bureau are currently in progress.

The establishment of the EUROPOL National Bureau will enable further cooperation with EUROPOL with regard to the fulfilment of the obligations under the "EUROPOL Road Map for Signing the Operational Agreement on Cooperation between EUROPOL and Western Balkan Countries", which will enable Montenegro full participation in joint activities with EUROPOL, through exchange of police information on persons, and criminal groups interesting from the security point of view, as well as on international organised crime trends, and through participation of Montenegrin Police in EUROPOL Analysis Work-files (AWF).

One of the most important activities that Montenegrin police has been currently working on is the establishment of the secure communication police link with EUROPOL in order to provide conditions for the secure strategic information exchange. The request to establish secure communication link (with the consent that police accepts EUROPOL requirements with regard to the selection of the equipment and telecommunication provider), has been communicated to EUROPOL, and the approval is expected, as well as the provision of the necessary equipment to be installed in the Police Directorate. After the provision of the equipment, the Police Directorate will sign the Agreement with EUROPOL on use of the equipment for secure communication link, after which all requirements will be fulfilled for making it operational, expected to happen during the first six months of 2010.

### **108. What is your capacity to participate in Europol?**

The Police Directorate is in the process of amending the Rulebook on Job Description, in order to position the EUROPOL National Bureau within the Police structure. By the amendments to the current Rulebook, it is planned to reorganise the current structure of INTERPOL National Central Bureau, which is positioned in the Criminal Police Department, to be reorganised into the Division for International Police cooperation, under which there will be:

Organisational unit for cooperation with INTERPOL, and

Organisational unit for cooperation with EUROPOL.

The procedure has already been initiated within the existing INTERPOL NCB on recruitment and training of the staff who will take over the tasks in the newly established National Bureau of EUROPOL. To this end, a workshop for middle rank police managers (including future officers of the EUROPOL NB) was organised in Montenegro in July 2009, in cooperation with EUROPOL, during which mission, goals and activities, key functions, databases and manner of EUROPOL functioning were presented. The training have been planned to be conducted in EUROPOL headquarters, which will, along with the continuous support of the EUROPOL representatives, enable EUROPOL National Bureau in Montenegro to start working in full capacity.

The activities on establishing secure communication link with EUROPOL are in progress.

Working space and the equipment needed for the work of EUROPOL National Bureau have not been provided yet. This should be done during the first six months of 2010, until when the working space of the INTERPOL NCB will be used.

**109. What information tools exist and are used (databases (owner, content, access); data registers, on-line sources etc.)? Describe how police officers access these tools. What are the regimes in place for ensuring data quality within the databases and systems?**

Information system of the Police Directorate consists of the following sub-systems:

- subsystem of the national database on wanted persons, vehicles and registration plates, which contains basic identification information on persons, when and by whom the wanted notice was issued for a person, as well as the measures that are to be undertaken once the person is found. The national database on vehicles and registration plates searched for, contains information on a vehicle, when and who initiated the search for a vehicle. The Criminal Police Department is the owner of the data in the database (they are responsible for entering, updating and erasing data), and data from this database may be searched by border police officers when conducting the border check, through subsystem for the border check, general police officers through traffic control subsystem and public peace and order control subsystem;
- Subsystem for recording all daily events, which registers all events being reported to the Police Directorate by citizens, in person or by phone, or by police officers. The manner these events were handled is also part of this subsystem. Operational Communication Centre is the owner of the data;
- Subsystem for registering criminal offences. This record includes database on criminal offences, perpetrators of criminal offences and victims. Criminal Police Department is the owner of the data;
- Subsystem for database on persons, subject to identity establishing procedure. This system contains digital photograph, fingerprints, palm prints and physical description of a person. Forensic Centre is the owner of the data;
- Subsystem for traffic related issues, within which a database is kept on traffic accidents, traffic related fines and measures taken, participants in traffic accidents and violations. General Police Department is the owner of the data;
- Subsystem with database on all public peace and order perpetrators, and all peace and order violations. General Police Department is the owner of the data;
- Subsystem for electronic database on human resources in which the data on the police staff, regulated positions, education of employees, awards and fines, and other data are kept. Department for Human Resources, Legal Issues, Telecommunication and Information Systems is the owner of the data;
- Subsystem for material-financial affairs which includes material-financial management, personal incomes, the police income model. Department for Human Resources, Legal Issues, Telecommunication and Information Systems is the owner of the data;
- Subsystem for operational-statistics reporting, which enables users to direct the work of the body, based on the received data. It is in the implementation phase;
- Subsystem of border checks, involving the database on passengers and vehicles crossing the state border, their number/quantity, status of the crossings, photographs on the document used by persons to crossed the state border. Border Police Department is the owner of the data.
- INTERPOL database on persons. Criminal Police Department is the owner of the data. It contains information on persons, when and by whom the wanted notice was issued for a person, requesting country and INTERPOL NCB, as well as the measures to be undertaken once the person is found.

All listed subsystems are inter-connected and altogether they create a single police information system. All these subsystems are to be accessed through specially developed software. The Software is based on Microsoft NET technology and multi-layered architecture: SQL Server, Internet Information Services – ASP.NET and Windows desk top applications.

The quality of the data in the databases is secured at all levels, such as:

- At application level, achieved through a basic level of the logic control, i.e. based on the data in the client computer.

- At the level of the application server, achieved through a logic control by the means of respecting business rules.

The last instance, i.e. the database, takes care of the data quality at the level of individual constraints and referential integrity rules.

For the data analysis, Criminal Police Department uses analytical software I2Base and I2 Analysts Notebook. This software is used by the analyst of the Criminal Police Department at the central level, and the analysts in the Regional Police Units, who access the software through computer network, since the software has the network license.

For use of the software and 2 Analyst Notebook, there are 8 licenses available, out of which 3 are network licenses set up on the computer network of the police information system, and can be used by the analysts in the Regional Police Units, 3 network licenses are set up on the local network of the crime –intelligence analyses, at the central level, while 2 independent keys are used during the field work, outside the computer network or for presentation of the analysis results.

In order to secure the quality of processing and data analysis, the analysts using this software underwent basic training on crime intelligence and DESK functions, as well as specialised analyst training by ANACAPA model. Within the Criminal Intelligence Unit at the central level, the DESK office was established. The main task of the officers working in that office is to process the collected data in compliance with the adopted standards and methods of the criminal intelligence work. Currently, as Pilot project, the DESK offices have been established at the regional level, in the Regional Police Units in Bar and Budva, and according to the future plans, Desk offices will be established in all Regional Police Units.

At the end of May 2009, the new software started functioning, for collecting and searching intelligence data and information, assessed in accordance with 4x4 model. This software provides faster data flow, more efficient search of the central database on intelligence and information, and more efficient preparation preceding the analysis.

The Software has currently been used by the officers of the Criminal Intelligence Analyses Section within the Criminal Police Department at the central level, as well as the police officers in the Regional Police Units in Bar and Budva, and in the Local Police Unit in Ulcinj. According to the plans, in the time to come, the users database will be extended as to cover other segments of the service.

The software enables all police officers in the Regional Police Units in Bar and Budva and Local Police Unit in Ulcinj to send intelligence assessed in accordance with the 4x4 method to the central database and to the Criminal Intelligence DESK Units, by the computer system with the protected communication.

Information is produced in accordance with the, in advance defined structure and forms of documents, and is forwarded in accordance to the adopted routing diagrams. The access to the information, with regard to the search and analytical processing, is being regulated in accordance with the, in advance given authorisations (according to “should know and need to know” principle). Business administration of the system, the right of access and users roles is decided by the criminal intelligence unit, at the central level.

The content and level of access is decided by the IT Section, in accordance with the authorisations.

INTERPOL NCB makes use of the following national databases:

- a) Citizens database (with identification documents being issued), which contains data on: name and surname, date and place of birth, residence address, personal identification number, parent name, number of the identification document, date of issue and the validity date of a document;
- b) Database on the registered vehicles, which contains data on vehicles and the owners of vehicles: vehicle registration number, date of issue, validity date, number of the vehicle registration card, owner of vehicle, date of issue, validity date and VIN;
- c) Database on vehicles being searched for at the national level;

d) Database on issued travel documents (number of a travel document, identification data of a travel document holder, date of issue and validity date of a document): photographs of persons and identification documents are issued to;

e) Police databases: on persons criminally processed, on criminal records of persons (persons being convicted for a criminal offence by a final and enforceable judgment), on misdemeanour related data of a person (persons being convicted of misdemeanour), on persons being subjects of wanted notice, issued by judicial authorities, such as: on persons subjects of wanted notices being issued by Montenegrin judicial authorities, on persons being subjects of wanted notices issued by foreign judicial authorities, and on missing persons;

f) Database on weapons being in possession of citizens (data on number and type of weapons, owner of a weapon);

g) Database on persons crossing the border at the border crossing points (database on the crossings at the Montenegrin border crossing points) which contains: identification data of a person (name, surname, number and type of a travel document, date and place of crossing, registration number of vehicle used for crossing the state border), status of the crossing (crossing approved, crossing denied), data on check of a person (whether the person is wanted, either at the national or international level), check of travel documents (whether the document is searched for in the national or in INTERPOL database) and vehicles (whether the vehicle is searched for under the VIN and/or the licence plates, in national or INTERPOL database).

Database is accessed through a closed police network, from police computers. The database cannot be accessed from computers outside the police network. After the given query, the database offers one (or more) answers with the requested data. The access to the database is done in accordance with the authorisation to access certain data (or to certain level of data) in accordance with the "need to know" principle.

There are also open sources – databases on registered legal persons – companies in Montenegro (Central Registry of the Commercial Court, which contains data on legal persons, identification data of the companies responsible persons, identification data of the companies founders); registered ownership over real estates (data on persons - owners/users of real estates, registered with the Real-Estate Administration of Montenegro), and data on telephone numbers subscribers (land line phones – unprotected numbers).

The search is conducted online by direct query to the data base, by one or more criteria. After the given query, database offers one (or more) answers with the requested data. Access to the databases is not limited, and is available to everyone, through an open Internet.

The list of INTERPOL databases used by the Police Directorate (INTERPOL NCB): search of wanted persons, vehicles, personal and travel documents; smuggling of narcotics (practical experiences, analysis, statistics, annual reports of the member states); financial crime (data on the types of credit cards frauds, statistics on different criminal offences being registered, warnings related to new crime trends, etc); forensics (checks of fingerprints, DNA profiles); cyber crime (cyber crime manual, contact points for suppressing cyber crime, etc.); wanted notices (red, blue, yellow, green, orange, black), database on stolen and missing works of art and other valuable objects; databases on stolen and missing weapons; statistics on international crime and statistics and other data related to vehicles smuggling.

INTERPOL NCB takes over data, checks the data compliance with the national legislation, enters and updates national database (police database on wanted persons/missing persons, at the international level) for all wanted persons (or missing persons) into the INTERPOL database, so that the national database represents a proper copy of INTERPOL database on wanted (or missing) persons.

Other INTERPOL databases are used by INTERPOL NCB and other segments of the Police Directorate, by direct query method.

Statistics and other data that are entered and updated into INTERPOL database by INTERPOL NCB, are the following: wanted notices for persons for whom the arrest warrant is issued by Montenegro judicial authorities, notices for missing persons, and minors, the vehicles, being stolen



in Montenegro, lost/stolen/invalid/travel and identification Montenegrin documents, data on stolen works of art and statistics on criminal offences (at annual level).

For the purpose of more efficient access to INTERPOL databases, INTERPOL NCB has implemented a joint project on wireless access to INTERPOL databases, in cooperation with the INTERPOL General Secretariat. By the means of this Project, the officers of the INTERPOL NCB are enabled to establish connection with INTERPOL databases, by using a commercial telecommunication network, with an proper encryption system being applied (by creating so called VPN tunnels), through portable computers (lap-top computers and smart phone devices), at any time and from any location (out of office), to send a query and make a search of certain data through INTERPOL databases, with fully secured system of data protection, authorisation of database users (by entering username and password), in accordance with the "need to know" principle.

**110. What information equipment is used (fax, phone, radio communication, beepers, pagers, data networks, etc.)?**

The Police Directorate uses radio-telephone terminals, telephone terminals and mobile phones for communication.

Analogue radio-telephone terminals (hand held, mobile and stationary unit) in VHF/UHF range are manufactured by Motorola, while HF transceivers are manufactured by Harris.

Telephone terminals (telephone devices, telephones systems, fax machines) are mainly manufactured by Panasonic.

Mobile phones for communication within leased mobile phone closed users group are not uniformed, however the different brands devices are used.

IT solution for implementation of the backbone for Multi-service gigabyte MPLS WAN network, is MPLS (Multi-Protocol Label Switching) based technology. MPLS network is characterised by high speed of processing and sending packets.

Optical fibres are used as transport medium in the network. Montenegro has concluded the agreement with Telecom of Montenegro on leasing 2 optical fibres for the period of 20 years. In this year, optical fibres have been installed in all Regional Police Units and Local Police Units, thus completing the optical infrastructure at the level of Montenegro and establishing the network backbone. Single-Mode optical cable has met all security and performance related requirements, defined within the network planning process.

In order to overcome inter-cities distance successfully, GBIC Gigabit Long Haul Ethernet modules have been used within the Project, capable of transmitting signal through optical routes, even up to 100 km distance.

OSPF is used as routing protocol in transport network, expanded by OSPF-TE (Traffic Engineering) protocol extensions for transmitting proper information to the MPLS Control plane layer. In this way, MPLS receives necessary information on network topology and parameters, and is capable of managing MPLS tunnel reaction in a required manner.

Special attention has been paid to creation of Virtual Private LAN Services - VPLS. VPLS is a MPLS service, which enables network administrators to create multipoint L2 VPN tunnels, and in the practice it has shown as ideal for LAN-to-LAN services i.e. for efficient and simple connection of the distant LAN networks. In this way, by using VPLS, every user creates his/her own private network, using the same infrastructure as all other users, with the security and performances of the leased delivery lines.

The work with all standard types L2 and L3 MPLS tunnels has been supported in the network:

- L3 - BGP/MPLS VPN (RFC2547bis)
- L2 - VPLS (Virtual Private LAN Service)

- L2 - Point-to-Point (Martini draft) and
  - L2 and L3 FEC,
- providing their equal use.

Network backbone consists of two optical rings on which Nodes River Stone RS38000 routers have been installed, having core/edge router functions. At the locations with lower ports, concentration routers RS3200 have been installed. Structure of the ring provides for creation of an alternative route in case of the failure of the main network route.

The network consists of several VPNs which are adjusted to the current use.

Police has several VPNs for its internal use. Apart from the police, the network has currently been used by the Ministry of Interior and Public Administration and Agency for National Security. Each of them has their own MPLS VPN L2 domain by which their data are transmitted.

Border crossing points Ilino brdo, Bozaj, Kula and Kobilja, are connected to MPLS network by Wireless links Redline Communication AN-50e. The Redline communication equipment is WI- Max ready, and it provides links to MPLS Core network with the speed of up to 72 Mbps.

The border crossing point Sukobin is connected to MPLS Core network by radio link leased from Radio Diffusion Centre of Montenegro, with the flow rate of 2 Mbps.

In order to modernise current structured cabling system, the police has developed the entire installation, termination and attesting to CAT 6 category of FTP cabling in the following facilities: the Police Directorate Headquarters, Airport of Tivat, Local Police Unit Plav, Local Police Station Tivat, Local Police Station Ulcinj, Regional Police Units Niksic, Bar, Budva, border crossing points Dobrakovo, Dracenovac, Ilino brdo, Luka Bar, Debeli Brijeg and Sukobin.

#### **111. What are the modalities of and conditions for co-operation of the police with other public security bodies (customs, security and intelligence services)?**

The Law on State Administration (Chapter IX, Articles 60 to 80) regulates relations and cooperation between the state administration bodies and the Government, relations between the Ministries, relations between the Ministries and state administration bodies, relations of the Ministries and the Parliament, relations of the state administration bodies towards courts, local self-government bodies, public institutions and public companies, and other legal persons being founded by the state, and the non-governmental organisations as well.

The Law on Police contains provisions laying out that the police is bound to provide assistance to the state administration bodies, local self-government units, legal and natural persons, in the case of general danger caused by natural disasters and epidemics (Article 6). The Police Directorate is also bound to provide assistance to the state bodies, local administration and legal persons in the procedure of enforcement of their decisions, if during the procedure a physical resistance is expected or exercised (Article 7). Pursuant to Article 7 of the Law on Police, the Ministry of Interior and Public Administration has adopted a Rulebook on conditions and the manner of providing assistance to state bodies, local administration and legal persons in the procedure of enforcement of their decisions (Official Gazette of the Republic of Montenegro 57/06).

Pursuant to the above-mentioned legal obligations, the Police Directorate has concluded:

- Agreement with the Administration for Prevention of Money Laundering and Financing of Terrorism (23 July 2004);
- Agreement on mutual cooperation with the Tax Administration (9 March 2007) regulating in more detail mutual cooperation in the fight against corruption and organised crime;
- Agreement on mutual cooperation between the Supreme Public Prosecutor's Office, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police, and non-governmental organisations: Montenegrin Women's Lobby, Safe Woman's House and Centre Plus (18 October 2007), to ensure more efficient cooperation in the fight against

trafficking in human beings, my means of prevention, education, criminal prosecution of perpetrators of these offences and protection of potential victims of trafficking in human beings, especially women and children;

- Agreement on mutual cooperation with the Customs Administration (6 October 2008), by which the signatory parties more precisely defined mutual cooperation in the fight against corruption and organised crime, aiming at development of cooperation and provision of optimal conditions for exchange of information;
- Agreement on cooperation with the Central Bank (28 October 2008), more precisely defining mutual cooperation in the fight against corruption and organised crime, especially in the part related to providing funds for implementation of the secret surveillance measures and producing reports on their execution;
- Agreement on understanding and cooperation between the Ministry of Interior and Public Administration and Police Directorate (21 August 2008) on using databases owned by the Ministry;
- Memorandum on cooperation and information exchange related to prevention, detection and prosecution of perpetrators of criminal offences, prosecuted *ex officio* with the Supreme Public Prosecutor's Office (10 June 2009), regulating rules of cooperation between the Police Directorate and Prosecutor's Office in the process of prevention, detection and prosecution of perpetrators of criminal offences, prosecuted *ex officio*;
- Memorandum on cooperation in suppressing, detecting and prosecuting perpetrators of criminal offences against environment, between the Ministry of Spatial Planning and Environmental Protection, Ministry of Justice, Supreme Public Prosecutor's Office and Police Directorate, signed on 25 September 2009 in Podgorica.

Memorandum stipulates that the signatory parties should establish joint team to coordinate the overall process.

Interagency cooperation with other authorities is developed within the legal framework and in the spirit of good practices (Administration for Anti-Corruption Initiative, Real-Estate Administration, etc).

The Police Directorate, Tax Administration and Real-Estate Administration have signed mutual bilateral agreements, which represent foundation for signing multilateral agreement on exchange of information and intelligence, and establishing National Coordination Office of the state administration bodies.

Establishment of the National Coordination Office, with the main role to coordinate activities of the authorities and bodies enforcing the laws in the fight against organised crime and corruption, is the first initiative of that kind in the Region.

**112. What statistical data exist (police activities, crime, prevention, convictions)? Please provide details about the methods and quality of these statistical data. How are statistics used to guide policy development?**

In order to follow, assess, direct and make progress in all lines of work within its competency, the Police Directorate keeps relevant records, and in an organised manner collects data on all trends, activities and measures being undertaken in compliance with the legal powers.

The Police Directorate collects and, in the relevant records, register statistics on crime, all security related issues, traffic and public order related misdemeanours, traffic accidents, trans-border traffic, police procedures undertaken against foreign nationals, as well as all other activities being undertaken by the Police Directorate pursuant to the legal powers.

All trends, events and activities are documented along with the agreed – specified statistics, entered into appropriate records - templates, kept at the level of competent organisational units.

Processed statistics are used for producing reports and protocols, as well as for planning police activities.

Based on the collected statistics on situation, results and effects of policing, all organisational units of Police Directorate are tasked to produce monthly reports, based on which monthly reports on the work of the Police Directorate are drawn up (General Report).

Monthly reports are assessed and analysed, and data on results, scope, trends and rate of certain types of crime, misdemeanours, etc., are subsequently used to efficiently direct preventive and operational police activities.

Processed statistics are also used for quarterly assessment of the planned activities, pursuant to the Police Directorate Work Plan for the current year. Received data are then compared with plans and programmes of work, in order to correct them, and to plan activities and measures aiming at correction of mistakes and improvement of the situation in certain fields.

Annual statistics serve as basis for developing Annual Report on the Police Directorate performance, for strategic planning and development in all fields of work under competence of the Police Directorate, as well as for drafting work plan for the following year.

The Police Directorate keeps the following databases:

**Criminal Police Department:**

- The Witness Protection Unit keeps records on persons being part of the Protection Programme, with the identity being changed or concealed, data on property, records on personal data of a protected person, his/her stay and residence, and other data produced during the process of applying measures and actions regulated by law, as well as on protected persons being part of the protection Programme, based on international cooperation.

- General Crime Suppression Section keeps records on nationally and internationally wanted persons, as well as on persons wanted for pre-trial proceedings.

- Forensic Examinations Section – Fingerprints Group, keeps the fingerprints and palm prints collection.

**INTERPOL NCB**

The Police Directorate (INTERPOL NCB) has been using the following INTERPOL databases:

- Databases on wanted persons, vehicles, vehicles license plates, personal and travel documents
- Drugs smuggling (practical experience, analysis, statistics, annual reports of the INTERPOL member countries)
- Financial crime (data on types of credit cards frauds, statistics related to various registered criminal offences, warnings related to new crime trends, etc.)
- Forensic (fingerprints examination, DNA profiles)
- Cyber crime (cyber crime manuel, contact points for suppression of cyber crime, etc);
- Wanted notices (red, blue, yellow, green, orange, black),
- Database on stolen and missing works of art and other valuable objects;
- Databases on stolen and missing weapons
- Statistics on international crime
- Statistics and other data related to vehicles smuggling

Statistics and other data being entered and updated in INTERPOL database by INTERPOL NCB are the following:

- Wanted notices on persons being wanted by Montenegro judicial authorities
- Notice for missing persons /minors
- Searches for vehicles stolen in Montenegro
- Lost/stolen/invalid travel and identification Montenegro documents
- Data on stolen works of art
- Statistics on criminal offences (at annual level)

**Operational Communication Centre keeps the following databases:**

- Database on daily events;
- Database on citizens complaints, filed in person;
- Database on persons deprived of liberty;
- Database of seized firearms;
- Database of seized property and objects.

**Department for Human Resources, Legal Issues, Telecommunication and Information Systems**

Management, Planning and Human Resources Development Section keeps human resources-related database.

Legal Affairs Section keeps internal database on disciplinary cases, developed for the needs of disciplinary prosecution and disciplinary proceedings.

**Department for Security of Facilities and Persons**

The Department keeps the following databases:

- Databases on checks of persons when entering and leaving protected facilities;
- Databases on measures (actions) undertaken with a view to secure protected persons and facilities;
- Databases on assistance provided in regard to the courts security;
- Databases on data related to works on protected facilities;
- Database on coercive means used;
- Databases on citizens complaints.

**Internal Control Division**

The Division keeps the following databases;

- Database on citizens complaints,

- Database on conducted control, pursuant to Article 95 of the Law on Police.
- Database on coercive means used,
- Database on criminal charges filed against the Police Directorate employees for criminal offences, prosecuted *ex officio*,
- Database on filed requests for initiating misdemeanour proceeding against police officers for public peace and order related misdemeanours,
- Database on serious disciplinary violations, committed by the Police Directorate employees,
- Database on minor disciplinary violations committed by the Police Directorate employees.

### **Border Police Department**

Keeps the following databases:

- Databases on persons being subjected to border check at the border crossing points, at which INTERPOL I-24/7 system has been installed;
- At other border crossing points, the databases involving the following data has been kept: name of the border crossing point, date of crossing, surname and name, date and place of birth, type of document, number of document, country of issue, entry/exit.
- Database on persons being subjected to the procedure on establishing identity,
- Database on issued approvals for movement and stay in the area of border crossing point,
- Database on persons who committed state border related violations,
- Database on persons who announced hunting, i.e. fishing along the border line,
- Database on seized property and objects,
- Database on stolen weapons, ammunition and mine-explosive devices,
- Database on issued permits for bringing weapons in the country,
- Database on persons being engaged in business activities at the border crossing points on permanent or temporary basis.

The Department, pursuant to provisions of the Law on Foreigners, keeps databases on:

- Foreigners to whom the stay is denied,
- Foreigner who are prohibited from entering and exiting Montenegro,
- Issued visas at the border crossing point,
- Denied visa application forms,
- Annulled and shortened visas,
- Reported missing identification documents for foreigners,
- Temporarily seized travel documents.

- Database on residence of Montenegro and foreign nationals, being granted permanent or temporary stay, or the stay up to 90 days.

## CRIMINAL ACTS OF ORGANIZED CRIME

## STATUS OF SENTENCES INTO EFFECT, OCTOBER 20, 2009.

No.	COURT	No. of persons	Criminal Code Article/ Felony	SENTENCE	imprisonment	DEPRIVED	STATUS	DOCUMENT INTO EFFECT
1	Basic Court Kotor, 2006	2 persons (along with 15 members of criminal group in a case from 2005.)	-smuggling (art. 265 par. 1 and 2 of CC) - fraud (art. 244 par. 4 regarding par. 2 and 1 of CC) - abuse of official status (art.416 par.5 regarding par. 4 and 1 of CC)	Conviction		- 25,5 t of cigarettes - 2 ships and - 3 trucks Convicted persons are charged to pay pecuniary benefit in the amount of 565.000 €	First instance sentence suppressed by defense complaints and case is returned for retrial. In repeated procedure several hearings were held in 2009.	
2	High Court Podgorica 07.07.2006.	2 persons	- unauthorized production, keeping and releasing for circulation of narcotics (art. 300 par. 3 regarding par. 1 of CC)	Acquittal  - suppressed by prosecutor's complaint		- 15 kg of heroin / seized in Slovenia during transport /	In repeated procedure accused were convicted (sentence from 26.12.2008.). In court second instance sentence, prosecutor complaint was refused and first instance sentence were confirmed (19.05.2009.)	
3	High Court Podgorica 18.11.2006.	2 persons	- grave types of murder (art. 144 par.1 point 1 and 4 of CC)	12.06.2009. Conviction			Prosecutor complaint submitted on 30.06.2009.	
4	High Court Podgorica 31.10.2006	10 persons	- counterfeiting money (art. 258 par. 3 regarding par.2 of CC) - criminal association (art. 401 par. 3 regarding par 1 of CC)	5.5.2008. Conviction	2 persons - 14 years each, 3 persons - 8 years each, 1 person - 6 years, 2 persons - 5 years and 6 months each, 2 persons - 2 years each	- counterfeit banknotes in the amount of 800.000 € and 100.000 USD and  - 3 vehicles		<b>8.6.2009.</b>
5	High Court Podgorica 21.02.2007	5 persons	- unauthorized production, keeping and releasing for circulation of narcotics (art. 300 par. 3 regarding par. 1 of CC)	Conviction	1 person - 7 years and 1 month, 1 person 6 years, 1 person 5 years 1 person sentence suppressed, new case number Ks.9/09 1 person free of charges	- 1,5 kg of heroin and - 15 kg of marijuana		<b>6.11.2008.</b>



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6	High Court Podgorica 7.12.2006.	18 persons	- associating for unconstitutional activities (art. 372 par.1 and 2 regarding art. 365 of CC)  - Preparing acts against the constitutional order and security of Montenegro (art. 373 par. 1, 2 and 3 regarding art.364 and 365 of CC)	Conviction against 17 persons,  And regarding one person procedure is separated	1 person - 6 years and 6 months, 2 persons - 5 years, 1 person - 6 years, 2 persons - 4 years, 2 persons - 2 years and 5 months, 1 person - 3 years and 3 months, 3 persons - 3 years, 1 person - 3 months, 3 persons - 6 months, 1 person - 7months,	seized large amounts of infantry and artillery weapons and mines and explosives		<b>10.6.2009.</b>
7	Basic court Berane 29.5.2007.	2 persons	- Abuse of official status (art. 416 par.3 regarding par.1 of CC) along with 6 persons in a case from 2005.	11.06.2009. Conviction against 5 persons 1 person free of charges 1 person passed away		41.000 €	Sentence is not final, since it has not jet been relegated.	
8	Basic court Podgorica 03.02.2007.	5 persons	- criminal association (art. 401 par.2 regarding par. 1 of CC)  - Illegal crossing of the state border and trafficking in human being (art. 405 par. 2 of CC)	Conviction  - Prosecutor complaint submitted 30.4.2007			Second instance court suppressed first instance sentence. In repeated procedure convictions were brought. Prosecutor submitted complaint against this sentence too (22.02.2008.). Decision upon this complaint has not jet been brought.	
9	Basic court Nikšić 27.2.2007	6 persons	-unlawful keeping of weapons and explosives (art. 403 par. 2 of CC)	- Conviction against 5 persons, 1 person free of charges		130 hand grenades	Procedure upon complaint is in progress since 14.03.2009.	
10	Basic court Podgorica 20.4.2007.	7 persons	-unauthorized trade (atr.284 par.4 regarding par.1 of CC)	- Conviction against 6 persons - One dismissal sentence	5 persons - 1 year each, 1 person - 6 months,  1 dismissal	58.841,36 €		<b>9.12.2008.</b>

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11	High Court Podgorica 5.4.2007.	4 persons	- criminal association (art. 401 par. 3 regarding par. 1 of CC) - Illegal crossing of the state border and trafficking in human being (art. 405 par. 1 of CC) -unlawful keeping of weapons and explosives (art. 403 par. 2 of CC)	08.02.2008. Conviction		confiscation of firearms and ammunition  (one automatic rifle and 89 rounds)	Appellative court suppressed this sentence upon prosecutor and accused complaints (19.06.2008.). Repeated procedure is in progress. Main hearing scheduled for 14.05.2009. not held since two accused did not receive court summons (Albanian citizens)	
12	High Court Podgorica 3.10.2007	12 persons	2 persons for - criminal association (art. 401 par.3 regarding par 1 of CC) -smuggling (art. 265 par. 2 of CC)  - active bribery (art. 424 par. 1 regarding art. 24 of CC)	29.12.2008. Conviction		8 vehicles « S » class	Second instance court suppressed first instance sentence upon prosecutor and barrister complaints (07.05.2009), case is returned for retrial.	
			8 persons for - criminal association (art. 401 par. 2 regarding par 1 of CC) -smuggling (art. 265 par. 2 of CC)					
			1 person for - criminal association (art. 401 par. 2 of CC) - abuse of official status (art. 416 par.1 of CC)					
			1 person for - criminal association (art. 401 par.2 regarding par. 1 of CC) - Passive bribery (Art. 423 par. 1 of CC)					
13	Basic court Nikšić 5.10.2007	1 person	- criminal association (art. 401 par. 2 of CC) - Illegal crossing of the state border and trafficking in human being (art. 405 par. 3 regarding par. 2 of CC) - falsifying a document (art. 412 par. 2 regarding par.1)	Conviction		1 vehicle	Sentence is final. Second instance court refused prosecutor complaint (26.06.2009.) and confirmed first instance sentence.	
14	Basic court Ulcinj 07.07.2007.	2 persons	- criminal association (art. 401 par. 2 of CC) - Illegal crossing of the state border and trafficking in human being (art. 405 par. 3 regarding par. 2 of CC)	Conviction		Floating car - boat	Sentence is suppressed upon accused complaint on 10.04.2008. In repeated procedure court brought acquittal decision. (18.03.2009). Sentence is not final, since it has not yet been relegated.	

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15	Basic court Podgorica 31.10.2007.	1 person	- criminal association (art. 401 par. 1 of CC) - Illegal crossing of the state border and trafficking in human being (art. 405 par. 3 regarding par.2 of CC)	Conviction	1 year and 3 months regarding crime - Illegal crossing of the state border (art. 405 par. 3 regarding par.2 of CC) Free of charges regarding crime - criminal association (art.401 par. 1 of CC)			<b>15.6.2009.</b>
16	Basic court Podgorica 26.12.2007.	10 persons	- criminal association (art. 401 par. 2 of CC) - Illegal crossing of the state border and trafficking in human beings (art. 405 par. 3 regarding par. 2 of CC)	16.07.2008. Conviction		Proposed seizure of illegally acquired property is used in the amount of  <i>91.000,00 €</i> , one vehicle and one residential building-house	Sentence is not final. Prosecutor submitted complaint on 08.11.2008., regarding two accused. In court second instance sentence (27.03.2009.), prosecutor complaint was refused and first instance sentence were confirmed regarding 1 accused and regarding 9 accused, sentence is suppressed upon barrister complaint.	
17	High Court Podgorica 26.12.2007.	2 persons	- criminal association (art. 401 par. 3 regarding par. 1 of CC) - unauthorized production, keeping and releasing for circulation of narcotics (art. 300 par. 3 regarding par. 1 of CC)	23.04.2009. Conviction		33,931 kg marijuana / seized in B i H during transportation/	Prosecutor submitted complaint on 30.06.2009 due to decision on imprisonment.	
18	High Court u Podgorica 4.4.2008.	3 persons	1 person for - grave types of murder (art. 144 par.1 point 1 and 4 of CC) - unauthorized production, keeping and releasing for circulation of narcotics (art. 300 par. 1 of CC) - unlawful keeping of weapons and explosives (art. 403 par. 3 regarding par. 2 and 1 of CC)	26.12.2008. Conviction against 1 person, 2 persons free of charges			Prosecutor submitted complaint on 29.04.2009.	
			2 persons for - grave types of murder in helping (art.144 par.1 and 4 regarding art. 25 of CC)					

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19	High Court Bijelo Polje 19.8.2008.	2 persons	- unauthorized production, keeping and releasing for circulation of narcotics (art. 300 par. 3 regarding par. 2 and 1 of CC) - abuse of official status (art. 416 par. 5 regarding par. 4 and 1 of CC)	4.2.2009. Conviction		15 kg cocaine from Ecuador transported by ship, hidden in a container of frozen fruit pulp, customer is a company registered in Montenegro, ownership of one of the accused.	Prosecutor submitted complaint on 30.04.2009. Decision upon this complaint has not yet been brought.	
20	Basic court Podgorica 9.8.2008.	6 persons	- criminal association (art. 401 par. 2 regarding par. 1 of CC) - Counterfeiting money (art. 258 par. 2 regarding art. 49 of CC)		1 person - 4 years and 10 months, 3 persons 2 years and 4 months, 1 person 2 years and 10 months, 1 person free of charges	135 false banknotes USD and two vehicles		<b>15.6.2009.</b>
21	High Court Podgorica 21.9.2008.	4 persons	- criminal association (art. 401 par. 2 regarding par. 1 of CC) - Trafficking in human beings (art. 444 par. 6 regarding par. 1 of CC)	Conviction against 3 persons, 1 person free of charges		1 vehicle	Prosecutor submitted complaint on 20.04.2009 regarding acquittal part of sentence	
22	High Court Podgorica 14.1.2008.	3 persons	- criminal association (art. 401 par. 2 of CC) - illegal crossing of the state border and trafficking in human beings (art. 405 par. 3 regarding par.2 of CC)	28.4.2009. Conviction		1 boat	Prosecutor submitted complaint on 24.06.2009.	
23	High Court Podgorica 7.7.2006.	1 person	- unauthorized production, keeping and releasing for circulation of narcotics (art. 300 par. 3 regarding par. 1 and all regarding art. 507 par. 3 and 4 of CPC)	Conviction	1 person - 7 years			<b>30.4.2009.</b>
24	High Court Podgorica 1.5.2005.	5 persons	- unauthorized production, keeping and releasing for circulation of narcotics (art. 300 par. 3 regarding par. 1 and all regarding art. 507 par. 3 and 4 of CPC)	Conviction	1 person 11 years 1 person 9 years 1 person 6 years 2 persons 2 years			<b>11.6.2009.</b>

### Remark:

**There are 24 cases of organized crime, against 115 persons in which the charge is resolved.**

**Out of that number 8 sentences against 47 persons are into effect.**

**According to the Tree party Commission report from July 2009, 22 convictions were recorded. After additional verification of the High Court in Podgorica, information on cases under ordinal number 23 and 24 (final sentences) were also provided.**

**113. Are there national statistical instruments for measuring the crime rate and the clear-up rate? Please provide the relevant statistics for the last two or three years.**

In compliance with legal powers and methodologies, aimed at following, directing and developing the policing, an overview and assessment of the scope of issues to be addressed, the Police Directorate registers data and keeps databases on the crime related fields.

National statistic instruments for measuring crime rate and rate of solved criminal offences have not been defined yet, and therefore, aimed at making assessment of the crime related situation and quality efficiency of policing, the following indicators are most often used:

- Crime rate – number of criminal offences per a thousand inhabitants, at the municipal and national level. The rate is calculated per thousand inhabitants, due to the fact that a number of municipalities has less than 10 000 inhabitants, while according to the last Census, Montenegro has a population of 620 145 inhabitants.
- Percentage of solved criminal offences represents a number of criminal offences being solved subsequently by its own work, compared to a number of criminal offences with unknown perpetrator, in a certain period.

Police Directorate registers data/keeps databases on criminal offences, regardless to whether they are reported to the police or police has the knowledge on them through its own activities, on filed criminal charges, as well as on persons – perpetrators of criminal offences against whom the criminal charges have been filed. Police Directorate also keeps databases on the registered security related events, as well as on the actions undertaken upon the requests of the competent prosecutor upon filed criminal charges.

Data on registered criminal offences are registered into special Crime Registry.

The crime related issues (crime rate and crimes solved), the Police Directorate primarily evaluates on the basis of the criminal offences registered in the police databases, hence data on criminal offences being directly reported to the competent prosecutor offices is not included.

In 2007, the Criminal Registry had 9 258 criminal offences being registered, prosecuted *ex officio*. Crime rate of 14.9 was calculated per number of inhabitants in Montenegro according to the Census from 2003, that is 620 145 inhabitants, although more realistic assessment is that 650 000 inhabitants live in Montenegro.

Out of total number of criminal offences (9 258) with an unknown perpetrator, 3 947 have been registered, and police solved 2 347 criminal offences or 59.5% of them.

In 2007 Police Directorate also solved 197 criminal offences from 2006 and previous years.

In 2008, 8 277 criminal offences were registered in the Crime Registry, for which prosecution is initiated *ex officio*. Crime rate of 13.3 was calculated per number of inhabitants according to the Census from 2003.

Out of total number of criminal offences (8 277) with an unknown perpetrator, 3 470 criminal offences were registered, out of which the police solved 2 348 criminal offences or 64.2%. In 2008, the Police Directorate also solved 144 criminal offences from 2007 and previous years.

**114. Are performance indicators or benchmarks available to assess the quality of police activities? In the absence of such data, how is police performance evaluated?**

Statistics are being collected in regard with all undertaken police measures and activities, as well as the data on results and effects of policing. Based on the data obtained, police organisational units keep appropriate records, and drawn up work reports monthly, involving analysis and assessment of the situation in certain fields, as well as results achieved (issues to be addressed – undertaken measures and activities, percentage of solved criminal offences with unknown perpetrator).

The results are compared with the results from previous month, and those analysis serve for operational directing of police activities, depending on the scope of the issues to be addressed, or on identified trends.

Data and the received results at quarterly level, are compared with the work plans for certain period, based on which implementation of the planned activities is measured.

Implementation of the plans and programmes at the level of Police Directorate is assessed at quarterly level. Received data is used as feedback information, as well as for the purpose of plans and programmes amendments, planning and undertaking concrete measures in specific hot issues area or location.

For the purpose of the police activities quality assessment and the assessment of general security situation, the following indicators are most often used:

- Crime rate, number of criminal offences per thousand inhabitants;
- percentage of the criminal offences solved, represents a number of criminal offences being subsequently solved, compared to a total number of criminal offences with an unknown perpetrator being registered in certain period;
- Number of registered criminal offences and security related events;
- Number of police measures and actions applied, and the results of the measures being used;

Listed indicators of work results are compared with previous periods (statistics and assessment), as well as with results of police services of the neighbouring countries.

Performance indicators provide for police work quality assessment, which would be more efficient and comprehensive by increasing number of indicators and data on activities and measures, by entering all data on events and police actions into single database.

Police Directorate has not so far conducted public surveys on the security related situation and quality of policing. The researches of other authorities and institutions on public surveys, level of trust in the state authorities work, whether citizens feel secure and safe, etc., has been used as an indicator for the situation and results assessment.

Within the implementation of the Community Policing Project, it is planned to develop policing quality assessment system, i.e. through relevant researches to introduce public opinion as one of the key indicators for policing and security situation assessment.

**115. What are the tools for career development? How is the performance of the individual police officer assessed?**

The Police Directorate staff has many possibilities for professional development, such as:

Through implementation of the annual programmes of professional and specialised training delivered at the Police Academy,

Through different forms of international cooperation, and

Through implementation of the annual training programmes being organised and implemented by the Human Resources Administration.

Annual programmes for professional and specialised training of the civil servants and state employees of the Police Directorate are prepared and delivered by the Police Academy, based on the requests of the police operational departments. After the program is harmonised, and jointly verified, the time schedule of the educational courses is decided. In average, more than 40 specialised and professional training courses and seminars are conducted annually.

Through this kind of education, police officers become qualified for implementation of:

Legislation (Law on Police, new Criminal Procedure Code, Law on Foreigners, Law on Asylum, etc.),

Projects on Community Policing, Intelligence Led Policing and School Resource Officer, and

Strategic documents and Action Plans (for suppressing corruption, organised crime, traffic safety issues, etc.).

Through implementation of the specialised courses and seminars, additional knowledge and skills are gained in the area of:

Suppressing organised crime,

Detecting and proving acts of corruption,

Use of special techniques in detecting perpetrators of serious criminal offences (secret surveillance techniques, undercover investigator, etc.),

Procedures and methods in preventing various forms of trans-border smuggling,

Use of technical means in executing different police tasks,

Use of modern operational techniques in crime scene examination,

Modern management principles,

Solving conflicts and crisis situations management,

Interview techniques, etc.

The above-mentioned training activities are implemented by professors and instructors at the Police Academy, as well as by the guest lecturers – experts in certain police related topics, from the University of Montenegro, from Police, Prosecutor's Office, international organisations dealing with police education, and from Police Academies and Police Colleges from the countries in the Region and other European countries.

Upon completion of each course and the assessment of the knowledge gained, participants receive certificates which serve as a proof that they are qualified for certain police tasks, which represents the basis for their professional career development.

In the first half of 2000, the Police Academy was granted appropriate licenses and it opened School for Foreign Languages and IT school in accordance with ECDL standards, by which the conditions have been created for employees of the Police Directorate and employees of other law enforcement agencies, to develop their knowledge in these, for the overall reform process, very important areas, under the favourable conditions. Participants who successfully complete these courses, receive internationally recognised certificates.

Employees of the Police Directorate have also the possibility for professional development through participation in regional courses and seminars, organised by various international organisations and associations, such as: OSCE, DCAF, MARRI, SECI Centre, SEPICA, OCTN, Council of Europe, ICITAP, etc.

Through education under the concrete bilateral agreements and projects, such as: Enhancing capacities of modern and democratic policing in Montenegro and Intelligence led policing, being implemented in cooperation with SIDA, Community policing implemented with the OSCE Mission, police officers develop their capacities for performing specific operational tasks.



Significant number of criminal police officers participated and successfully completed education at the Academy ILEA in Budapest, which significantly contributes to better results in specific operational tasks, and therefore to the development of their professional career.

Police management also develops its professional knowledge through tailor made and other study visits, organised through various forms of regional and wider international cooperation.

Civil servants and state employees also develop their professional knowledge in accordance with Professional Development Programme, drawn up by the authority in charge of human resources management – the Human Resources Administration. This Programme defines the content of the professional development and funds needed for its implementation.

Moreover, the Law on State Employees and Civil Servants ([Annex 176](#)) gives the possibility to apply for special professional development, as well as for scholarships, when assessed that it is of importance for the work of the state authority and when funds are allocated.

Development of a special act which would regulate rights, duties and accountability of the Police Directorate employees being sent for education, professional development, specialisations, postgraduate studies, as well as the criteria for granting the scholarship, etc. is pending.

The Police Directorate staff, state employees and civil servants performance assessment is done based on the Law on Civil Servants and State Employees. The assessment is done aiming at evaluating the officers performance and proper decisions making in regard to their promotion in the Service. The Law on Civil Servants and State Employees regulates criteria, procedure and manner of employees assessment. Performance assessment is done with respect to:

- Work results achieved;
- Independence and creativity in performing tasks;
- Established cooperation with clients and colleagues at work;
- Quality of work organisation in performing tasks and
- Other capabilities, skills and quality of tasks performing.

The employees are given the following grades: "excellent"; "good"; "satisfactory" and "unsatisfactory".

The assessment is done once a year, the latest up to 31 January, and it refers to the previous year.

**116. Which information do you store and, if yes, who has access to the following data:**

**a) data on persons wanted for extradition;**

INTERPOL NCB takes over wanted person notices submitted by other NCBs, after which it checks if they are in the conformity with the national legislation, updates and enters them into the national database on wanted persons (police database on wanted persons and missing persons, both at the national and international level), so as that national database of wanted persons represents a copy of INTERPOL database on wanted and missing persons. On the request of other NCBs, NCB INTERPOL conducts corrections and amendments, as well as cancels wanted notices for internationally wanted persons.

Beside internationally wanted person notices and missing persons notices issued by other NCBs being entered and updated by INTERPOL NCB, it also issues internationally wanted person notices, upon the request of Montenegrin judicial authorities, as well as internationally missing persons notices, upon the request of the Regional Police Units. In this case, INTERPOL NCB,

beside entering data, performs updating and cancelling international wanted person notices and international missing persons notices.

**b) data on aliens to whom entry was refused;**

These databases are under the competence of the Border Police Department.

At the border crossing points, which are connected to the Police Directorate single information network of the Police Directorate (15 of them), database on foreigners to whom entry to Montenegro was refused is kept in electronic form. At other border crossing points, data on foreigners to whom entry to Montenegro was refused, are kept in a hard copy form and in a form of reports being submitted and stored in the Border Police Department.

In the Border Police Department monthly and annual reports, there are records on number of foreigners to whom entry to Montenegro was refused, which are kept in a hard copy form.

In addition to that, the Section for Foreigners and Illegal Immigration Suppression has the right of access to the application "Border", through which, in individual cases, it can obtain data on foreigners to whom entry to Montenegro was refused.

**c) data on missing persons;**

Data on missing persons are part of the national database on wanted persons, which is kept in electronic form. Application on missing persons contains complete identification data of a missing person, physical description and photo of a person, time, place, reason and circumstance under which the person is missing, as well as all other relevant, operationally useful data on a missing person, measures and procedures to be undertaken if a person found.

National database on the above-mentioned data is a part of the database on nationally wanted persons, and users of the data are, through single information system of the Police Directorate, all operational police units (Regional Police Units, Local Police Units, Border Police Regional Units, etc.), and all police officers authorised and competent to undertake search related activities, regulated by law, in order to locate and find a missing person.

Internationally missing person notices are given in the answer to the question 116. a).

**d) data on persons to be placed under police protection for their own protection or to prevent threats;**

Pursuant to the Decision of the Government of Montenegro on determining persons and facilities to be protected by the Directorate (Official Gazette of the Republic of Montenegro 69/06), Department for Security of Persons and Facilities undertakes protection measures with regard to the persons referred to in Articles 1, 2 and 3 of the Decision (the President of Montenegro; the Speaker of the Parliament of Montenegro; the Prime Minister of Montenegro; Supreme Public Prosecutor, Minister of Foreign Affairs, Minister of Defence, Minister of Interior Affairs and Special Prosecutor for Organised Crime; Heads of foreign countries, Parliaments and Governments during their residence on the territory of Montenegro as well as other foreign officials when security reasons require so, other persons determined by the Government of Montenegro according to the previous security assessment and the degree of jeopardy).

Manner of protection of persons, degree and forms of security measures undertaken individually as well as official records that are kept are conditioned by security assessments of the degree of

jeopardy determined in cooperation with the National Security Agency (Article 1 of the Decision) separately for every person protected.

Director of the Police Directorate, in accordance with the Law on Police and Law on State Administration, adopted the Professional Instructions on the procedures for the adoption of the Protection Plan of Police Directorate officers who work on matters of suppressing organised crime and corruption. Conditions and procedure of protecting this category of officers is implemented by Department for Protection of Persons and Property.

Based on the security assessments, individual security plans are developed elaborating in detail the measures of security and protection.

The Witness Protection Unit keeps records on persons entered in Protection Programme being subjects of the measure of changed or concealed identity and data on property. The Unit keeps records on personal data of protected persons, their place of stay and residence, and on other data produced during the application of measures and actions regulated by law, as well as on protected persons being subjected to the Protection programme, under the international cooperation. Protection of the data and the records are regulated in articles 45 and 46 of the Law on Witness Protection.

**e) data on witnesses, on persons summoned to appear before judicial authorities and on persons who are to be served with a criminal judgement or summons to report in order to serve a penalty involving deprivation of liberty;**

Records on received orders and actions upon conducted accordingly, are kept by the Regional Police Units and Local Police Units. These records contain only data related to enforcement of orders, and only personal data given in orders: name and surname, address of residence and the capacity at which they are summoned for hearing, or the reason for which the person is wanted.

Courts, regional authorities competent for misdemeanours, and police officers empowered to conduct criminal proceedings, submit Orders to the Regional Police Units and Local Police Units which are binding to all of them to act upon. The orders refer to defendants and witnesses in proceedings. They may refer to the delivery of documents (decision, judgement, check of residence address, etc.), and to arrest warrants for persons who previously failed to comply with summon, in order to serve a penalty involving deprivation of liberty, regardless of whether they are summoned for the main hearing or to serve a penalty in the competent institution (Penitentiary Institution). After the action is undertaken, the Police Directorate informs the authority which has issued an Order, in the following way:

- in the cases of persons being served with documents, a duly signed proof of service (service receipt) by the recipient who received judgement, decision, etc., has to be submitted;
- when a person is brought before the authority requesting his/her presence, that authority has to state in the Order that person is apprehended, with precise data on date and time of apprehension;
- when a person is brought into a competent institution for serving the prison sentence, that institution is bound to state that, and the Police Directorate informs on that the authority which ordered a person apprehension to serve the prison sentence, and
- in cases when Police Directorate does not find a person, regardless of whether the documents are to be served to him/her, or he or she has to be apprehended, the Police Directorate informs competent authority that it acted in accordance with the order, but could not comply with it due to the reasons provided.

**f) data on persons (or vehicles used)**

Based on the data on perpetrators of serious criminal offences, the Criminal Police Department keeps records, cancels, makes alterations and amendments to the given category, in order to control the stay and movements of the persons interesting from the security point of view, as well as to prevent criminal offences of being committed on the territory of Montenegro, and to resolve already committed criminal offences.

Data on persons (or vehicles used) for whom there is a clear evidence or, based on an overall assessment, reasons to suppose that serious criminal offences will be committed, may also be obtained through INTERPOL NCB by direct query/search in INTERPOL database.

**g) data on convicted persons (of Montenegrin nationality, European citizens, third country nationals)**

Records on persons convicted with final and binding judgements by competent courts, are kept and updated in the Regional Police Units and Local Police Units, within criminal police. Pursuant to the Criminal Procedure Code, Criminal Code and the Instructions on keeping the above-mentioned records, criminal records or records on final and binding decisions are kept and updated in classic form (file and criminal record), and data are also stored in electronic form - "criminal records application". These records are, through the IT Section, available to the relevant units being granted special authorisation for their use.

Criminal records – records on final and binding judgements, are kept in the place of birth of convicted persons - perpetrators of criminal offences. All changes (rehabilitation instrument, deleting or expiration of conviction legal effect) in this record are made by the Regional Police Units and Local Police Units staff.

**h) data on objects (stolen vehicles, firearms, documents, vehicle number plates and banknotes).**

Within the Criminal Police Department, the national database is set up on the items being searched for, i.e. objects that have been searched for with regard to criminal offences committed on the territory of Montenegro, and on the items that have temporarily been seized based on grounded suspicion of being subject of criminal offences committed in Montenegro.

Storage of the above-mentioned data in electronic form, with all alterations, amendments and deleting, is done within the Criminal Police Department – General Crime Suppression Section – Unit for searches, operational control and cooperation with Penitentiary Institution.

An overview of data stored is the following:

- national searches application – vehicles searched for;
- national searches application – license plates searched for;
- national searches application – weapons searched for;
- national searches application – wanted owners of temporarily seized weapons;
- national searches application - other items searched for;

All operational police units have the access to the above-mentioned applications.

Data entered and updated by INTERPOL NCB in INTERPOL database refer to:

Searches for vehicles being stolen in Montenegro;

Lost/stolen/invalid travel and identification Montenegrin documents, and

Data on stolen works of art.

Access to the databases listed above is available to civil servants and employees of the Police Directorate who acquire this right on the basis of the scope and level of work they perform and who are authorised to use these data by a special act. The model “need to know” is used.

**117. Please provide information on national legislation or other rules governing this area, and their adhesion to relevant international conventions.**

The Criminal Code (Official Gazette of the Republic of Montenegro 70/03 and 47/06 and Official Gazette of Montenegro 40/08), Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03 and 47/06), Law on Witness Protection (Official Gazette of the Republic of Montenegro 65/04), Law on Public Prosecution Office (Official Gazette of the Republic of Montenegro 69/03 and 40/08) ([Annex 167](#)), Law on Criminal Liability of Legal Persons (Official Gazette of the Republic of Montenegro 2/07), Law on Mutual Legal Assistance in Criminal Matters (Official Gazette of Montenegro 4/08), Law on Courts (Official Gazette of the Republic of Montenegro 5/02 and 49/04 and Official Gazette of Montenegro 22/08) (Aneks 163) is main legislation governing efficient fight against organised crime.

Article 401 of the new Criminal Code defines the criminal offence of criminal association, incriminating establishment of criminal organisations or groups, i.e. organisers of association or member of an association. This provision provides for that a member of association who reports the association, before he/she as a member of the association or for the association has committed a crime, is liable to a fine or imprisonment for a term up to one year, and may also be acquitted of punishment. The Criminal Code also provides for criminal offences that may be committed in an organised manner, in which case, for that type of criminal offence more severe punishment is foreseen, for example with criminal offences typical for organised crime: money laundering, trafficking in human beings, possession and circulation of narcotic drugs, terrorism, etc. It should be underlined that the process of amending the Criminal Code is pending, by which, based on expertise and experts opinion and the analysis of the national experts, it will be fully harmonised with international conventions and standards.

The Criminal procedure Code in the Chapter 30 contains special provisions which refer to the procedures for criminal offences committed in an organised manner. Those are special rules for criminal prosecution of perpetrators of organised crime criminal offences, and all provisions are to be applied if there is reasonable suspicion that the criminal offence that has been committed has been the result of organised acting of more than two persons, whose aim has been to commit serious criminal offences. At least three conditions have to be fulfilled for the existence of an organised crime offence, apart from the above mentioned condition: that every member of a criminal organisation has been given in advance an assignment or a role; that activities of the criminal organisation have been planned for a longer period or unlimited period; that activities of the organisation have been based on implementation of certain rules of internal control of discipline of its members; that activities of the organisation have been planned and performed in international proportions; that violence and intimidation have been applied in performing their activities or are likely to be applied; that operations have been conducted through a political, economic and business structures; that money laundering or illegal acquisition of gain takes place; that there is an influence of the criminal organisation or its part upon legislative authorities, media, executive or judiciary authorities or other social and economic factors. New Criminal Procedure Code which entered into force, but which implementation is postponed for a year from the date of entry into force (Official Gazette of Montenegro 57/09) contains definition of an organised crime, pursuant to which organised crime implies the existence of grounds for suspicion that a criminal offence punishable under law by an imprisonment sentence of four years or a more severe sentence, is a result of the action of three or more persons joined into a criminal organisation, i.e. criminal group, acting with the aim of committing serious criminal offences in order to obtain illicit profit or power, under the previously mentioned conditions, in case when at least three of them have been met in

the area of organised crime, this Code is fully harmonised with UN Convention on Transnational Organised Crime.

The Criminal Procedure Code regulates the witness protection issue within criminal proceeding and use of special investigative means (secret surveillance measures), while the Law on Witness Protection regulates witnesses protection out of criminal proceeding i.e. including witnesses in special witness protection programme. The witness collaborator instrument has also been introduced. Public Prosecutor may suggest to the Court to interrogate a member of the criminal organisation as a witness, with his/her consent (witness collaborator, witness penitent) against whom criminal charges have been brought or the criminal proceedings have been instituted for an organised crime offence. Member of a criminal organisation may act as a witness provided that it is obvious that his statement and testimony are likely to help to a large extent in regards to proving the criminal offence in question and culpability of perpetrators, or in regards to revealing, proving and preventing other criminal offences of the criminal organisation, and that implication of his testimony as to proving these criminal offences and culpability of other perpetrators is prevail over the harmful consequences of the criminal offence he/she has been charged with.

The Law on Public Prosecution Office introduces the Special Prosecutor institute for fight against organised crime. Therefore, within the Supreme Public Prosecutor's Office, Division for Suppression of Organised crime, Corruption, Terrorism and War Crimes was established run by Special Prosecutor. All Public Prosecutors are bound to inform the Special Prosecutor if during their work encounter the cases they suspect to have elements of organised crime, corruption terrorism and war crimes.

The Law on Courts, with its last amendments introduces novelties in regard to the criteria for selection of judges and concentration of the jurisdiction for criminal offences of organised crime, corruption, war crimes and terrorism to the two Higher Courts in Podgorica and Bijelo Polje, and establishment of specialised divisions in those courts for prosecution of the criminal offences of organised crime, corruption, terrorism and war crimes.

Montenegro has ratified and incorporated into its national legislation many international conventions and EU standards, which will contribute to efficient fight against all forms of crime, especially organised crime. Criminal legislation is to a great extent harmonised, among others, with the UN Convention on Transnational Organised Crime, with its additional Protocols, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, the Council of Europe Convention on Corruption, the Council of Europe Convention on Action Against Trafficking in Human Beings, the European Convention on Mutual Legal Assistance in Criminal Matters, with the additional protocols, as well as with other relevant documents.

**118. Please provide an overview of your activities to implement the action-oriented measures that were adopted by the Government as a follow-up to the London Conference and presented at the EU-Western Balkans JHA ministerial meeting of 28 November 2003.**

Pursuant to the commitments undertaken at London Conference for Fight Against Organised Crime in South East Europe (25 November 2002, London, UK) and meeting of the EU Troika for the area of Justice and Home Affairs (Thessaloniki, Greece, 22 April 2003), the Government of Montenegro has undertaken a set of activities in the area of suppressing organised crime, primarily on:

- intensifying legal reform process in order to create an adequate legal framework for the fight against organised crime and corruption;
- creating institutional frameworks in compliance with international legal documents and practices, in order to strengthen the capacities of state authorities for more efficient fight against corruption and organised crime.

To that end, the following priorities have been defined in order to:

1. Intensify and strengthen regional and international cooperation in the area of justice and security;
2. Fulfil all international obligations being taken over;
3. Provide conditions for more efficient performance of the Prosecution Office, Police Directorate, and Judiciary, and protecting citizens rights and freedoms;
4. Make use of all the society capacities in detecting and suppressing organised crime;
5. Fight the crime in the roots, by identifying organised crime hot spots on domicile territory;
6. Fight against transit crime by undertaking activities on preventing transit of organised criminal groups throughout Europe and beyond;
7. Fight the crime in its destination, by identifying criminal organisations acting on a territory of a foreign country, through seizure and confiscation of proceeds acquired through criminal activities.

Priorities in the fight against organised crime are secured through criminal legislation reform, its implementation as well as through the training of the judges and prosecutors, and civil servants as key stakeholders in the crime suppression procedure. Accordingly, new Criminal Procedure Code, Criminal Code, Law on Public Prosecution Office and Law on Witness Protection have been adopted.

By the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03), special rules have been provided for with regard to the proceedings for criminal offences committed in an organised manner, and more severe punishment is to be imposed for criminal offences committed in an organised manner. For the purpose of detecting, resolving and proving organised crime offences, special procedural-legal mechanisms have been established, such as special investigative techniques and methods which are, pursuant to the Criminal Procedure Code (Articles 237-243) defined as secret surveillance measures, presenting a special way of gathering information.

Adoption of the new Criminal Code provided for sanctioning of all forms of new criminal offences, especially organised crime and corruption offences, and the new penal policy and strategy for modern crime control has been established.

The Law on Public Prosecutor provides for appointing a Special Prosecutor as a specific, functional, organisational, and in terms of powers and obligations a new instrument, aimed at providing efficient suppression of all forms of crime.

The Law on Police and Law on National Security Agency, provide for legal framework for reform of the security sector, first of all transformation of the police into a modern service which will efficiently suppress activities supporting all forms of crime. To that end, a specialised unit for fight against organised crime was established in the Ministry, within the Criminal Police Department (on 04 February 2003), aimed at following, studying and analysing situation, trends and forms of organised crime, based on information-analysis research and crime situation assessment, intelligence, identification of the crime phenomena (criminal offence) and actors being involved, possible facts and their characteristics, characteristics that identify them, as well as organised crime forms.

On the basis of the Law on Police (Official Gazette of the Republic of Montenegro 28/05) and the Decree on organisation and the manner of work of the state administration (October 2005), Police Directorate is established as an independent administration authority and organised in accordance with the determined competences within the process of state administration reform.

By the Rulebook on internal organisation and job descriptions of the Police Directorate 03-11/07-9 of 03 January 2007, which entered into force on 11 January 2007, reorganisation of the Section for fight against organised crime was conducted, after which it became also responsible for the activities related to fight against illegal trafficking in human beings and witness protection, resulting also in the increase of the number of staff.

Division for international police cooperation and European integration has been established, while the Division for Analyses, Information and Documentation, was transformed into Division for Planning, Development and Analytics.

Accession of Montenegrin Police Directorate into full membership of INTERPOL, required the establishment of INTERPOL NCB Podgorica, organised within the Criminal Police Department.

The Law on Prevention of Money Laundering (Official Gazette of the Republic of Montenegro. 55/03), Montenegro adopted for the first time at the beginning of 2003, and it entered into force on 08 October 2003. For the purpose of more efficient implementation of this Law, the Government of Montenegro, by the Decree on amendments to the Decree on organisation and the functioning of the state administration (Official Gazette of the Republic of Montenegro 67/03), which entered into force on 23 December 2003, established the Administration for Prevention of Money Laundering. The Administration was provided with proper working space, necessary information and telecommunication equipment. By adopting basic legislation (General act on organisation and job descriptions), the assumptions have been created for employment of the officers and commencement of work. For the purpose of efficient implementation of the strategic measures for the fight against organised crime, the Government of Montenegro adopted:

- Montenegrin administrative reform strategy (2002-2009); in the previous phase of the administrative reform, beside others, the following legislation was adopted: Law on State Administration, Law on Civil Servants and State Employees, and Law on Salaries of Civil Servants and State Employees;
- Programme of fight against corruption and organised crime (28 July 2005) and Action Plan for making it operational (04 August 2006), which defines measures and activities of the competent authorities and institutions for the period of three years (2006-2008). The Programme of fight against corruption and organised crime becomes operational through the Action Plan. The Action Plan was innovated in May 2008 when the implementation period was extended by the end of 2009.

**119. What particular types of crime, especially organised crime, does your country have to deal with? Please provide a description of the issues and any available statistics.**

The Police Directorate, in accordance with the Programme of work and the defined competencies, independently and in cooperation with other state bodies, undertook measures and activities on preventing and suppressing crime and identifying and detecting perpetrators of criminal offence. In the period from 2006 to September 2009 following criminal offences were identified:

<b>Overview of the most significant criminal offences</b>	2006	2007	2008	01/07 2009
Murder and grave types of murder	<b>25</b>	<b>10</b>	<b>23</b>	<b>18</b>
Attempted murder	<b>77</b>	<b>59</b>	<b>60</b>	<b>42</b>
Rape and attempted rape	<b>14</b>	<b>10</b>	<b>20</b>	<b>8</b>
Extortion	<b>9</b>	<b>14</b>	<b>7</b>	<b>8</b>
Kidnapping	<b>4</b>	<b>2</b>	<b>3</b>	<b>3</b>
Robbery and Theft in the nature of robbery	<b>86</b>	<b>77</b>	<b>90</b>	<b>111</b>
Trafficking in Human Beings	<b>1</b>	<b>2</b>	<b>2</b>	<b>3</b>



Illegal state border crossing	16	26	12	8
Domestic violence	511	565	507	332
Counterfeiting currency	139	153	113	18
Abuse of official status	181	139	83	48
Illegal Trafficking	272	193	123	86
Smuggling	107	115	45	49
Money laundering	37	16	7	1
Unauthorised production and circulation of narcotic drugs	344	409	363	244
Enabling the taking of narcotics	92	140	97	62

In **2006**, on the territory of Montenegro, Police Directorate registered **9 564** (9 579)<sup>1</sup> criminal offences, and compared to 2005, the crime rate was at the similar level. The crime rate (number of criminal offences per 1000 inhabitants) was 15.4. Out of the total number of the registered criminal offences, 7 519 criminal offences referred to the general crime (comparable period 7 643), which was the decrease by 1. 62%. When it comes to the economic crime, 2 045 (1 872) criminal offences were registered, which compared to 2005 showed an increase by 9.3%.

An increase in resolved criminal offences has been observed with regard to organised crime offences, abuse of narcotic drugs (23.4%), domestic violence and violence in a family community (22%) and economic crime (9%). The results referred to the resolved criminal offences shown in percentage was 55.8%

In **2007**, on the territory of Montenegro, the Police Directorate registered 9 258 criminal offences, so that compared to the previous year (9 564), the drop in crime rate was registered by 3.2%. The crime rate was 14.9. Out of the total number of registered cases, 7 206 criminal offences referred to the general crime offences, which compared to 2006 (7 519), represented a drop in crime rate of this type of crime, by 4%. In the field of economic crime 2 052 criminal offences were registered which is at the same level with the comparable period 2006 (2 045).

It can be stated that, in spite of the drop in crime rate, during 2007 an increase in the number of resolved drug abuse related criminal offences by (25.3%) and the domestic violence and violence in the family community by (10.5%) was registered, and quite high percentage of economic crime related offences that were resolved remained the same. The percentage of the resolved criminal offences was 59.5%, whereby the most important fact is that all murder cases were resolved.

In **2008**, the Police Directorate registered 8 277 criminal offences, so that in comparison to 2007 crime rate was decreased by 10.6%. The crime rate was 13.35. Out of the total number of registered criminal offences, 6 648 criminal offences referred to general crime offences, which compared to 2007 showed the drop in the rate of this crime by 7.7%. In the field of economic crime, 1 629 criminal offences were registered, which indicates to the drop in crime rate by 20.6%, compared to the comparable period. Apart from the decrease in the crime rate, an increase in the registered criminal offences against life and body, as well as against sexual freedom was registered, while the number of reported drugs related criminal offences decreased by 17%, and the quantity of seized narcotic drugs was increased by 24%, and high percentage of the resolved economic crime related offences remained the same. The trend of decreasing continued in the property related criminal offences, and reached its lowest level in the observed five year period,

<sup>1</sup> Data given in the brackets refer to previous year

and at the same time the percentage of the resolved cases was increased by 61.5%. Very good results were registered in resolving criminal offences – 64.2%.

During the **nine months of 2009**, the Police Directorate registered 6 122 criminal offences.

In cooperation with the special Division of the Supreme Public Prosecutor for Suppression of Organised Crime, Corruption, Terrorism and War Crimes, the Police Directorate has established the system, so that all legal mechanisms for suppressing organised crime in Montenegro have become effective:

- Enforcement of measures of secret surveillance (MSS);
- Court and Prosecutor's instrument of "witness collaborator" (during period 2004-2007 enforced in three cases);
- Seizure of assets obtained as a result of the commission of a criminal offence;

In **2006**, the Police Directorate filed to the Special Prosecutor 14 criminal charges for criminal offences with organised crime elements, against 106 perpetrators who committed 263 criminal offences.

The structure of criminal offences committed in an organised manner is as follow: criminal association 58, money laundering 42, abuse of official status 35, frauds 24, counterfeiting documents 20, unauthorised possession of weapons and explosive substances 21, preparation of criminal offences against the constitutional order and security of Montenegro 18, counterfeiting currency 10, unauthorised production, possession and circulation of narcotic drugs 7, grave type of murder 2, extortion 3, tax evasion 4, causing general danger 2, unlawful deprivation of freedom 2, coercion 2, acts of violence 1, active bribery 2, false representation 2, computer fraud 3 and unauthorised trade 2.

In **2007**, 12 criminal charges for the criminal offences with organised crime offences were submitted to the Special Prosecutor, against 76 perpetrators who committed 1 136 criminal offences.

The structure of criminal offences committed in an organised manner is as follow: counterfeiting documents - 503, frauds - 491, criminal association - 48, illegal crossing of the state border -21, unauthorised possession of weapons and explosive substances - 18, abuse of official status -15, money laundering - 11, tax and contribution evasion-9, aggravated theft -2, abuse of authority in economy-2, counterfeiting currency-2, murder -1; passive bribery-1 and active bribery-1.

In **2008**, 13 criminal charges were filed to the Special Prosecutor, against 71 perpetrators, who committed 123 criminal offences.

Within the structure of detected criminal offences the majority of them are as follow: criminal association - 27, abuse of official status - 20, unauthorised possession of weapons and explosive substances - 19, unauthorised production, possession and circulation of narcotic drugs - 14, illegal crossing of the state border and smuggling of people - 8, counterfeiting documents - 4, forgery of an official document - 5, counterfeiting currency - 4, money laundering - 7, trafficking in human beings - 2, unconscientious performance of office - 3, abuse of authority in economy - 4, embezzlement in economy - 2, active bribery -1, grave murder with elements of organised crime - 1, grave type of murder with elements of organised crime with aid in commission -2 and an attempted grave murder in connection with criminal association 1.

During the first nine months of 2009, three criminal charges were filed to the Special Prosecutor, including 53 persons due to founded suspicion that they have committed 93 criminal offences with elements of organised crime.

The structure of the detected criminal offences with elements of organised crime is the following: criminal association – 40, unauthorised production and circulation of narcotic drugs – 44, unauthorised possession of weapons and explosive devices - 9.

It should be pointed out that, due to the changed jurisdiction, since the end of 2008, the criminal offences with elements of corruption are also under the jurisdiction of the Special Prosecutor, and in the first nine months of 2009 there were 150 of them registered against 90 persons. Special

Prosecutor was forwarded 29 criminal charges against 45 persons who committed 100 criminal offences of the following structure: passive bribery – 77 cases, active bribery – 13 cases, abuse of official status – 9 cases, money laundering – 1 case.

Basic Public Prosecutors were forwarded 30 criminal charges against 45 persons for 50 criminal offences of the following structure: abuse of official status – 38 cases, abuse of authority in economy – 8 cases, false balance - 2 cases, abuse of official status with aid in commission – 1 case, active bribery – 1 case, material damage caused by corruptive criminal offences amounts to EUR 931 469.

After the assessment of the reported criminal offences and perpetrators by the Police Directorate, the Supreme Public Prosecutor's Office also prosecuted criminal charges of other authorities, organisations and citizens, and therefore the rate of crime for the stated period (2006-2009) is more comprehensive. The total number of 41320 perpetrators of criminal offences that are prosecuted *ex officio* have been registered in Montenegro. According to the overview made per years, number of perpetrators of criminal offences is as follow: in 2006 - 11 818, in 2007 - 11 678, in 2008 - 11 046, and in the first seven months of 2009 - 6 778 perpetrators.

Given statistic data reveal a drop in crime rate from a year to year. In 2006 in comparison to the previous - 2005, the crime rate decreased by 4.28%, in 2007 in comparison to 2006 the crime rate decreased by 2%, and in 2008 in comparison to the previous year the crime rate decreased by 5.42%. Statistics for the first seven months of 2009 reveal that the number of perpetrators of criminal offences is approximately equal to the number of perpetrators in the same period in 2008.

In the structure of crime for the period of three years (2006, 2007 and 2008), general crime offences make 84%; criminal offences against payment operations, economic transactions and official status (criminal offences with elements of corruption, etc.) make 10%; criminal offences against human health (trade in narcotic drugs, etc.) make 3.7%; while the participation of organised crime offences in the total number of criminal offences in Montenegro is bellow 1%, i.e. 0.67%.

In the first seven months of 2009, the structure of criminal offences did not change significantly compared to the previous three years. Namely, general crime offences make 87%; criminal offences against payment operations, economic transactions and official status (criminal offences with elements of corruption, etc.) make 9%; and criminal offences against human health (trade in narcotic drugs, etc) make 3%; while the participation of organised crime offences in the total number of criminal offences in Montenegro is also bellow 1% that is 0.60%, which is given in the figure bellow (Figure 1).

**FIGURE.1**

PERPETRATORS OF CRIMINAL OFFENCES												
Overview per years	2006			2007			2008			2009		
	adults	minors	total	adults	minors	total	adults	Minors	total	adults	minors	total
<b>Total per persons</b>	<b>11 197</b>	<b>621</b>	<b>11 818</b>	<b>11 037</b>	<b>641</b>	<b>11 678</b>	<b>10 477</b>	<b>569</b>	<b>11 046</b>	<b>6 398</b>	<b>380</b>	<b>6 778</b>
<b>Structure of criminal offences</b>												

<b>General crime</b>	<b>9 335</b>	<b>598</b>	<b>9 933</b>	<b>9 364</b>	<b>610</b>	<b>9 974</b>	<b>8 987</b>	<b>548</b>	<b>9 535</b>	<b>5 530</b>	<b>377</b>	<b>5 907</b>
<b>Criminal offences against payment operations and economic transaction, and official duty (corruption and other criminal offences)</b>	<b>1 343</b>	<b>9</b>	<b>1 352</b>	<b>1 124</b>	<b>14</b>	<b>1 138</b>	<b>1 008</b>	<b>8</b>	<b>1 016</b>	<b>616</b>	<b>1</b>	<b>617</b>
<b>Criminal offences against Human health (narcotic drugs trafficking, etc)</b>	<b>390</b>	<b>13</b>	<b>403</b>	<b>466</b>	<b>14</b>	<b>480</b>	<b>420</b>	<b>12</b>	<b>432</b>	<b>207</b>	<b>2</b>	<b>209</b>
<b>Criminal offences against humanity and other rights guaranteed under international law (war crimes, trafficking in human beings)</b>	<b>9</b>	<b>-</b>	<b>9</b>	<b>22</b>		<b>22</b>	<b>13</b>		<b>13</b>	<b>4</b>		<b>4</b>
<b>Organised crime</b>	<b>120</b>	<b>1</b>	<b>121</b>	<b>61</b>	<b>3</b>	<b>64</b>	<b>49</b>	<b>1</b>	<b>50</b>	<b>41</b>		<b>41</b>

As for the criminal offences of war crimes, four cases have been prosecuted against 31 persons: two cases against 18 persons for war crimes against civil population; one case against 6 persons for criminal offence – war crime against civil population and war crime against prisoners of war and one case against 7 persons and one case against 7 persons for crimes against humanity.

For the criminal offence of trafficking in human beings, eight cases have been prosecuted against 21 persons, out of which one case against four persons falls into organised crime category.

Within the stated period a total number of 276 perpetrators of organised crime offences were registered.

Criminal offences of organised crime in 2007 and 2008 in comparison to 2006 show an obvious tendency of decreasing. In the first seven months of 2009, two criminal offences of organised crime were registered with 41 perpetrator, which indicates to a slight increase of this type of crime compared with the same period of the previous year.

In the structure of organised crime offences in 2006, the most common criminal offences were criminal offences against payment operations and economic transactions, and they make 44% of the total number of the reported persons for these criminal offences. In this group, the most one is the criminal offence of money laundering.

In the structure of organised crime criminal offences in 2007, the most present criminal offences are criminal offences against public peace and order, and they make 48.43% of the total number of reported persons. In this group of criminal offences, the most dominant one was the criminal offence of illegal crossing of the state border and smuggling of human beings.

In the structure of organised crime criminal offences in 2008, the most present criminal offences are criminal offences against public peace and order, and they make 38% of the total number of reported persons. In this period also the most dominant criminal offence was illegal crossing of the state border and smuggling of human beings.

In the first seven months of 2009, in the structure of organised crime offences, the registered cases referred to criminal offences against human health (trade in narcotic drugs), so that this type of organised crime is 100% represented.

Statistic data of the described structure of organised crime offences are given in the figure bellow. (Figure 2):

**Figure 2**

<b>PERPETRATORS OF ORGANISED CRIME OFFENCES</b>												
<b>Overview per years</b>	<b>2006</b>			<b>2007</b>			<b>2008</b>			<b>2009</b>		
	adults	minor	total	adults	minor	total	adults	minor	total	adults	minor	total
<b>Total per persons</b>	120	1	121	61	3	64	49	1	50	41		41
<b>Structure of criminal offences</b>												
<b>1. Criminal offences against life and body</b>	7		7	1		1	3		3			

<b>2. Criminal offences against payment operations and economic transaction</b>	53	1	54	28	1	29	12		12			
<b>3. Criminal offences against human health (narcotic drugs trafficking, etc.)</b>	10		10	2	1	3	12		12	41		41
<b>4. Criminal offences against the Constitutional order and security of Montenegro</b>	18		18	-		-	-		-			
<b>5. Criminal offences against public peace and order</b>	5		5	30	1	31	18	1	19			
<b>6. Criminal offences against official duty</b>	23		23				2		2			
<b>7. Other criminal offences</b>	4		4				2		2			

From the given statistics, a drop in crime rate of the criminal offences against payment operations and economic transactions related to organised crime field is obvious in 2007, 2008, and in the first seven months of the current 2009, there were no criminal cases prosecuted in regard to these criminal offences. Criminal offences against official duty show a rapid tendency of drop in 2007 and 2008.

The given statistics reveal slight increase of organised crime offences in the first seven months of 2009, compared to the same period of the previous year. The increase is not only a consequence of a real increase of organised crime offences, but also the result of further strengthening of work

of the authorities responsible for suppression of organised crime, in the field of detection of criminal offences and criminal prosecution of the perpetrators thereof.

**120. Specify if there is a proven international dimension of organised crime in your country.**

International dimension of organised crime is proven in our country and is manifested through smuggling of drugs, human beings, goods, weapons, vehicles. The territory of Montenegro is considered a transit area for mentioned types of crime.

Previous work and actions of the state authorities, competent for suppression of organised crime, have confirmed the connection between organised crime in Montenegro and activities of the organised criminal groups abroad, particularly those being active on the territory of the countries established after the breakdown of former Yugoslavia. Connection between criminal groups from Montenegro and criminal groups from abroad is proven in almost all prosecuted organised crime related cases.. That connection is obvious with regard to: perpetrators (so that perpetrators are connected with each other and have accomplices abroad or the accomplices – foreign nationals act together with Montenegrin nationals on the territory of Montenegro, and vice versa); the subject to the criminal offence committed (so that subject of the criminal offence comes from abroad or is intended for abroad) and the place of commission of the criminal offence (so that the criminal offence was initiated abroad and continued in Montenegro, and vice versa).

Information exchanged through INTERPOL NCB shows a good connection and organisation of criminal groups from the territory of former Yugoslav countries and Albania.

International dimension of crime connected with drugs, has also been manifested through international activities of smuggling drugs through our territory, in which, as a rule, our citizens are also involved, being members of international organised criminal groups. As per the number and scope of smuggling activities the most immanent groups are the ones formed through association of criminal structures from Albania, Montenegro and other former Yugoslav Republics, which have been involved in smuggling cannabis products produced in Albania, for a long period of time, through our territory to Bosnia and Herzegovina, Croatia, Serbia, Slovenia and further to the EU member states.

Montenegrin police submitted criminal charges against 53 persons for criminal offences of criminal alliance and unauthorised production, possession and circulation of narcotic drugs in an organised manner, through the execution of the most important actions in 2009, conducted in cooperation with the Special Prosecutor for fight against organised crime and corruption

As for Montenegro, the “Balkan Route” of smuggling Afghanistan heroin is a relevant one, since a smaller part of the route towards Bosnia and Herzegovina, Croatia and further to the EU member states, goes through Montenegro, and the entry routes of the drug are primarily at the state borders with Kosovo, as well as with Albania. When it comes to the amount of the delivery of heroin being smuggled through this route, the amounts are mainly from 1-5 kilos. The biggest percentage of it transit through our territory while much smaller part of it remains in the country, for the needs of local consumers. One of the characteristic of this market is good international connections of the criminals from Montenegro with their partners from the entire Balkan region, particularly from Kosovo and former Republics of the Socialist Federal Republic of Yugoslavia.

Montenegro is also an important geographic area for smuggling “cocaine” coming from South America across Mediterranean Sea to our coast, and further on to the countries of the Region and EU countries by using road traffic. On the basis of previous experience two modus operandi can be identified:

- Use of containers for transport of goods and concealment of cocaine in legal goods. This type of smuggling is characterised by good international connections of criminal groups, big deliveries, investment of big amounts in these kind of jobs, use of real and façade companies and huge profits being shared once “cocaine” is placed on illegal market of the EU member states and

- when ship's crew is involved in smuggling; crewmen conceal packages of "cocaine" in the holes of a ship, and in that way they smuggle it to our coast in order to deliver it to Montenegrin criminal groups which organise further transit to the EU countries.

As one of the ways of smuggling cocaine, less important but not the negligible at all, is smuggling by civil air transport, when our criminal groups engage so called "couriers -mules" who bring the cocaine to our territory for the purpose of further distribution, by hiding it in their personal luggage, and sometimes in stomach or in body cavities.

Information on smuggling of cocaine which is gathered and exchanged at international level indicates to the involvement of our citizens in the smuggling and distribution activities, conducted far away from Montenegrin borders. The money earned in this way has often been sent to Montenegro and invested into legal business, procurement of real estates, vehicles, etc.

The territory of Montenegro has not been particularly threatened by smuggling or distribution of other types of drugs. To a lesser extent we face distribution of synthetic drugs amphetamine or "ecstasy" type, in the coastal cities mostly, during summer tourist season. The existence of laboratories for production of narcotic drugs has not been encountered.

An international dimension of organised crime in Montenegro is obvious, based on the following examples and statistics indicators of the Supreme Public Prosecutor's Office.

Namely, in 2006, out of total number of 20 prosecuted cases against 121 persons, in 15 cases against 90 persons were prosecuted for the following criminal offences: illegal production, possession and circulation of narcotic drugs, money laundering, frauds, abuse of official status, counterfeiting of currency, association for the purpose of acting against constitutional order and security of Montenegro, with the international organised crime dimension being confirmed. Within these cases, one case was prosecuted against two persons Montenegrin nationals, members of an international criminal group which committed a murder in the Republic of Germany over a foreign national.

In 2007, out of 12 prosecuted cases against 64 persons, 11 cases against 49 persons, were prosecuted for the following criminal offences: illegal crossing of the state border and smuggling of human beings, illegal trafficking (illegal mediation in real estates trade), smuggling of high class vehicles, smuggling of weapons, illegal production, possession and circulation of narcotic drugs and preparation of aggravated thefts and robberies on the territory of Montenegro, with the international organised crime dimension being confirmed. In one of these case, one person – Montenegrin national, being member of an international criminal group which was active in Bosnia and Herzegovina was given a status of a witness collaborator for the needs of the proceedings in that country, for prosecution of a case of attempted murder of police officers from Bosnia and Herzegovina.

In 2008, out of a total number of eight prosecuted cases against 50 persons, 6 cases against 32 persons were prosecuted for the criminal offences: illegal crossing of the state border and smuggling of human beings, illegal production, possession and circulation of narcotic drugs, trafficking in human beings, with the international organised crime dimension being confirmed. In one of these cases, against 10 persons for a criminal offence of criminal alliance (preparation of grave murder of Montenegrin national) one foreign citizen from Kosovo member of a criminal group was appointed to commit the murder.

In the first seven months of 2009, in the two prosecuted cases, for the criminal offence of legal production, possession and circulation of narcotic drugs, against 41 persons as members of several criminal groups from several countries (Albania, Montenegro and Bosnia and Herzegovina) an international organised crime dimension in Montenegro was confirmed.



## **121. What are the main elements of your policy dealing with organised crime?**

The priority task in the fight against organised crime is to provide all preconditions for efficient suppression and identification its types and forms. Montenegrin policy in this area has been implemented through:

- detection, identification and proving criminal activities, the main actors of the criminal groups, by applying special investigative means and methods pursuant to law;
- establishment and further development of cooperation between police and citizens;
- suppression of corruption, suppression of money laundering and financing of terrorism;
- seizure of assets obtained as a result of the commission of a criminal offence.

Achievement of the above-mentioned priorities has been ensured through:

- a consistent implementation of international instruments;
- harmonisation of Montenegrin legislation with EU and UN standards, referring to the fight against organised crime, corruption, money laundering and financing of terrorism;
- implementation of the obligations from the Progress Report on Montenegro, international organisations relevant for this field (Group of countries for the fight against corruption, Committee of Experts on the Evaluation of the Fight Against Money Laundering, Stability Pact Initiative);
- enforcement of activities and implementation of measures adopted by the Programme of Fight against Corruption and Organised Crime and the Action Plan for its Implementation;
- impartial, professional, legitimate and team work of police officers and judges and prosecutors, in detecting criminal offences of organised crime;
- coordination and synchronisation of activities of all stakeholders and institutions competent for the fight against organised crime, corruption, terrorism and money laundering;
- eliminating conditions for corruptive and other irregular actions, as well as by means of prevention of potential connections between criminal structures and groups and the officers of the administration authorities for the purpose of committing criminal offences in an organised manner;
- consistent implementation of the Criminal Code provisions;
- consistent implementation of the Criminal Procedure Code provisions;
- continuous professional development of police officers, judges and prosecutors dealing with suppression, detection and prosecution of the organised crime offences and their equipping with necessary technical and material resources;
- permanent innovation of the institutional authorities being competent for the fight against organised crime and corruption in order to provide conditions for functional distribution of assignments and authorities, being capable of providing efficient response to the organised crime related threats;
- development of impartial and efficient judiciary;
- efficient execution of judicial criminal proceedings, along with the judgements with regard to all types of criminal offences, particularly those committed in an organised manner through harmonisation of criminal policy on the entire territory of Montenegro;
- intensifying, development, maintenance and enhancement of all types of international police cooperation for the purpose of more successful detection and suppression of organised crime, and through exchange of data and information thereof.

By the Strategy for the Reform of the Judiciary (2007-2012), there have been goals set up, that have to be achieved in the framework of more efficient fight against crime, especially organised crime, corruption, terrorism and war crimes, and by the Action Plan for implementation of the Strategy, there have been measures provided for to be undertaken in order to achieve the stated

goals. The main goals of the policy that have been implemented in resolving criminal offences, particularly organised crime are as follow:

- ratification of international conventions and concluding bilateral agreements which provide for mechanisms for more efficient fight against crime;
- harmonisation of the legislation with international standards;
- conducting the analysis of the human resources capacities and recruiting of lacking staff;
- permanent education and professional development in the field of judiciary;
- improvement of the working and living conditions and financial position of judges and prosecutors;
- securing integrity protection of judges and prosecutors;
- making concentration of jurisdiction of the judiciary authorities for criminal offences of organised crime and corruption;
- introducing efficient investigative mechanisms for fight against corruption;
- introduce mechanisms for more efficient seizure of the assets obtained as a result of the commission of a criminal offence, and
- secure more efficient protection of a victim in criminal proceedings.

**122. Is there a system allowing for confiscation/seizure of proceeds from crime? Who is competent for the confiscation/seizure?**

Substantive legal aspect of seizure of the property is laid down in the Criminal Code (Official Gazette of the Republic of Montenegro 70/03 and 47/06 and Official Gazette of Montenegro 40/08), the procedural legal aspect is laid down in the Criminal Procedure Code (Official Gazette of Montenegro 71/03 and 47/06), while managing (handling) frozen and confiscated property is laid down in the Law on Managing Seized and Confiscated Property (Official Gazette of Montenegro 49/08).

New Criminal Procedure Code (Official Gazette of Montenegro 57/09) for the first time introduces in the Montenegrin legal system provisions of extended seizure and reverse burden of proof for the property of suspicious legal origin. The reverse burden of proof related provisions will start to be applied on the day of commencement of application of the Criminal Code provisions regulating extended seizure of property. The most part of the new Criminal Procedure Code provisions will start to be applied on 26 August 2010, whilst application of the reverse burden of proof provision is related to the amendments of the Criminal Code. Namely, in order to start with application of the procedural provisions of reverse burden of proof, it is necessary to regulate the relevant substantive legal aspect within the Criminal Code. Amendments to the Criminal Code regarding the relevant substantive legal aspect are ongoing.

**Seizure of property**

Currently valid Criminal Procedure Code regulates only the procedure of seizure of the proceeds from a committed crime, so called "fruits of crime". Criminal Code involves the principle that no one can keep property obtained from a crime. The proceeds are seized by the court order which establishes commission of the crime.

Only the proceeds obtained from a committed crime can be seized from a perpetrator or other persons. The proceeds are seized from a perpetrator and a third person on which behalf it is obtained, or to whom it is transferred. If a perpetrator by having committed a crime obtained property for a third person, the property shall be seized from a third person without any additional requirement. However, if a perpetrator obtained the property for himself/herself, and subsequently transferred it to a third person, the proceeds shall be seized from a third person, provided it is transferred without a compensation or with a compensation obviously not corresponding to the

actual value. In contrary, if a third person paid full compensation, according to the rules on protection of a diligent purchaser, the proceeds cannot be seized from him/her, however a perpetrator will be obliged to pay the property prize.

The proceeds from crime involve the existence of the causation link between a committed crime and obtained gain. A gain can be obtained directly, before a crime is actually committed, by committing a crime itself, or after a crime is committed. Money, valuable items and all other kind of property obtained from a crime can be seized from a perpetrator, and if a seizure is not possible, a perpetrator shall be obliged to pay the amount corresponding to the obtained property. The Criminal Code does not prescribe time limits for enforcement of this measure, therefore there is no time limit for the execution.

Proceeds from crime are established within a criminal procedure *ex officio*, and the judicial and other authorities competent for running criminal procedure are obliged during the procedure to gather the evidence and examine the facts relevant for establishing the proceeds. If a victim lodged the legal claim on proceeds for the recovery of an item obtained from a crime, or for the compensation corresponding to the item value, the proceeds are established only in a part not covered by the legal claim on proceeds.

### **Seizure of the property which origin is not proved (extended seizure and reverse burden of proof)**

New Criminal Procedure Code proceeds from the assumption that the Criminal Code shall envisage the option of extended seizure of the property which legal origin cannot be proved. Therefore, the provisions of the new Criminal Procedure Code referring to the reverse burden of proof will be applied from the day the provisions of the Criminal Procedure regulating extended seizure are to be applied. Extended seizure of the criminal, i.e. illegally obtained property is extended due to a fact that it refers not only to the property proved to originate from a concrete crime, or crimes, but it also refers to the property reasonably suspected to be obtained from a set of other crimes, i.e. they are the result of a certain criminal career of the concrete perpetrator, i.e. the person convicted by a final and enforceable judgement.

Legal grounds for running extended seizure procedure is linked to a normative solution in the field of criminal substantive law, as the legal ground in the view of establishing of the crimes regarding those for which such a seizure is possible, will be provided for in the Criminal Code provisions. By referring to the Criminal Code provisions in regard to defining the crimes, being subjects of criminal procedure, for which extended seizure from the convicted person is possible, retroactive application of the provisions, is evaded, as the retroactivity of criminal substantive law provisions shall be hereby prohibited. Therefore, the Criminal Procedure Code refers to the Criminal Procedure Code provisions, which automatically means that those criminal procedure provisions cannot be applied retroactively.

The Criminal Code shall provide for legal grounds and substantive requirement for extended seizure of the property, which legal origin is not proved. Within the extended seizure, the property can be illegal, even though it does not originate directly from a crime, or when it is not proved it actually originated from a crime, while for the seizure of the property, it has to originate directly from a crime, or there should be causation link between a committed crime being the subject of criminal procedure, and obtained gain.

In order to apply the provisions of extended seizure of proceeds, it is sufficient that the property of a suspect or accused is not in proportion to his/her income. If the property value is higher than his/her income, than it is on the suspect or the accused to prove legal origin of his/her property (*onus probandi* – burden of proof). The property is always illegal when a person concerned does not prove legality of the property origin. The suspect has a possibility to explain before the court disproportion between the property he/she owns and his/her income. The suspect, or the accused does not have to absolutely to prove legal manner of obtaining the property, however only to make it probable, i.e. to prove that the property origin is not illegal.

### **Freezing, confiscation and disposal of property**

The system and procedure of seizure of property which legal origin is not proved (extended seizure), can be divided in three phases:

- investigative phase, in which the property established, located and evidence on the owner is gathered. This phase can result in temporary measure (temporary seizure, freezing), in order to ensure subsequent seizure upon the court order;
- judicial phase, in which the property is permanently seized (final seizure, confiscation);
- disposal phase, in which the property is disposed of pursuant to the law.

### **Temporary seizure (freezing)**

One of the phases within the procedure of seizure of the property which legal origin is not proved is investigative phase (pre-trial investigation and pre-trial procedure) which is used to establish the proceeds from crime and gather the proceeds related evidence. In order to establish proceeds from crime, and to gather proceeds related evidence, it is necessary to conduct the financial investigation. The financial investigation can result in temporary measure (freezing) to ensure subsequent seizure upon the court order.

Public prosecutor initiates the procedure for establishing temporary seizure of the property which legal origin has not been proved. Within the preliminary seizure procedure, related provisions of the Law on Enforcement Procedure are applied. Temporary seizure is decided by investigative judge immediately or within eight days from the day the request was received, or by the President of the chamber of judges, before which the main hearing is conducted. Pursuant to the Law on Enforcement Procedure, the court competent for enforcement, enforces the order on temporary seizure, and is at the same time competent for disputes in regard to the enforcement.

Temporary seizure can last till the decision is made by the chamber of three judges upon the request of public prosecutor for final (permanent) seizure of the property which illegal origin has not been proved. If temporary seizure is ordered in preliminary investigation, it will be terminated *ex officio* if the investigation is not initiated within six months from the day the order on temporary seizure is issued. Court can revoke the order on temporary seizure *ex officio* or upon the request of public prosecutor or concerned person, if it is shown that the seizure is not necessary or justified, taking into account the severity of the crime, property situation of the person concerned, or the individuals he/she is obliged to support pursuant to the law.

### **Permanent seizure (confiscation)**

Permanent seizure (confiscation) based on final and enforceable court order is the second phase of the seizure of the property which legal origin has not been proved. Within pre-trial investigation and pre-trial procedure, as well as at the main hearing, judicial and other authorities are obliged *ex officio* to gather evidence and establish circumstances, relevant for establishing proceeds.

The following property can be confiscated:

- a) the one obtained from a crime (pursuant to valid and new Criminal Procedure Code), and
- b) the one which legal origin is not proved within the extended seizure procedure (only pursuant new Criminal Procedure Code).

Property presents the gain reflected in surplus of property owned by perpetrator, obtained from a crime commission. Court is obliged to establish *ex officio* the value of the obtained property.

Seizure of the proceeds can be ordered by the following court orders, characterised by establishing the facts that the crime being prosecuted is committed: a sentence, order on sanctioning without a main hearing, order on judicial admonition, order on corrective measure, and order on security measures of mandatory psychiatric treatment. Therefore, the proceeds from crime are seized also from a person found in the state of mental incapacity during the commission of the crime, and who was imposed a security measure of mandatory psychiatric treatment and confinement of that perpetrator in a medical institution, or a motion for mandatory psychiatric treatment of at large. In the enacting terms of judgment or operative part of the order, the court states which valuable items, amount of money or other property is to be seized. If the court omits imposing of this measure in the above-mentioned orders, it cannot be imposed by the court separate order

retrospectively. The omission in this regard can be corrected only by lodging the appeal, and if the order has become legally-binding, the request for judicial review may be submitted.

b) Confiscation of the property which legal origin has not been proved is possible only following the final and enforceable judgement pronouncing the convicted person guilty of a crime for which pursuant to the Criminal Code extended seizure of the proceeds can be applied (activities on amending the Criminal Code to include substantive legal provisions, necessary to implement this measure are ongoing). The proceeds can be seized not only from the convicted person, but also from other persons: legal successor of the accused, or the person to whom the property has been transferred. The procedure is initiated upon the public prosecutor request. Request for confiscation of the proceeds is submitted within the preclusive period of one year, being calculated from the date the judgement became final and enforceable. The request involves data on the convicted person, his/her legal successor, or the person to whom the property has been transferred, indication of the proceeds to be seized, proofs on the property owned by the convicted person, his/her legal successor of the accused, or the person to whom the property has been transferred, and on their legal proceeds, as well as circumstances indicating the obvious discrepancy between the total property and the legal property of the convicted person, his/her legal successor and the person to whom the convicted person has transferred the property.

The request is submitted without delay to the above-mentioned person, along with a notice of the obligation to prove the legal origin of the property before the chamber of three judges, as well as that the property will be seized if its legal origin has not been proved. The following persons are invited to the chamber of judges session: Public Prosecutor, convicted person, his/her legal successor, or a person to whom the convicted person has transferred his/her property, and his/her proxy. Depending on the evidence procedure results, the chamber of judges session is finalised by passing the order on confiscation of the proceeds, or by rejecting the prosecutor request. The chamber of judges can reject the prosecutor request partially, if the person subject of the procedure for confiscation of the proceeds proved their legality to a certain extent. The chamber of judges appraisal of proving legality is based on the principle of free assessment of evidence and judicial discretion. If the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property does not prove by valid documents or in absence of valid documents, in some other manner fails to prove the legal origin of the property, the chamber of judges shall issue an order on the confiscation of the proceeds.

The order on proceeds confiscation shall be delivered to the convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property, his/her proxy, Public Prosecutor, and the state body which, pursuant to the law, administrates the seized proceeds. Convicted person, his/her legal successor or the person to whom the convicted person has transferred his/her property and his/her proxy may appeal against the order on proceeds confiscation within eight days, whereas the Public Prosecutor may lodge an appeal against the order on total or partial rejection of the request for proceeds confiscation.

### **Disposal of the proceeds seized in a criminal procedure**

Managing frozen and confiscated proceeds is entrusted to the competent authority pursuant to the Law on Managing Seized and Confiscated Proceeds. The Law provides for the manner of handling and managing frozen and confiscated proceeds in a criminal procedure. Among other, handling and managing involves the following: value assessment, storage, keeping, recovery, selling, depositing funds obtained from selling, and keeping records on seized proceeds.

Within the procedure of seizure of proceeds and the proceeds which illegal origin has not been proved, all kinds of property can be seized: material or non-material, movable or immovable, assessable or non-assessable, being of a high value. Income or other gain obtained directly or indirectly from a crime, as well as the benefit turned into or mixed with, is also considered to be the property. Within the meaning of the Law on Managing Seized and Confiscated Proceeds, the proceeds are: money, movables, immovables, precious items (gold, noble metals, precious stones, semi precious stones, pearls and other valuable items), other real property rights, securities pursuant to law, other documents for proving the property rights, and other proceeds from crime.

Handling and managing activities of the seized or confiscated property is done by the body in charge of the public property management. Pursuant to the Decree on Organisation and

Functioning of the State Administration (Official Gazette of Montenegro 59/09), Public Property Administration is in charge of administration activities related to the managing public property. The proceeds seized within the procedure, is managed by the Public Property Administration in a way which guarantees the highest level of preserving their value, with the lowest costs. Public Property Administration is obliged to take care of the interest of owners, diligent holders, and persons from whom the proceeds are temporary seized. In order to preserve the property value, the competent authority can sell the seized property pursuant to the law. The Public Property Administration can entrust managing of the seized proceeds to an registered organisation or institution, and the one fulfilling conditions provided by law for managing that kind of property. The organisation or institution is obliged to manage entrusted property pursuant to the law.

The Court is obliged to send without delay to the Public Property Administration final and enforceable order on freezing or confiscation. For the needs of the procedure, the Public Property Administration can be entrusted by the court with assessing value of seized proceeds. The seized property keeping and maintenance costs are covered by the Public Property Administration till the order is final and enforceable. The Administration is competent for selling seized proceeds, and the selling procedure is done pursuant to the relevant provisions of the Law on Enforcement Procedure.

Funds obtained from the sale of confiscated proceeds, after covering costs of storage, keeping, sale and other similar costs, are paid to the Budget of Montenegro, and are used for funding projects on strengthening capacities of judiciary, public prosecution office and police.

**123. Describe the specific institutions/bodies/departments/court chambers set up to fight organised crime (including data on staff, budgetary allocations and equipment in this area). How do you ensure special training of law enforcement officers including prosecutors and judges in this area?**

The following institutions perform activities in fighting against organised crime: Police Directorate, Supreme Public Prosecutor's Office and higher courts.

**Police Directorate**

Within the Police Directorate, the following primarily deal with activities regarding fight against organised crime: Criminal Police Department, Border Police Department. Within the Criminal Police Department, there is Section for Fighting Organised Crime and Corruption, Economic Crime Section, Special Verifications Section, Section for Fight against Drugs and Smuggling, Witness Protection Unit and NCB INTERPOL.

Forensics Centre and Division for International Police Cooperation and European Integrations also deal with the aforementioned matters.

Section for Fighting Organised Crime and Corruption is established on 04 February 2003 entrusted with the task to follow, study and analyse organised crime related situation, trends and related crimes based on information-analyses researches and examination of crime related situation, intelligence, to identify security related phenomena (crimes) and the persons linked to those phenomena, possible facts and their elements, and their identifying characteristics, as well as the organised crime forms (organisational aspect, inter connection with other persons, professionalism, technical achievements misuse, confidentiality, connection to some political and legal powers related persons, division of tasks, continuity, permanency in work, etc.).

The Head of the **Section for Fighting Organised Crime and Corruption** is responsible for its operations, where two working positions are also systematised and those are positions of analyst and operator.

Within the Section, pursuant to the Rulebook on Internal Organisation and Job Descriptions within the Police Directorate, the following three groups are organised:

*General Organised Crime Suppression Group for:*

- serious crimes against life and body, kidnapping, blackmail and robbery,
- smuggling of motor vehicles, weapons, dangerous substances and works of art,
- illegal migration, organised smuggling and trafficking in human beings,
- terrorism and international terrorism.

Tasks of this Group are conducted by the Head and four officers.

*Economic Organised Crime Suppression Group for:*

- money laundering and conducting financial investigations,
- official position abuse, tax evasion, smuggling of excise and other goods,
- counterfeiting currency and other instruments of payment, and document forgery,
- cyber crime and copyright abuse.

Tasks of this Group are conducted by the Head and four officers.

*Corruption Suppression Group for:*

- corruption in governmental and non-governmental organisations

Tasks of this Group are conducted by Head and two officers.

**Special Verifications Section** is dealing with crime-intelligence tasks and implementation of one part of secret surveillance measures (technical surveillance). There are four Groups within the Section:

- a. Monitoring and Exploitation Group
- b. Crime-Intelligence Analyses Group
- c. Observation and Documentation Group and
- d. Operational Techniques Group

Funds for functioning of the Police Directorate and its Departments and Sections are provided within the special allocation of the Budget.

In cooperation with the Police Academy, Police Directorate is conducting training and education of the police staff. Organised crime subject is incorporated in the regular programme and curriculum of the Academy for the police staff tasked with the suppression of organised crime. In cooperation with the OSCE, ICITAP, IOM, UNDP, specialised seminars are organised for the criminal and border police staff, as well as for other civil servants involved in the Action Plan measures for the implementation of the Training Program against corruption and Organised Crime.

From 2007-2009, Section for Fighting Organised Crime and Corruption staff participated in 80 training activities in 2007, in 45 training activities in 2008 and 40 training activities in the first nine months of 2009 in the area of fighting organised crime in country and abroad, facilitated by the following international organisations: UNDOC, OCTN, ICITAP, CARE, ICMPD, OLAF, ILEA and INTERPOL.

**Special Prosecutor for Suppressing Organised Crime, Corruption, Terrorism and War Crimes**

Within the Supreme Public Prosecutor's Office, special Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes is set up, and it started functioning on 30 June 2004, headed by the Special Prosecutor. The Division is in charge of pre-trial criminal procedure, and it directs police actions in undertaking measures necessary to detect crimes within the scope of its jurisdiction, it requests conducting an investigation, it brings and represents the indictments, and it undertakes other actions and measures provided for in the law in order to seize and confiscate assets and proceeds of crime.

In addition to the Special Prosecutor, there are five Deputies within the Division, who are in the prosecution administration activities assisted by four state employees, and there is a position of a Counsellor. Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes is fully equipped in terms of the working space, offices and technical equipment. To this end, EUR 60,000 were spent from the Budget. Funds for functioning of the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes are provided within the special allocation of the Public Prosecution Office Budget.

Aimed at efficient performing of the prosecution function within the Division, organised crime and corruption related training was conducted from 2005 up to nowadays, through a large number of seminars, international meetings and conferences, organised by the following international organisations: OSCE, UNICEF, UNDOC, Council of Europe Office, UNDP, etc., as well as by the Judicial Training Centre of Montenegro, Public Prosecution Office, Ministry of Justice and Ministry of Interior. Special forms of training of Public Prosecutors in the field of organised crime and corruption were conducted during the implementation of CARDS Programme (which is finalised), PROSECO Programme (which is ongoing) and TWINING Project – Reform of Judiciary (which is ongoing). In September 2008, Supreme Public Prosecutor's Office has adopted the Programme of Supreme Public Prosecutor's Office of Montenegro for training of Public Prosecutors and the Deputies, and its implementation is ongoing.

Based on the above-mentioned education activities, the prosecutorial office holders within the Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes obtained necessary knowledge and skills to deal with the most complex cases within the scope of their jurisdiction.

### **Specialised Divisions for Trial Proceedings of Organised Crime, Corruption, Terrorism and War Crimes in High Courts**

High Courts are competent for running trial proceedings in prosecuting cases of organised crime, regardless of the severity of prescribed penalty, crimes having the elements of corruption, terrorism and war crimes. Within two High Courts in Podgorica and Bijelo Polje specialised divisions are set up on 01 September 2008 pursuant to the Law on Amendments to the Law on Courts of 2008 for handling those cases. Special Division within the High Court in Podgorica has five Judges, and the Division of the High Court in Bijelo Polje has three Judges. The number of Counsellors within a High Court is specified based on the number of Judges; one Advisor is appointed to one Judge.

Financial resources for funding activities of Special Divisions within High Courts are provided within the Courts Budget allocation.

Training of Judges is conducted in the Judicial Training Centre. The Judicial Training Centre conducts education activities through a continuous education, seminars, workshops, round tables, conferences and organisation of study visits. A large number of training activities on organised crime was conducted for Judges and Counsellors within the Courts, supported by the following international organisations: OSCE, UNICEF, UNDOC, Council of Europe Office, UNDP, etc.

Judicial Training Centre conducts the training of Judges and Public Prosecutors, and initial training of Counsellors within the Courts and Public Prosecution Office. The Judicial Training Centre conducts training activities, in accordance with the Annual Education Programme, adopted by the Coordination Board. Regarding the future education of Judges and Prosecutors in the field of organised crime, it is planned to conduct comprehensive training for preparation of implementation of the new Criminal Procedure Code and implementation of the United Nation and Council of Europe international treaties regulating organised crime issues.

Training of the police staff is organised at the Police Academy, with the participation of experts from international organisations and associations, and police services of the European countries, and abroad. In accordance with the Annual Education Programme, Professional Training and Specialised Training of the Police Directorate employees, it is planned to organise the following seminars and courses on organised crime and corruption in 2009:

- Cooperation of the police in the Region in suppressing organised crime



- Suppression and Detection of Cyber Crime
- Corruption - detecting crimes with elements of corruption
- Money Laundering and Financial Investigations
- Fight against illegal migration
- Fight against smuggling and trafficking in human beings

**124. How do you co-operate internationally in fighting organised crime and how do you ensure national coordination in this combat? How do you co-operate with the private sector, notably the banking sector?**

International police cooperation is developed in compliance with national legislation, Constitution, Criminal Procedure Code, Law on Police, Law on Mutual Legal Assistance in Criminal Matters, signed and ratified international conventions and bilateral and multilateral treaties.

Montenegro has signed and ratified many international conventions, bilateral and multilateral treaties on cooperation in fight against terrorism, suppression of drugs smuggling and international organised crime with European and non-European countries.

Among the most relevant conventions regarding cooperation in organised crime cases is Vienna Police Cooperation Convention for Southeast Europe, signed on 05 May 2006 in Vienna. It defines general measures of cooperation through: prevention, joint investigations, criminal prosecution (application of secret surveillance measures, controlled deliveries, undercover agents), witness protection, enhancement of cooperation through expert procedures and DNA profiles comparison, work of joint teams in investigating organised crime and state border security, as well as the training in compliance with the legal system of each Contracting Party of the Convention.

Bilateral police cooperation agreements are signed with the following countries: Republic of Albania, Bosnia and Herzegovina, Republic of Croatia, Republic of Serbia, UNMIK – Kosovo, FYR Macedonia, Republic of Slovenia, Austria, Bulgaria, Rumania and Russian Federation.

International police cooperation is to the largest extent developed through INTERPOL. INTERPOL NCB, as a part of the Police Directorate, for the needs of Montenegrin Police and other law enforcement agencies, as well as judicial authorities, exchanges information with foreign police services, and it coordinates joint international activities and operations (both initiated by Montenegro and a foreign police service), in accordance with its competences and jurisdiction in conducting police activities. Key international police cooperation is developed by using INTERPOL communication channel.

INTERPOL NCB coordinates international police activities through:

- coordination of all activities, upon a foreign request, related to all Police Directorate segments in order to collect required information, and to organise specific police activities in Montenegro,
- centralised, incorporated submitting of the requests to foreign police services (upon initial requests of the Police Directorate segments, other administration authorities, the ministries, judicial authorities at the national level), in order to collect and submit required information, or to conduct specific police activities, as well as to submit the reply, information or notification to the requesting segments at the national level.

INTERPOL NCB develops intensive and continuous (direct and indirect) cooperation with the banking sector, at the national and international level through:

- cooperation with international institutions (through INTERPOL, EUROPOL and with European Central Bank) regarding currency counterfeiting, and forgery and misuse of credit cards. All requests, received at the national level, regarding currency counterfeiting, forgery and abuse of credit cards are submitted to INTERPOL and EUROPOL, which facilitate in receiving information from European Central Bank and other foreign banking institutions, necessary to detect crimes committed in Montenegro.

In addition to the above-mentioned, INTERPOL NCB develops international cooperation also through foreign liaison officers accredited for Montenegro, as well as through other international police organisations (SECI Centre, OLAF, etc.).

By signing Strategic Agreement on Cooperation with EUROPOL, and by establishing safe communication link, it will be possible to establish efficient information exchange.

Conducting and processing of concrete criminal cases provide for direct cooperation, assisted by liaison officers, which is mostly grounded on signed bilateral cooperation treaties.

Cooperation with foreign police services is also developed through the Police Division for International Police Cooperation and European Integration.

Cooperation with the banking institutions in Montenegro is developed through an active and two-way information exchange with the Central Bank of Montenegro regarding the issues of currency counterfeiting within the scope of concrete police investigative actions, as well as regarding organisation of training for banking sector staff aimed at preventive action.

Collection of information by private, i.e. banking sector is developed: directly, upon the request of the competent prosecutor, and indirectly through the Administration for Prevention of Money Laundering and Financing of Terrorism, when information is needed within the scope of its jurisdiction regarding activities and movements of the natural and legal persons accounts, both in the country and abroad.

The Supreme Public Prosecutor's Office develops cooperation in the fight against organised crime in compliance with the 1959 European Convention on Mutual Assistance in Criminal Matters with its 1978 Additional Protocol and 2001 Second Additional Protocol, the Law on Mutual Legal Assistance in Criminal Matters adopted in January 2008 and harmonised with relevant European standards.

Within the Supreme Public Prosecutor's Office which is an integral part of the prosecution organisation in Montenegro, Division for Suppressing Organised Crime was set up, which jurisdiction pursuant to the 2008 Law on Public Prosecution Office, is extended to corruption, terrorism and war related crimes. The Division, pursuant to the Criminal Procedure Code and the Law on Public Prosecution Office, is in charge of pre-trial criminal procedures and it directs the activities of the Police Directorate and other competent authorities, especially with the private and banking sector involved in fighting organised crime, and which can be used for collecting proper evidences. It should be underlined that upon the competent prosecutor request, all authorities are obliged to submit requested evidence, as well as the banking transactions related information.

Aimed at more efficient fight against organised crime, the Supreme Public Prosecutor's Office signed the following bilateral and multilateral agreements with:

- Public Prosecution Office of the Republic of Croatia,
- Prosecution Office of Bosnia and Herzegovina,
- Public Prosecution Office of the Republic of Serbia,
- Prosecution Office for War Crimes of the Republic of Serbia,
- EULEX Special Prosecution Office of the Republic of Kosovo,
- General Prosecution Office of the Republic of Albania,
- General Prosecution Office of Ukraine,
- General Prosecution Office of the Russian Federation.

In Skopje in 2005, Memorandum of Consent on Regional Cooperation in the Fight against Organised Crime was signed between Public Prosecution Office of the Republic of Macedonia, General Prosecution Office of the Republic of Albania, Public Prosecution Office of Bosnia and Herzegovina, Public Prosecution Office of the Republic of Croatia, Public Prosecution Office of the Republic of Serbia.

The Supreme Public Prosecutor's Office of Montenegro is a member of the Southeast European Prosecutors Advisory Group (SEEPAG), within which in 2004 the Agreement on Mutual

Information, Data and Evidence Exchange in the field of transnational organised crime was signed, with the following members: Republic of Slovenia, Republic of Croatia, Bosnia and Herzegovina, Macedonia, Serbia, Montenegro, Albania, Greece, Bulgaria, Turkey, Moldova, Romania and Hungary.

The Supreme Public Prosecutor's Office appointed the contact point within the EUROJUST.

Pursuant to the Law on Public Prosecution Office, International Cooperation Division is set up within the Supreme Public Prosecutor's Office. From 2006 to 01 August 2009, there were 77 cases of mutual legal assistance, with the request for collection of specific physical evidence, checks of information, provision of documents, all cases having been processed within the prescribed time period, and all requests for mutual legal assistance fully acted upon.

Within the above-mentioned time period, the Public Prosecution Office conducted criminal prosecution in 203 cases, based on the letters rogatory for transfer of cases by the Prosecution Offices of other countries, and it transferred 172 cases to other competent foreign Prosecution Offices in order to assume criminal prosecution (Note: those cases are not organised crime cases).

### **125. What are the main forms of trafficking (human beings, drugs, cigarettes, firearms, stolen vehicles, etc.)**

The territory of our country is mostly defined as a transit one, as regards smuggling of drugs, human beings, weapons, cigarettes and other high tariff goods. Smuggling modus operandi and routes depend on the origin and type of smuggled goods.

Smuggling of drugs is manifested in two basic forms: international smuggling and distribution on Montenegrin illegal drugs market. Montenegro is a transit territory, primarily for cannabis products, produced in Albania and smuggled through Montenegro to the Region countries, and further on towards European Union. These drugs come to Montenegro through Montenegrin-Albanian border, mostly through illegal crossing points on green border, after which the smuggling is organised by passenger and cargo transportation to Serbia, Croatia, Bosnia and Herzegovina, and further on.

Heroin is smuggled through well known "Balkan route", which is used for Afghani heroin to reach through Turkey, Bulgaria, Macedonia and Kosovo to Montenegro, where a small amount is left for "street dealing", and the most of it transits towards former SFRY countries and further on, towards Western Europe. This kind of drugs is smuggled mostly through legal border crossing points, most often concealed in holes of passenger and cargo motor vehicles.

The territory of our country is also interesting from the aspect of cocaine smuggling from South America to our coast, after which the most of it transits to EU countries, and a part, the small one, is left for domestic consumption.

In terms of other types of drugs, it can be stated that they are not present at the Montenegrin illegal market significantly (amphetamine and ecstasy type of drugs are consumed in smaller amount), and those are mostly during a summer tourist season. So far, there were no cases or information registered in the Police Directorate practices on potential laboratories for production of those drugs.

As far as trafficking in human beings is concerned, the countries of origin are Serbia, Ukraine and Kosovo, mostly in terms of sexual exploitation. When it comes to smuggling of human beings, countries of origin are Albania, Kosovo, Turkey, Bosnia and Herzegovina and Serbia, while Montenegro is a transit country, and rarely final destination country.

Organised smuggling of human beings, as a phenomenon, has been registered since 2000, i.e. just after the war conflicts in former Yugoslavia. At that time, the most of illegal migrants arrived by land route, by using liberal visa regime between these countries and the high migration risk countries. The organisers of the smuggling are mostly foreigners leading the actions of a criminal organisation outside Montenegro, whilst the Montenegrin territory is mostly used as a transit area, and individual Montenegrin nationals or criminal groups are part of international smuggling chain.

In regard to smuggling of weapons, Kosovo, Albania, Serbia and Bosnia and Herzegovina are the countries of origin, and Montenegro is a transit country.

In regard to smuggling of motor vehicles, Montenegro is mostly a transit country. Vehicles are smuggled from Western Europe countries to Albania, Kosovo and/or the countries of Asian continent. In Montenegro, from 2007-2009, 86 969 vehicles registered in Montenegro were checked through INTERPOL NCB. For the same time period, 247 vehicles stolen abroad were found in Montenegro, which compared to the number of vehicles registered in INTERPOL database on stolen vehicles – 4 641000 (information of 31 December 2008), is a small number, confirming the fact that Montenegro is a transit country. Trafficking in vehicles in Montenegro is also reflected in vehicle embezzlement, in a way that perpetrators rent vehicles, mostly from "rent-a-car" companies from Montenegro, and take them over, based on forged documents, subsequently taking them within a short time period out of the country, where they are smuggled further on.

In the first nine months of 2009, 700 896 vehicles were checked by using MIND on Montenegrin border crossing points through INTERPOL database.

According to Montenegrin legislation, smuggling of goods implies transport of goods across the customs boundary by evading customs control measures, or actions during the transport of goods across the customs boundary also evading the customs control. Selling, distribution or concealment of uncleared goods, or organisation of the network of dealers or agents for distribution of such goods is considered as smuggling of goods. Such actions are sanctioned by the Criminal Code (Article 265), pursuant to which the goods being the subject of smuggling are seized. In regard to the sanctions for the perpetrators of smuggling, the penalties imposed are six months (for minor forms) up to eight years imprisonment (for serious forms). The goods managed to be smuggled are placed on the black market, and as such, if they cannot be proved they are smuggled, become the subject of illegal trafficking. Illegal trafficking related illegal actions are sanctioned pursuant to Article 284 - Illegal Trafficking of the Criminal Code.

Penalties imposed for perpetrators of this crime are from six months (for minor forms) up to six years imprisonment (for serious forms).

Goods which are the most often smuggled are the following: excise goods (cigarettes and alcohol), textile and other wide consumption goods, food, coffee, domestic animals, etc.

Smuggling of goods is mostly done between former Yugoslavia countries and Montenegro, our country being final destination or transit country, and rarely the goods originating from Montenegro are smuggled outside the country. Illegal trafficking and smuggling of various types of goods through the border crossing points are mostly done to evade customs duty and VAT. Those illegal activities are especially present at the areas nearby the border crossing points (Rozaje, Bijelo Polje, Niksic, Podgorica, Herceg Novi, Ulcinji).

As far as the forms of smuggling are concerned, smuggled goods enter Montenegro from the neighbouring countries, mostly in the following two ways:

-bypassing official border crossing points, by using bypassing routes. Often the goods are transported by pack animals or by terrain vehicles, when the terrain configuration conditions allow so;

-concealing goods and other smuggled objects in specially built and adjusted compartments in motor vehicles, in which most often the smuggled goods are found. Smuggled goods are transported to Montenegro also by trains, and by river and sea routes by boats.

In addition, during import or export of goods, along with legal transportation of goods, illegal goods for which an owner does not have an origin are transported.

The goods managed to be smuggled are the subjects of illegal trafficking, and the most often they are distributed to the customers at market desks and at the non-registered trade facilities. Distribution of smuggled cigarettes is mostly done covertly, due to the activities of inspection services.

According to the information of the Supreme Public Prosecutor's Office, all forms of illegal trafficking and smuggling of human beings, narcotic drugs, cigarettes, firearms and luxurious vehicles are represented in Montenegro.

In regard to the trafficking in human beings, which was in 2001 for the first time introduced in criminal legislation of Montenegro as a separate crime, from 2001 up to nowadays, 20 cases have been prosecuted against 45 persons, out of which three cases against 11 persons were prosecuted as organised form of this crime. In regard to the cases of organised form of this crime, in two cases the victims of trafficking of human beings were from Ukraine, and in the third case the victims were from Bangladesh. In one case, final destination was Montenegro, where the victims were exploited for the labour purposes in construction activity, and in two other cases Montenegro was only a transit country, whilst in one case final destination was Kosovo, and in another one a Western Europe country.

Regarding illegal crossing of the state border and smuggling of human beings, in 2007, from the aspect of organised crime, five cases against 19 persons were prosecuted, and in 2008 there were two cases against 10 persons. Smuggled persons-migrants were in all cases foreign nationals, from Kosovo and Albania. Montenegro was a transit area, and final destination is a Western Europe country, and in one case final destination was USA.

Regarding smuggling of narcotic drugs (illegal transportation across the state border), from the aspect of organised crime, nine cases against 65 persons were prosecuted. Various types of narcotic drugs were smuggled (heroin, cocaine and marihuana – skunk which is dominant). Marihuana – skunk, is mostly smuggled from Albania, Montenegro being a transit country, only to a small extent it is a final destination for this type of drugs. Heroin and cocaine are smuggled from Albania and Venezuela, Montenegro being mostly a transit country.

With regard to smuggling of vehicles, from the aspect of organised crime, one case against 10 persons was prosecuted. High S class vehicles were smuggled, being previously obtained in Western Europe, smuggled through Montenegro, Republic of Albania being the final destination.

Regarding smuggling of weapons, from the aspect of organised crime, three cases against 10 persons were prosecuted. One case included the weapons of large destruction powers Surface-to-Air Missiles, and two other cases included smuggling of bursting weapons (grenades, firearms – guns). Smuggled weapons originates from former Yugoslavia countries, it continues through Montenegro as a transit country, to the Republic of Albania as the final destination country.

Regarding smuggling of cigarettes, from the aspect of organised crime, one case against 17 persons was prosecuted. Foreign brand cigarettes were smuggled by the sea route from the Republic of Albania to Montenegro, in order to be sold at the Montenegrin market.

## 126. What are the estimated volumes and value of different categories of illegal trafficking?

Subjects of illegal trafficking in Montenegro are excise goods – cigarettes and alcohol, various types of textile goods, technical goods and devices, food, wood products, domestic animals, etc.

The table shown below illustrates statistics on cigarettes, alcohol, domestic animals and other goods (textile goods, wood products, household appliances, pirated DVD movies and similar goods), temporary seized by the Police Directorate staff due to the lack of the goods origin certificates, i.e. lack of proper documents. The statistics refer to 2007, 2008 and the first nine months of 2009:

Year	Cigarettes		Alcohol beverage		Domestic animals		Other goods (textile, wood products,
	Volume	Value	Volume	Value	Volume	Value	

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	(No of boxes)	(Euro)	(Bottles)	(Euro)	(No of Head)	(Euro)	household appliances, pirated DVD movies and similar goods) value in Euro
2007	41 837	415 491.00	18 661	81,042.00	569	53 614.00	317 648.00
2008	23 039	218 202.00	361	4,470.00	290	42 300.00	43 0220.00
31 September 2009	18 111	152 128.00	576	5 420.00	30	5 800.00	191 848.00
Total	82 987	785 821.00	19 598	90,932.00	889	101 714.00	939 716.00

When cigarettes, alcohol, or any other foreign goods are concerned, they are handed over to the Customs Administration for further actions within its jurisdiction, along with a charge for the customs misdemeanour, and in parallel, the criminal charge is filed for illegal trafficking.

In 2007, 193 cases of illegal trafficking were prosecuted, 115 cases of smuggling and 241 cases of the customs offences charges; in 2008, 123 cases of illegal trafficking, 43 cases of smuggling and 147 cases of the customs offences charges; in the first 9 months of 2009, there were 86 cases of illegal trafficking prosecuted, 49 cases of smuggling, 100 cases of the customs offences charges. The above-mentioned statistics refer to the detected and seized cigarettes, alcohol beverages, domestic animals and other goods, as well as to the number of charges being prosecuted. The statistics enable identification of the phenomenon presence and intensity; however it is not possible to identify the volume of illegal goods at the "black market".

**127. Please describe your national legislation on trafficking in human beings (see also questions under Political Criteria).**

Montenegrin criminal legislation has recognised trafficking in human beings as one of the most threatening forms of criminal activities, therefore based on analyses of relevant international instruments while stipulating those crimes, the lawmaker made efforts through definitions of trafficking in human beings related crimes to cover the widest possible spectrum of actions violating fundamental rights of a person, such as the freedom and protection of physical integrity.

Montenegro has acceded to UN Convention against Transnational Organised Crime (Palermo Convention) and its Additional Protocols – Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Sea and Air. The Convention with Additional Protocols was ratified at the level of the Federal Republic of Yugoslavia in 2001 (Official Gazette of the SRY - International treaties 6/01). After the United Nations received the Information of Montenegro on acceding all international treaties signed or ratified on the level of State Union of Serbia and Montenegro with a list of multilateral

agreements deposited at the UN Secretary General on 23 October 2006, Montenegro is considered as a Party to those conventions, including the Palermo Convention with Additional Protocols.

Priorities in suppression of illegal migrations are ensured by adoption of the set of following laws in the field of judiciary: Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of the Republic of Montenegro 40/08), Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03, 7/04, 47/06), New Criminal Procedure Code (Official Gazette of the Republic of Montenegro 57/09), Law on Witness Protection (Official Gazette of the Republic of Montenegro 65/04) and the Law on Criminal Responsibility of Legal Persons (Official Gazette of the Republic of Montenegro 2/07 and 13/07).

**Criminal Code** provides for a set of crimes regulating the field of illegal migration and trafficking in human beings, and they are the following: Pimping and Enabling having a Sexual Intercourse (Article 209), Mediation in Prostitution (Article 210), Illegal Crossing of the State Border and Smuggling of Persons (Article 405), Trafficking in Persons (Article 444), Trafficking in Children for Adoption (Article 445) and Submission to Slavery and Transportation of Enslaved Persons (Article 446).

Within the scope of crimes against sexual freedom the following are prescribed as criminal offences: Pimping and Enabling having a Sexual Intercourse (Article 209) and Mediation in Prostitutions (Article 210).

Pimping and Enabling having a Sexual Intercourse (Article 209) is a criminal offence which implies pimping a minor for the purpose of sexual intercourse, an act equal to it or some other sexual act. Prescribed penalty for this offence is from three months to five years imprisonment. Another form of this offence is enabling having sexual intercourse with a juvenile, an act equal to it or another sexual act. Imprisonment in the duration of three years is the prescribed sentence for this criminal offence.

Mediation in Prostitution (Article 210) involves instigating or inciting another person to prostitution, or participating in handing over a person to another person in view of prostitution, or promoting or advertising prostitution by means of media and other similar means. Prescribed penalty for this criminal offence is a fine or an imprisonment sentence not exceeding one year. Qualified form (grave one) of this criminal offence is when mediation in prostitution of juveniles is done; hence the prescribed penalty is from one to ten years imprisonment.

Illegal migrations are sanctioned by criminal offence of Illegal Crossing of the State Border and Smuggling of Persons (Article 405), within the scope of crimes against public peace and order. This criminal offence is committed by a person who crosses or attempts to cross the state border of Montenegro without a proper permission, who carries arms or by using violence. Imprisonment not exceeding one year is the prescribed sentence for this criminal offence. Qualified forms of the offence are when a person deals with illegal transfer of other persons across the border of Montenegro or when the person enables another for gain to illegally cross the border or illegal stay or transit. Prescribed penalty in those cases is imprisonment sentence of three months to five years. If this criminal offence is committed by more persons in an organised manner, by abuse of official position or in the manner endangering the lives or health of people whose illegal crossing of the border, stay or transit is enabled or if a large number of people were smuggled, the prescribed sentence is imprisonment of one to ten years. This Law also prescribes seizure of means intended for or used for the commission of this offence.

Within the scope of offences against humanity and other rights guaranteed under international law, two following trafficking in human beings related offences are provided for: Trafficking in Persons (Article 444) and Trafficking in Children for Adoption (Article 445).

Pursuant to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, amending the UN Convention against Transnational Organised Crime, the Criminal Code provides for a criminal offence – Trafficking in Human Beings (Article 444). This criminal offence is committed by a person who by force or threat, deceit or keeping in delusion, by abuse of authority, trust, relationship of dependency, difficult position of another person or by keeping back identification papers or by giving or receiving money or other benefit for the purpose of obtaining consent of a person having control over another: recruits, transports, transfers, hands

over, sells, buys, mediates in sale, hides or keeps another person for exploitation of work, submission to servitude, commission of crimes, prostitution or begging, pornographic use, taking away a body part for transplantation or for use in armed conflicts. Prescribed sentence for this criminal offence is imprisonment of one to ten years. If such offence is committed to a juvenile person, the offender will be punished by prescribed sentence for that criminal offence, even if there was no force, threat or any other of the stated methods present in the commission of the crime and the prescribed sentence is imprisonment of not less than three years. If the commission of this offence has caused serious bodily injuries to a person, the offender will be punished by imprisonment sentence of one year to twelve years and if the commission of the offence has caused death of one person or more, the offender will be punished by imprisonment sentence for a minimum term of ten years. The Law prescribes that anyone who deals with committing these offences or participates in their organised commission together with several other persons will be punished by imprisonment sentence for a minimum term of five years

Criminal Code provides for a separate offence concerning the form of trafficking in persons - Trafficking in Children for Adoption (Article 445). This offence is committed by a person who abducts a person who has not reached the age of fourteen for adoption in contravention of current regulations or whoever adopts such a person or mediates in such adoption or whoever for that purpose buys, sells or hands over another person who has not yet reached the age of fourteen or transports, provides accommodation for or hides such a person. Prescribed sentence for such offence is imprisonment sentence of one to five years. If a person who deals with commission of this activity or participates in their organised commission together with several other persons will be punished by imprisonment for a minimum term of three years under the Law.

Prohibition of the slavery and **trafficking** in slaves is provided for in various international instruments including The Universal Declaration of the Human Rights from 1948, and 1966 International Covenant on Civil and Political Rights and UN Convention against Transnational Organised Crime (Palermo Convention) and its Additional Protocols. The Criminal Code of Montenegro provides for as a criminal offence Submission to Slavery and Transportation of Enslaved Persons (Article 446). This criminal offence is committed by a person who breaching the rules of international law puts another person into slavery or other similar position or keeps another person in such a position, or buys, sells, hands over to another person or mediates in buying, selling or handing over of such a person or induces another person to sell own freedom or freedom of persons he/she supports or looks after, and the prescribed sentence is imprisonment for a term of one year to ten years. Another form of this criminal offence is when a person transports other persons in the position of slavery or other similar position from one country to another will be punished by imprisonment for a term of six months to five years. Grave form of this offence exists when it is committed to a juvenile person, and the offender will be punished by imprisonment for a term of five to fifteen years.

Pursuant to Palermo Convention, the Criminal Code of Montenegro provides for in Article 268 money laundering offence, which punishes actions which, through banking, financial or other commercial operations, conceal the manner the proceeds are obtained by all, and even offences related to smuggling of persons, illegal migrations, trafficking of persons.

Criminal Code, Criminal Procedure Code, Law on Witness Protection, Law on Criminal Liability of Legal Persons, Law on Prevention of Money Laundering and Financing of Terrorism (Official Gazette of Montenegro 14/07 and 4/08) and Customs Law ( Official Gazette of the Republic of Montenegro 7/02, 38/02, 72/02, 21/03, 29/05, 66/06 and Official Gazette of Montenegro 21/08) present legal framework involving provisions providing for functioning of institutions and incrimination in criminal legislation for fight against trafficking of persons.

**Criminal Procedure Code** provides for normative bases for efficient prosecution and processing of criminal offences of human trafficking. The Code envisages the possibility of using investigative methods and means (secret surveillance measures) such as audio and visual recording, secret photographing, secret following and technical recording, hiring undercover investigator and collaborator, etc. For the purposes of efficient processing of criminal offences, the newly adopted Criminal Procedure Code (Official Gazette of Montenegro 57/09) provides for secret surveillance measures, which, prior to its adoption, could only be used in the pre-trial proceeding, now can be used in the stage of investigation.



Criminal Procedure Code provides for ensured court protection of witnesses in the processing and witness collaborator. An injured party, who is the victim of sexual abuse and violence, as well as a child being examined as a witness, is entitled to testify in separate premises before the judge and the Court clerk, whereas the Prosecutor, defendant and defence attorney are given the possibility to ask questions to the witness. If there are grounds to fear that by giving a statement or answering certain questions a witness would put in danger his, his spouse's or close relative's life, health, body integrity, freedom or property of great value, the witness may withhold from giving the details, answering certain questions or giving the statement altogether until his/her protection is secured. Witness protection consists of special ways of participating and questioning witnesses in the criminal proceedings and those are: questioning of witnesses under pseudonym, questioning with assistance of technical equipment (protective wall, voice simulators, devices for transmission of image and sound), etc. (Articles 108 and 109).

**Law on Witness Protection** provides for conditions and procedures for provision of out-of-court protection and assistance to a witness, where other measures are not sufficient, and when reasonable fear exists that testifying for the purpose of bringing evidence about the offence, in connection with which the protection may be provided under this Law, would expose the witness to severe danger to life, health, physical integrity, freedom or property.

**Law on Criminal Liability of Legal Persons** provides for the possibility of seizure of items used for or intended for use for commission of crime, or which were created by the commission of a criminal offence, if being owned by legal person. In addition, the Law also provides option for mandatory seizure of items, as well as for conditions for seizure of the items in individual cases.

**128. Does a National Programme on Combating Trafficking in Human Beings exist in your country? If so, please describe the main elements.**

Yes. The Government of Montenegro in cooperation with the US Government, OSCE, Council of Europe and International Organisation for Migration, among the first countries in the Region, on 13 November 2003 adopted the Strategy on Combating Trafficking in Human Beings and the Action Plan for its implementation.

The Strategy implies concrete tasks in this field, bodies and individuals responsible for implementation of the complete measures, as well as the time frameworks for their enforcement. Among other things, the Strategy implies the obligation of the records keeping on the number of the judgements and convictions for trafficking in human beings, cooperation with the neighbouring countries in criminal prosecution investigations, as well as with the countries of origin and destination, the public awareness and education, especially the children and vulnerable groups, which also involves the Government support, and assistance to the efforts made by non-governmental organisations, etc. The strategy is fully harmonised with the Convention against Transnational Organised Crime, as well as with Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Thus, necessary assumptions and mechanisms for suppression of this form of crime are set up.

After the adoption of the Strategy, the Government has set up special team, i.e. the Working Group for its implementation. **The Working Group** is a body involving representatives of the competent Ministries at the level of the Deputy Ministers (Ministry of Health, Ministry of Labour and Social Welfare, Ministry of Justice, Ministry of Education and Science), the Police Directorate, Deputy Supreme Public Prosecutor, Head of Office for Fight against Trafficking in Human Beings and IOM, CoE, OSCE, Save the Children, UNICEF and United States Embassy representatives, having the status of observers.

The Working Group meets twice a month upon the notification of the Head of the Office for Fight against Trafficking in Human Beings who is chairing the sessions. At the meetings, the institutions representatives are reporting in a form of presentations to the Head of Office for Fight against Trafficking in Human Beings about undertaken and conducted activities from the Action Plan on Combating Trafficking in Human Beings.

The Action Plan (AP) on Implementation of National Strategy on Combating Trafficking in Human Beings in 2009 was adopted on 25 December 2008. Before it was adopted, there were a large number of seminars and meetings initiated by the Office for Fight against Trafficking in Human Beings, to enable exchange of experience, suggestions and proposals by all relevant actors engaged in Fight against Trafficking in Human Beings in Montenegro, and the inputs were used as guidelines for drawing up AP.

The AP is harmonised with the recommendations of the Convention against Transnational Organised Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, as well as with the European Convention on Action against Trafficking in Human Beings, which was signed and ratified by our country. The Action Plan defines priorities laid down in the Strategy on Combating Trafficking, recommendations of the Working Group and international organisations and institutions. The Action Plan follows all previously adopted continuity measures, and it defines new measures to enhance capacities of the institutions and organisations in fighting trafficking in human beings. The Action Plan is composed of three parts: prevention, protection and criminal prosecution. It provides for the measures, responsible persons and institutions, and time frameworks, i.e. dynamics of the commitments, indicators for measuring success, as well as possible risks factors. Activities on drawing up Action Plan for 2010/2011 are ongoing, and its adoption is expected in December 2009.

### **129. What are the competent authorities for combating trafficking in human beings?**

The Institutions in Montenegro engaged in combating trafficking in human beings are the following:

Supreme Public Prosecutor, Police Directorate, Ministry of Health, Ministry of Labour and Social Welfare, Supreme Court, Ministry of Justice and Ministry of Education and Science.

Umbrella governmental institution in this field is the **Office for the Fight against Trafficking in Human Beings**, which is from the organisational point of view positioned within the General Secretariat of the Government of Montenegro. According to the job descriptions, it coordinates activities of the competent authorities of the state administration, international organisations and non-governmental organisations in implementation of the National Strategy on Combating Trafficking in Human Beings, aimed at more efficient protection of the victims, prevention and criminal prosecution of the perpetrators: (it coordinates the sessions of the Project Board and the Working Group, it participates in the work of international conferences, it monitors implementation and application of the Action Plans, and it reports to the Government of Montenegro on its actions. Based on information provided by the above-mentioned institutions, the Office compiles high quality statistics on victims of trafficking in human beings (the statistics are available on the Office web site: [www.antitrafficking.gov.me](http://www.antitrafficking.gov.me)), it follows the course of a criminal procedure conducted against a perpetrator of this crime. The Office for the Fight against Trafficking in Human Beings is making efforts to obtain the support of the local community to the largest possible extent, by organising training campaigns for the employees in order to act preventively in the light of overall efforts in combating trafficking in human beings.

**The Memorandum of Mutual Cooperation between** the Supreme Public Prosecutor, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police Directorate and non-governmental organisations: Montenegrin Women's Lobby, Safe Woman's House and Centre Plus, aimed at more efficient cooperation in combating trafficking in human beings in the practice, through prevention, education, criminal prosecution of perpetrators and protection of potential victims of trafficking in human beings, especially women and children, defines duties and obligations of the respective partners in regard to undertaking concrete measures and activities to combat trafficking in human beings more efficiently.

According to the Memorandum, **Supreme Public Prosecutor's Office** establishes mutual cooperation aimed at combating trafficking in human beings through efficient criminal prosecution of the perpetrators of the following crimes:

Trafficking in Persons - Article 444 of the Criminal Code,

Trafficking in Children for Adoption - Article 445 of the Criminal Code,

Submission to Slavery and Transportation of Enslaved Persons – Article 446 of the Criminal Code, and

Mediation in Prostitution - Article 210 of the Criminal Code.

Powers, rights and duties of the public prosecutors are laid down in the Criminal Procedure Code, the Law on Public Prosecution Office (Official Gazette of the Republic of Montenegro 69/03) and the Law on Witness Protection (Official Gazette of the Republic of Montenegro 5/04).

Provided that there is a suspicion that criminal offence of trafficking in human beings, referred to in Articles 444, 445, 446 and 210 of the Criminal Code has been committed, Signatories of the Memorandum are obliged to report it pursuant to provision of the Article 227 of the Criminal Procedure Code.

Signatories of the Memorandum, i.e. authorised persons, shall report immediately to the Police Directorate, i.e. competent public prosecutor, if they recognise actions with the elements of trafficking in human beings. Public Prosecutors participate with the signatories of the Memorandum in joint meetings, seminars and training aimed at more efficient prevention of the above-mentioned crimes, and protection of victims of trafficking in human beings.

Public Prosecutors within the legal powers, are authorised to cooperate with the signatories of the Memorandum, aimed at protection of a potential victim, by giving instructions for undertaking concrete actions to secure a potential victim as a witness in potential criminal proceeding.

Public Prosecutors shall develop general prevention by lodging appeals, thus influencing the courts penal policy.

Public Prosecutors shall point out the need to obtain and secure medical and other documents, as well as appropriate accommodation and treatment of a victim in a shelter to obtain his/her trust, aimed at efficient conducting of a criminal procedure and punishment of the perpetrators of the above-mentioned crimes.

Supreme Public Prosecutor informs the Signatories of the Memorandum and the public about the decisions of the competent public prosecutors regarding the filed criminal charges for trafficking in human beings through the Annual Report.

**The Police Directorate**, in compliance with the Rulebook on Job Descriptions within the Police Directorate, organises activities in suppressing trafficking in human beings through the Section for Organised Crime and Corruption i.e. General Organised Crime Suppression Group, and its line of work for suppression of illegal migration, organised smuggling and trafficking in human beings. At the regional and local level, activities are organised at the level of the line of work for suppression of crimes against life and body and sexual related crimes, juvenile crimes and inspectors for foreigners.

The Police Directorate is providing full contribution to the implementation of the Memorandum, in terms of prevention, identification and protection of potential victims of trafficking in human beings, as well as in the criminal prosecution of the perpetrators of those crimes.

The Police Directorate staff participates in the training activities on prevention and detection of perpetrators of trafficking in human beings related crimes, and within its jurisdiction, it provides assistance to the potential victims in the procedure of reintegration and investigation in the countries of origin, transit and final destination. At the same time, the assistance mechanisms are established, and they provide for the police officers to be available round-the clock, to provide support to other Signatories of the Memorandum.

If the Police Directorate is informed on the presence of a potential victim of trafficking in human beings, or if it identifies one, it will secure implementation of the following measures and actions pursuant to the legislation and the Memorandum:

It will provide a potential victim with the opportunity to be cared of in the shelter for the victims of trafficking in human beings, run by Montenegrin Women's Lobby, Safe Woman's House and

Centre Plus, if the victim decides to go to a shelter, and it will inform the shelter staff immediately, and escort the potential victim to the shelter;

It will inform the competent social welfare centre, in a case the potential victim is a minor;

It will provide the persons supposed to be the potential victims of trafficking in human beings with full information about the services rendering assistance to the victims, in the language that a potential victim understands, in order to enable the victim to make a decision which is in his/her best interest, regardless of the fact whether the potential victim is ready to testify or not;

Pursuant to Article 51 of the Law on Foreigners, temporary residence for humanitarian purposes may be granted to a foreigner supposed to be the victim of trafficking in human beings, as well as to a juvenile foreigner being abandoned, or a victim of organised crime, also in a case he/she does not meet requirements provided for in Article 36 of this Law (lacking funds for living costs, lacking accommodation and similar). Temporary residence for humanitarian purposes may be granted for three months time period up to one year, and it can be prolonged as long as there are reasons provided for in this Article;

The Police Directorate shall respect the privacy and identity of the potential victims of trafficking in human beings;

The Police Directorate shall provide a potential victim of trafficking in human beings with the professional treatment based on the victim human rights;

The Police Directorate shall secure creation of optimal conditions under which a victim is able of giving his/her statement with maximum reduction of further trauma, and;

Within its jurisdiction, the Police Directorate shall provide appropriate measures for protection of the potential victims of trafficking in human beings, persons closest to them and the shelter staff, prior, during and after the activities undertaken taken as part of the crime scene investigation, collection of statements given by the citizens, witness interviews, up to the moment the victim is taken back to the shelter.

The Police Directorate informs the competent public prosecutor about all above-mentioned measures and actions. The Police Directorate cooperates with other state authorities in the field of immigration, in exchanging information aimed at securing legal temporary residence of a potential victim of trafficking in human beings, in accordance with the Instructions on Conditions and Regulations of Foreign Nationals Temporary Residence – the Potential Victims of Trafficking in Human Beings, of 07 December 2005, passed by the Ministry upon the request of the Signatories; it initiates the procedure for deciding upon residential status, or personal documents, pursuant to the Instructions. The Police Directorate undertakes measures for prevention, pursuant to the Government of Montenegro Strategy on Combating Trafficking in Human Beings.

The Police Directorate has plans for conducting operational actions involving: regular control of cafe bars, restaurants, aimed at collecting information, intelligence and assessment to identify trafficking in human beings cases for the purpose of sexual exploitation, mediation in prostitution, as well as other crimes prosecuted ex officio; control of entry of foreign nationals in Montenegro, their exit from Montenegro, movements and temporary residence of foreigners in Montenegro, as well as their employment and labour, aimed at collecting information and assessing whether their temporary residence and movements can indicate the offences such as illegal crossing of the state border and smuggling of human beings for the purpose of labour exploitation in regard to their working engagement; control of street begging aimed at collecting information to identify whether it is a case of voluntary begging which is a violation of the Law on Public Peace and Order, or a case of forced begging, as a form of trafficking in human beings related crime. In all above-mentioned cases of regular operational actions and controls at the local level, information is collected, checked and evaluated, and the assessment is done whether there are trafficking in human beings or some other crime elements, in consultation with the competent public prosecutor.

**The Ministry of Education and Science** provides proper accommodation to the potential victims of trafficking in human beings, the children, and continuation of the education in public education institutions, prioritising them over other cases, in compliance with the legislation regulating the field of education, by respecting the right to privacy, especially by avoiding personal and trauma

questions, not necessary for them to be included in education system. At the same time, the appropriate services of the Ministry, as well as psychological-pedagogical services of the public education institutions, shall secure prompt and efficient inclusion of children in education system into the country.

Mechanisms of the support and assistance to be provided to the children - the potential victims of trafficking in human beings, are based on the following:

Special pedagogical-psychological procedures within the education institutions, including the assessment of physical and mental condition of the children, their referral to special specialist treatments, and making proposals for establishment of special programmes, in compliance with the relevant legislation for this field of education; monitoring of behaviour and learning process of children, and informing appropriate services within the children protection system provided for in the Memorandum of Cooperation.

The costs required for accommodation in education institutions (student homes) and access to education, especially a specialised and vocational one, resulting in first profession of a child, are provided by the Ministry during their stay in our country. The Ministry shall, through the operations of public education institutions, through the regular and special programmes within the Action Plan, continuously monitor the activities on education and development of awareness among children and pupils on the human rights, protection of personal dignity and integrity, by guarantying gender equality, on the principles based on a child rights, aimed at preventing them from becoming the victims of trafficking in human beings. The Ministry of Education and Science shall, under prescribed conditions, cooperate with and provide NGOs and other organisations and experts with access to education institutions in activities intended for presenting programmes adjusted to the children age, and corresponding to the established goals within the Memorandum. The Ministry is continuously engaged in development of education policy, and protection and welfare of children, especially adolescents, and it cooperates with other authorities and organisations in suppressing trafficking in human beings or human rights protection, especially of a child rights, taking care of its best interest. The Ministry makes maximum efforts in including members of the risk groups, especially Roma population in education system in the largest number possible, as well as supporting their successful integration into the society and their better social status. The Ministry cooperates with NGOs and other competent institutions in order to fulfil the Memorandum objectives.

**Ministry of Health**, in providing health care to the potential victims of trafficking in human beings, ensures proper health care through public health care institutions, by complying with the principles of urgency and priority. Health care of potential victims of trafficking in human beings includes emergency medical aid, prevention and treatment of infectious diseases, childbirth and maternity cases during their stay in Montenegro.

Emergency medical services in all public health care institutions provide fast and efficient medical aid at the outpatient clinics, and in the field round-the-clock, on the territory of the country. In all cases, where the life is not endangered, health care of potential victims of trafficking in human beings is provided according to the procedure established pursuant to the Law, in the outpatient care centres by individual doctors: paediatrician, doctor for adults and gynaecologist, and at the secondary and tertiary level, upon a doctor for primary health care or emergency medical service referral note.

Support and assistance mechanisms provided in public health care institutions include the following:

- a) assessment of the health situation of a potential victim of trafficking in human beings, proper diagnostic examinations and therapeutic services, as well as proposal for further treatment with detailed medical records on all findings;
- b) identification of a potential victim, and notification of the competent authorities within victims protection system provided for in the Memorandum.

Health care services, in all cases of suspicion that a person is potential victim of trafficking in human beings, apply only the standards necessary for identification in order to respect:

- a) the right to privacy of a potential victim, especially in regard to personal and traumatic questions not necessary for provision of health care;
- b) the right of a potential victim to all information concerning his/her health situations, the level of a life being endanger, way of treatment and medical interventions;
- c) provision of medical services cannot be conditioned to the lack of identification documents.

Costs of health care protection of potential victims of trafficking in human beings without insurance pursuant to the Law on Health Insurance of Montenegro, in urgent medical aid cases, pursuant to Article 4 of Annex to the Memorandum, shall be provided from the Budget funds, though the Republic Fund for Health Insurance of Montenegro. In a case a potential victim of trafficking in human beings is a national of a country with which Montenegro has signed bilateral agreement on social insurance, the costs shall be settled pursuant to the agreement. In other cases, the costs of health care shall be covered by the Office of the National Coordinator for Fight against Trafficking in Human Beings.

**Ministry of Labour and Social Welfare**, in provision of social, child and family protection to the potential victims of trafficking in human beings, both Montenegrin and foreign nationals, ensures proper social, child and family protection, through Public Institutions of the Social Welfare Centres, treating them as a priority with regard to other cases.

Social and children protection of foreign nationals, potential victims of trafficking in human beings, involves the right to single allowance, and the right to the appointment of a custodian. Social and child protection of Montenegrin nationals, potential victims of trafficking in human beings is provided pursuant to the Law.

Social and child protection in the field of family relations provided for in the Annex to the Memorandum is provided to potential victims during their staying in the country, regardless their temporary residence location.

Assistance mechanisms include the following:

- a) assessment of social-economic situation, as the bases for approval of the single allowance, and other forms of protection pursuant with the Law,
- b) establishing legal grounds for appointing a custodian,
- c) drawing up individual plans on protection of potential victims of trafficking in human beings in accordance with other Signatories of the Memorandum.

For potential victims of trafficking in human beings, Montenegrin nationals and foreign nationals, the Centre for Social Work shall initiate a procedure based on the documents provided by the Ministry of Interior, Ministry of Foreign Affairs, Ministry of Education and Science, and other relevant institutions.

In all cases a person is suspected to be a victim of trafficking in human beings, the Centres for Social Work apply standards for identification in order to respect:

- a) the right to privacy of potential victims, especially in regard to personal and traumatic questions, unless they are necessary to obtain relevant information;
- b) the right of a potential victim to all information concerning social and child protection, and family relations, as well as other possible procedures to be undertaken aimed at the victim protection;

The Ministry cooperates with NGOs and other competent institutions in order to meet the objectives laid down in the Memorandum of Mutual Cooperation.

**Supreme Court** aims at providing prioritised processing of trafficking in human beings cases, through creation of conditions for efficient: conducting of investigation, conducting main hearing and rendering decisions. At the same time, it is oriented towards provision of support to the victims witnesses pursuant to the Law (Criminal Procedure Code and Law on Witness Protection), as well as seizure of the proceeds of crime. Supreme Court is obliged to submit the statistics on judgements to the Office for Fight against Trafficking in Human Beings, based on the established methodology.

**Ministry of Justice** is competent for the legislative framework and following of regulations and international standards in the field of criminal legislation providing for trafficking of human beings as a separate crime. In order to come across the mechanisms for efficient fight against all forms of criminal activities, involving trafficking in human beings, the Ministry develops cooperation with the relevant international institutions.

Non-governmental organisations engaged in fighting trafficking in human beings are the following:

#### **Montenegrin Women's Lobby**

Through SOS anti-trafficking hot line (+382 81 656 166), female activists of Montenegrin Women Lobby provide advices and educational type of information for potential victims and the public. They are running a shelter for victims of trafficking of human beings funded by the Government of Montenegro, where they provide temporary accommodation, assistance and support to the victims (health care, psychological, legal, educational, preventive). They are engaged in raising awareness regarding the significance of fighting trafficking in human beings, and identifying this phenomenon.

#### **Safe Woman's House**

Provides women and children with:

- temporary home (accommodation and food), safety, health care;
- support of institutions;
- education on skills to provide women with economic independence;
- feministic therapy of training the women on women rights, supporting them to oppose male violence actively, and;
- to get involved in women lobby;
- education and education work with children;
- free legal aid;
- free psychological support and temporary employment.

#### **Centre plus**

"Temporary Home" provides victims of the trafficking in human beings with:

- temporary place to stay (accommodation, food);
- safety and health care;
- support of institutions;
- psychological and legal aid;
- aid in establishing living patterns (continuation of education, assistance in employment and in economic development, establishing contact with families, etc.)

Female activists of the NGO Centre Plus run SOS hot line for victims of trafficking +382 67 355-155 (0-24 hrs).

### **130. Do your law enforcement agencies receive specific training on combating trafficking in human beings? Please describe.**

Yes. Within the scope of its competences, the Government Office for Fight against Trafficking in Human Beings, at the beginning of a year draws up plan of training to be delivered to the law enforcement staff who may get into contact with victims of trafficking in human beings, both in the field of prevention and criminal prosecution of perpetrators. Based on the above-mentioned plan, the competent ministries, administration bodies, independently or provided with the funds by international organisations, conduct continuous training of their staff, aimed at proper treatment of victims of trafficking in human beings. The activity plan for 2009 provides also for the training of the

diplomatic and consular staff. According to the above-mentioned Memorandum on Cooperation, each governmental institution engaged in fight against trafficking in human beings has designated one or two persons (depending on the need), tasked to coordinate the activities of other employees in the respective field, to attend specialised trainings, and subsequently to train the staff within the institution.

Also, it can be pointed out that Montenegro has established legal framework which properly addresses the issue of training of the judicial staff (judges and public prosecutors). Namely, in 2006, the Law on Education of Judicial Bodies (Official Gazette of the Republic of Montenegro 27/06) is adopted, pursuant to which the education is defined as organised adoption and proficiency in theoretical and practical knowledge and skills, by using programmes which provide active engagement of the judicial staff in the education process.

According to the Law, vocational training of the judicial staff is treated as a right and an obligation. The Law provides for the education to be organised as an initial and continuous education, based on annual programme and special education programmes. Programmes for education of the judicial staff involve, among other things, also the *professional skills*.

Office for Fight against Trafficking in Human Beings, together with experts and financial support of international partners, organises workshops for representatives of local self-government, prosecution staff, judicial staff, health care organisations, the Police Directorate, education system, NGOs engaged in the fight against trafficking in human beings. During the training activities, through experience-based workshops the participants are informed on the legal issues, as well as on the good practice examples, and how to act towards the victims of trafficking in human beings. Also, the Office staff, as well as the staff from other competent agencies, participated in trainings, seminars and conferences on trafficking in human beings, both in the country and abroad:

**In 2007:**

From 17 to 18 April 2007, seminar on trafficking in human beings for the purpose of sexual exploitation was delivered, focused on indicators, identification of victims, differences between forced labour and black labour, for the representatives of bureaus and agencies for employment, labour and police inspectors;

From 23 to 26 April, representatives of the Office participated in the seminar on the programme to support the development of referral mechanisms for trafficked person in South-Eastern Europe, organised by International Centre for Migration Policy Development from Vienna, aimed at revising transnational referral mechanisms draft guidelines and agreeing on further measures at national level to establish transnational referral mechanisms;

On 29 May 2007, the training was organised on Code of Conduct for the protection of children from sexual exploitation in travel and tourism. The training was organised for the staff of tourist agencies and the hotels staff of the northern region of Montenegro, and it gathered together a great number of the representatives. The training was the follow up of the activities initiated in the previous year within the Project on Cooperation between public and private sector in prevention of trafficking and sexual exploitation of juveniles in travel and tourism;

On 25 June 2007 within the project on Code of Conduct for the protection of children from sexual exploitation in travel and tourism, the training was organised for the signatories from the central region;

**In 2008:**

From 13 to 15 February, the Office representative participated in the Vienna forum, organised within the Global Initiative for fighting trafficking in human beings (UN.GIFT), gathering together representatives from 116 countries. The Forum aimed at raising awareness regarding to all forms and dimensions of the trafficking in human beings, in the light of strengthening and intensifying cooperation, and facilitating new partnership between the participants.

From 24 to 28 March 2008, the Office representative participated in the Fourth Regional Conference on Suppressing Trafficking in Human Beings organised by CARE International, in cooperation with the local partner organisations in Ilidza, Sarajevo, Bosnia and Herzegovina. The aim of the Conference was to address current legal frameworks and efficiency of referral



mechanisms for identification, assistance, protection and reintegration of domestic victims of trafficking in human beings from Bosnia and Herzegovina, Croatia, Serbia and Montenegro.

On 09 April 2008, the Office representative participated in the round table on suppression of trafficking in human beings – a victim repatriation and reintegration, organised by the Office for Human Rights of the Government of Croatia and the Ministry of Foreign Affairs and European Integration. Regarding to the topic of the Round Table, achievements of the host country, as well as of the whole of the Region in the field of suppression of trafficking in human beings were presented, with the focus on the significance of information exchange.

On 24 April 2008, participation in the seminar – workshop, organised within ICMPD Project titled Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe, held at the hotel Maestral in Milocer, Montenegro. The Seminar participants were representatives of relevant institutions engaged in fight against trafficking of human beings.

From 19 to 22 May 2008, the Office representative of National Coordinator participated in the seminar on Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe, held in Rome within the two year Project initiated by International Centre for Migration Policy Development.

From 05 to 07 June 2008 in Bar, Montenegro, the seminar entitled “What's an issue” was organised by the NGO Montenegrin Women's Lobby, US CARE International and Austrian Development Agency, within the Project on Strengthening Anti-Trafficking Network in Western Balkans. The Seminar was intended for the judges and prosecutors from Montenegro. Training of the judges and prosecutors is one of the priorities in the field of prevention, i.e. the training of relevant institutions. The Seminar was attended by more than 20 judges and prosecutors from all Montenegrin towns, by those taking part or running topical trial proceedings on human trafficking in human beings cases.

From 23 to 25 July 2008, the Office of National Coordinator, with financial support by the OSCE and IOM, organised the forum aimed at gathering together all relevant stakeholders engaged in fight against trafficking in human beings in Montenegro, to exchange experience and proposals, subsequently used for drawing up the current Action Plan on Fight against Trafficking in Human Beings for 2009.

Representatives of the Office for Fight against Trafficking in Human Beings participated in the international conference entitled Successful Conducting of Criminal Proceedings against Perpetrators of Trafficking in Human Beings – Challenges and Good Practices, organised by the OSCE Office of Special Representative and Coordinator for Suppression of Trafficking in Human Beings, held in Helsinki, Finland, from 10 – 11 September 2008.

From 18 to 19 September, the Office representative participated in the regional meeting on fight against trafficking in human beings and money laundering, organised by the OSCE in Larnaca, Cyprus, aimed at exchanging of experience in the field of fight against trafficking in human beings and money laundering in Mediterranean countries.

Participation in Technical Seminar on National Reporters and Proper Mechanisms in the Fight against Trafficking in Human Beings, organised by the OSCE from 22 to 23 September 2008 in Vienna, Austria. The aim of the Seminar was to gather together experts from the relevant national authorities, in order to exchange experience and relevant information in direct dialog on National Reporters activities and other proper anti-trafficking mechanisms involved in collecting and analysing information, proposing recommendations to the Governments, monitoring, etc.

Participation in the work of Third World Congress against Sexual Exploitation of Children and Adolescents, organised by UNICEF, held in Rio de Janeiro, Brazil, from 25 to 28 November 2008, aimed at developing and enhancing joint action in the field of protection of children and adolescents from sexual violence and abuse. The Congress was held at the level of high governmental officials dialogue.

The Office representative, together with the representatives of the Ministry of Justice and the Police Directorate Directorate, participated in the Seminar organised by the Centre for Security Cooperation from 01 to 02 December 2008 at the RACVIAC Centre, Rakitje, Zagreb, Croatia.

Representatives of the Government Office for the Fight against Trafficking in Human Beings, together with 30 representatives of various countries from Europe, Asia and Africa, participated from 15-24 November 2008 in the training on Fight against Trafficking in Human Beings, held in Ankara, Turkey. The training was organised by the Training Centre of the Partnership for Peace of the Republic of Turkey.

Aimed at more efficient response in the field of prevention and improved training of the following institutions representatives: Judiciary, Prosecution, Social Welfare Centres, Health Care Local Units, Education, as well as of the local administration, in cooperation with the National Team for Implementation of TRM Guidelines, the Office organised three seminars on Strengthening Mechanisms of Fight against Trafficking in Human Beings, organised for the following three Regions in Montenegro:

For the North Region - from 10 to 11 December 2008 in Bijelo Polje;

For Central Region – from 17 to 18 December 2008 in Cetinje, and;

For South Region – from 22 to 23 December 2008 in Budva.

In cooperation with the Ministry of Interior and Public Administration, the Police Directorate and the NGO Safe Woman's House, the Office for Fight against Trafficking in Human Beings issued at the end of December 2008 the brochure "Guide for Safe Travel", with useful tips and relevant information for safe stay of our nationals abroad. In cooperation with the Ministry of Interior and Public Administration, it is planned to deliver brochures to the citizens when issuing travel documents to them. Mini guide for the Border Police staff was produced to assist in easier identification of potential victims of trafficking in human beings.

**In 2009:**

From 23 to 26 February 2009, members of the National Team for Implementation of TRM Guidelines visited Ukraine, aimed at exchanging experience with the relevant institutions engaged in fight against trafficking in human beings.

On 30 March 2009, the Final Conference on Principles of the Memorandum of Cooperation between key stakeholders in fight against trafficking in human beings was held in Vienna, Austria, organised by International Organisation for Migration (IOM) and UN. GIFT. On this occasion, the Office representative presented the Memorandum on Cooperation in the field of the fight against trafficking in human beings in Montenegro, which was mentioned and presented in international publication "Guiding Principles on Memorandum of Cooperation between Key Stakeholders and Law Enforcement Agencies", as one of the best example showing all relevant principles an memorandum of cooperation should incorporate.

After large number of preventive activities aimed at raising the overall public awareness on trafficking in human beings, in April 2009, in cooperation with International Organisation for Migration, the Office organised in secondary schools the lecture on Fight against Trafficking in Human Beings, attended by the Office Advisor, as a lecturer. Subsequently, the final year students of secondary schools in five municipalities in Montenegro (Podgorica, Berane, Niksic, Bar and Ulcinj), were subjected to the survey, aimed at assessing students' awareness level regarding the trafficking in human beings related issues.

At the beginning of May 2009 in Budva, Montenegro, with the participation of the National Team representatives, International Centre for Migration Policy Development organised the international conference, aimed at exchanging experience in the field of victims referral mechanisms.

From 18 to 20 May in Budva, Montenegro, International Organisation for Migration Mission organised the seminar on the Fight against Organised Crime, attended by the Office for Fight against Trafficking in Human Beings representative too. The seminar was organised within the Project on Strengthening Capacities of Montenegrin Police in Prevention of Transborder Illegal Migration and Organised Crime, aimed at delivering training to the police staff by the trainers from

Austria, covering topics related to suppression of smuggling of human beings, illegal migration and trafficking in human beings, with special focus on international cooperation in criminal matters. Trained trainers, who received certificates, will be responsible for the training of the Police Directorate staff in this issue. Total number of 60 police officers underwent this training.

National Team for Implementation of Transnational Referral Mechanisms (TRM) for trafficked persons, headed by the Head of the Office for Fight against Trafficking in Human Beings, participated in the seminar held in Ohrid, Macedonia, from 01 to 04 June 2009, on Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe. Together with the representative of the Ministry of Labour and Social Welfare and "Save the Children" international organisation, the Office for Fight against Trafficking in Human Beings representatives paid visit to Croatia from 15 to 18 July 2009, aimed at exchange of experience and good practice examples in fight against trafficking in human beings.

In cooperation with the Police Academy, the Police Directorate conducts training and education of the police staff. Trafficking in human beings subject is incorporated in the regular programme and curriculum of the Academy for all police staff through assigned number of teaching lessons. In cooperation with the OSCE, ICITAP, IOM, UNDP, specialised seminars are organised for the criminal and border police staff, as well as for other civil servants involved in the Action Plan measures through prevention, and especially protection of the victim of trafficking in human beings.

In **2006**, the OSCE continued previously initiated training programme on Border Police Development, and this kind of training involved 178 State Border Department staff.

In cooperation with the Austrian Development Agency, in 2006 the Police Academy organised three-day seminar on police cooperation in suppression of trafficking in human beings and illegal migration for the State Border Department and Criminal Police Department staff.

In cooperation with the Police Academy, the Police Directorate experts organised four courses on illegal migration and smuggling of human beings for 85 police officers.

From 21 to 24 April 2009, within the Austrian Project on Police Cooperation in Suppressing Trafficking in Human Beings, Smuggling of Human Beings and Illegal Migration, the Police Academy delivered the seminar on Police Custody System and Human Rights, involving 12 police officers.

From 04 to 08 May 2009, organised by the OSCE, TADOC Academy from Turkey and the Police Academy, the seminar on Illegal Migration and Trafficking in Human Beings was delivered to three customs officers and 13 border police officers.

From 11 to 15 May 2009, organised by the OSCE, TADOC Academy from Turkey and the Police Academy, the course on Illegal Migration and Trafficking in Human Beings was delivered to three customs officers, 13 border police officers and one officer for Section for Organised Crime and Corruption.

From **2007 to 2009**, police officers of the Section for Organised Crime and Corruption participated in the large number of trainings on organised smuggling and trafficking in human beings in the country and abroad, facilitated by the following international organisations: UNDOC, OCTN, ICITAP, CARE, ICMPD, OLAF, ILEA, INTERPOL, and the Police Academy, according to the training plan for all border and criminal police officers.

On 12 October 2007, the meeting was organised at the OSCE, in regard to taking into consideration of Annex to the Memorandum of International cooperation in prevention, criminal prosecution and protection of victim of trafficking in human beings.

From 09 to 12 October 2007.godine, the Police Academy in Danilovgrad delivered the seminar on Trafficking in Human Beings, organised by the Criminal Police of Austria.

On 15 October 2007, UNODC organised the seminar within the Project on Strengthening Operational Capacities for Investigation and Prevention of trafficking in human beings in Western Balkans.

From 22 to 23 October 2007, in Kolasin, Montenegro, the OSCE and National Coordinator Office for Fight against Trafficking in Human Beings organised national workshop in order to harmonise

Transnational Referral Mechanisms Document with the Memorandum of Mutual Cooperation and its Annexes.

From 24 to 26 March 2008, Fourth Regional Conference on Suppressing Trafficking in Human Beings with the focus on legal and social position of victims of trafficking in human beings, organised by CARE was held in Sarajevo, Bosnia and Herzegovina. Two officers from the Section for Organised Crime and Corruption participated in the Conference.

From 14 to 15 April 2008 in Skopje, Macedonia, the seminar within the Project on Programme for Enhancing Response to Trafficking in Human Beings in Southeast Europe – Collecting and Managing Information, was organised by International Centre for Migration Policy Development.

From 16 to 18 April 2008, organised by UN Office on Drugs and Crime (UNODC), the seminar within the Project on Strengthening Operational Capacities in Investigating Trafficking in Human Beings in Western Balkans was held in Belgrade, Serbia.

From 12 to 14 May 2008 in Prcanj, Montenegro, the seminar on Fight against Trafficking in Human Beings in Montenegro, was organised by IOM.

From 05 to 07 June 2008 in Bar, Montenegro, the NGO Montenegrin Women's Lobby organised the meeting in regard to the Project on Transnational Referral Mechanisms for Trafficked Persons.

The staff of this Section participated in the three seminars on Strengthening Mechanisms on Fight against Trafficking in Human Beings, held in three Regions in Montenegro: North Region - from 10 to 11 December 2008 in Bijelo Polje, Central Region – from 17 to 18 December 2008 in Cetinje, and South Region – from 22 to 23 December 2008 in Budva.

The seminars aimed at training of representatives of all state agencies and institutions at the local level in Montenegro.

**131. Do your law enforcement agencies include specific units for combating trafficking (human beings, drugs, cigarettes, firearms, stolen vehicles etc.)?**

Within the Police Directorate and in accordance with the Rulebook on Internal Organisation and Job Descriptions, activities on suppression of illegal trafficking are organised in the following way:

Within the Section for Organised Crime and Corruption there is a General Organised Crime Suppression Group, and its line of work for suppression of illegal migration, organised smuggling and trafficking in human beings. At the regional and local level, those activities are conducted through the line of work for suppression of crimes against life and body and sexual related crimes, juvenile crimes and inspectors for foreigners who are specially trained for conducting the procedure of identifying victims of trafficking in human beings, interview techniques and protection of victims of trafficking in human beings.

Activities on suppression of smuggling of excise and other goods are organised at the level of the Criminal Police Department - Section for Organised Crime and Corruption and Section for Suppression of Economic Crime. Within the Section for Organised Crime and Corruption there is a General Organised Crime Suppression Group, and its line of work for prevention of official position abuse, tax evasion, smuggling of excise and other goods. Within the Section for Suppression of Economic Crime, there is a line of work for suppression of illegal trafficking, as well as at the level of regional units (regional level), and local units (local level).

In this field, cooperation is developed with other authorities involved in suppression of this issue (Customs Administration, Tax Administration, Communal Police and inspection services, Market Inspection).

Aimed at comprehensive control of tobacco and derivatives market, pursuant to the Government Decree on Organisation and Functioning of the State Administration (Official Gazette of the Republic of Montenegro 06/05), Tobacco Agency, as an administration authority competent for tobacco activities was set up. The Agency started functioning in August 2005.

Work on suppression of smuggling of vehicles and weapons is organised at the level of the Criminal Police Department. Those activities are entrusted to the Section for Organised Crime and Corruption - General Organised Crime Suppression Group, and its line of work for smuggling of motor vehicles, weapons, dangerous substances and works of art, and to the Section for Suppression of General Crime. At the level of regional units (regional level), and local units (local level), the activities are organised through the line of work for suppression of smuggling of vehicles and illegal smuggling and possession of weapons related crimes, supported by the general police jurisdiction and border police departments, through all forms of transborder smuggling.

In Criminal Police Department, within the Section for General Crime Suppression, there is Property Crimes Suppression Group, having four officers. One officer is in charge of motor vehicles related crimes.

At the regional level, those issues are addressed at the following way: In Regional Unit in Podgorica – Criminal Police Branch has an Office for Suppression of Property Related Crimes within which there is a Unit for Motor Vehicles, having eight police officers. In Regional Unit in Niksic, within Criminal Police Branch in the Group for Suppression of General Crime, there is one position for suppression of motor vehicles thefts. In other Regional Units, this issue is addressed within the line of work for suppression of property related crimes and suppression of economic crimes, in accordance with the need and the scope of the issue, assigning one officer in each field.

Since 1996, Montenegrin Police has specialised units for suppression of drugs related crimes, with their main task to collect information on criminals involved in smuggling activities and street dealing of drugs, to collect evidence and prosecute cases to the competent judicial authorities. Pursuant to the current Act on Police Directorate Organisation, this line of work is composed of the following nine organisational units: Section for Fight against Drugs and Smuggling within the Criminal Police Department (in the Police Headquarters) and eight regional units. Section for Fight against Drugs is in charge of drugs cases having elements of organised crime. The Section cooperates with Special Public Prosecutor for Suppressing Organised Crime, it conducts and monitors implementation of secret surveillance measures, provided for in the Criminal Procedure Code, it participates in international operations and exchanges information at international level, as well as conduct other activities regarding this form of crime.

Although significant results are achieved, it was recognised that the above-mentioned organisation of this line of work has some weaknesses, mostly regarding the working methodology, flow of information, planning and synchronisation of activities, addressing human resources and technical issues, therefore reorganisation of these tasks is proposed, through the development of the Amendment to the job descriptions in Police, which provides for more efficient and simple model in a form of centralised unit with five organisationally linked structures.

Border Police Department is in charge of suppression of all forms of transborder crime, including illegal trafficking and smuggling of human beings, narcotic drugs, cigarettes, firearms, etc.

**132. Is there - based on a multi-disciplinary approach - any form of cooperation between the competent law enforcement bodies and other agencies, which are involved in the prevention of and the fight against trafficking in human beings?**

Yes. Having in mind the fact that trafficking in human beings is a global threat, and that most often it is committed in a form of organised crime, there is a high level of awareness in Montenegro, as well as in all other European countries, that regional, national and international approach is the key one in addressing this issue. Aimed at successful and efficient addressing this issue, the Government of Montenegro has chosen multi-disciplinary approach, meaning that various organisations and institutions are involved in the prevention and the fight against trafficking in human beings. Those institutions are inter linked, when necessary, aimed at efficient prevention of trafficking in human beings, provision of proper support to the victims of trafficking in human beings and bringing the perpetrators to the justice. All forms of cooperation, exchange of opinions, experience and building mutual trust is fostered through the activities of the Project Board for the

fight against trafficking in human beings, Working Group for Monitoring and Implementation of the Strategy, both coordinated by the Head of the Government Office for Fight against Trafficking in Human Beings, as well as through the Agreement on Cooperation between Governmental Authorities and NGOs on fighting trafficking in human beings and protection of the victims of trafficking in human beings, especially women and children.

**The Project Board** is a body composed of representatives of all relevant stakeholders engaged in the fight against trafficking in human beings. It meets periodically, it analyses current situation, exchanges information and establishes guidelines for further activities. The Project Board is chaired by the Head of the Office for Fight against Trafficking in Human Beings. Members of the Project Board are representatives of: Ministry of Interior and Public Administration, Coordinator for Gender Equality Issues, OSCE, Council of Europe, IOM, UNICEF, USAID, Save the Children–UK, and representatives of two NGOs from Montenegro: Women's Safe House and Montenegrin Women's Lobby.

**Working Group** is a body composed of representatives of the competent Ministries, at the level of the Assistant Ministers (Ministry of Health, Ministry of Labour and Social Welfare, Ministry of Justice, Ministry of Education and Science), the Police Directorate, Deputy Supreme Public Prosecutor, Head of Office for Fight against Trafficking in Human Beings and IOM, CoE, OSCE, Save the Children, UNICEF and United States Embassy representatives, having the status of observers. The Working Group meets twice a month upon the notification of the Head of Office for Fight against Trafficking in Human Beings who chairs the sessions. At the meetings, the institutions representatives report in their presentations to the Head of Office for Fight against Trafficking in Human Beings about all undertaken and conducted activities from the Action Plan for implementation of the National Strategy on Combating Trafficking in Human Beings.

Office for Fight against Trafficking in Human Beings is also obliged to monitor implementation of the Agreement on Cooperation signed by the Supreme Public Prosecutor, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, the Police Directorate and non-governmental organisations: "Montenegrin Women's Lobby", "Safe Woman's House" and "Centre Plus", as well as to coordinate the activities of the Signatories of the Agreement, to organise periodical meetings of persons competent for the Agreement implementation, where they present achieved results, and propose suggestions for further activities.

Agreement on Mutual Cooperation implies standard operating procedures at the national level. As the activities on implementation of the Programme on Transnational Referral Mechanisms for trafficked persons in South East Europe, as well as of relevant guidelines for their implementation were conducted in parallel, which presents standard operating procedures at transnational level, the national workshop was organised, where the Agreement Annexes were incorporated in TRM guidelines, thus compiling a single document, the comprehensive one, with clearly defined objectives and measures.

National team for implementation of ICMPD and USAID Project - Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe, is composed of the following members: Deputy Supreme Public Prosecutor, representatives of the Police Directorate from the Criminal Police Department – Head of General Organised Crime Suppression Group, State Border Department – Section for Foreigners and Suppression of Illegal Migration, representative of the Ministry of Labour and Social Welfare, coordinator of NGO Montenegrin Women's Lobby, and representative of the Office for Fight against Trafficking in Human Beings.

Aimed at harmonising TRM guidelines with the national legislation, a set of working meetings was organised with the National Team representatives, as well as the training events at the national level in order to implement TRM operating procedures efficiently. Final version of the Document was submitted to the Working Group for reviewing, and at the meeting of 15 June 2009, it was decided to submit the Document to the Government for reviewing and adoption. We expect TRM guidelines to be adopted at the national level by the end of third quarter of 2009, which was recommended by ICMPD and USAID.

**133. Please explain the main difficulties that you face in combating money laundering (see also Chapter 4 – free movement of capital).**

Main difficulties faced by the state authorities, competent for suppression of money laundering, refer to the difficulties in proving predicate criminal offence through which money was obtained, or other proceeds, being the subject of money laundering. Burden of proof that money or proceeds originate from a crime is on the authorities competent for criminal prosecution. By applying traditional methods, successful results cannot be achieved in detecting and proving money laundering criminal offence. In order to fight against money laundering efficiently, it is necessary to use special proving actions. Pursuant to the current Criminal Procedure Code, special proving actions – secret surveillance measures: secret surveillance and technical recording of telephone conversations; secret photographing and visual recording in private premises; simulated purchase of objects or persons and simulated giving and taking of bribe; supervision over the transportation and delivery of objects of crime; recording conversation after informing and obtaining a prior consent of one of the participants in the conversation; and use of an undercover investigator and collaborator, can be applied only for offences for which a prison sentence of ten years or a more severe penalty may be imposed, and for crimes with elements of organised crime. Application of those proving actions for money laundering offence so far was possible only for the most serious forms of this offence (for which a prison sentence of ten years or a more severe penalty may be imposed) or for organised crime offence. By adoption of a new Criminal Procedure Code, a possibility of applying special proving actions – secret surveillance measures is extended also to the offences with elements of corruption, involving money laundering offence too. Those legal solutions will contribute to raising efficiency in collection of data and evidence, needed for running criminal proceedings and proving predicative offence, from which the money or other proceeds were obtained, as well as to raising overall efficiency in the field of suppression of money laundering offence.

**134. Please describe the structures in place for combating money laundering (incl. within the police, prosecutor's office and judiciary). Have you established a properly functioning Financial Intelligence Unit? Describe any co-operation with the banking system and other financial actors (casinos etc.).**

**Administration for Prevention of Money Laundering** (hereinafter referred to as “the Administration”), pursuant to the Law on Prevention of Money Laundering (Official Gazette of the Republic of Montenegro 55/03 of 01 October 2003) was set up by the Government Decree of 15 December 2003 (Official Gazette of the Republic of Montenegro 67/03). It started functioning officially in February 2004, whilst operational functioning started in the mid of 2004. Pursuant to the Law on Prevention of Money Laundering and Financing of Terrorism, the Administration is organised as a Financial Intelligence Unit of an administrative type. The Administration is supervised administratively by the Ministry of Finance.

Pursuant to the Decree on Amendments to the Decree on Organisation and Functioning of the State Administration (Official Gazette of Montenegro 26/08), pursuant to the competences laid down in the new Law on Prevention of Money Laundering and Financing of Terrorism (Official Gazette of Montenegro 14/07 of 21 December 2007), the name of the body was changed into: Administration for Prevention of Money Laundering and Financing of Terrorism.

The Administration conducts the tasks of detection and prevention of money laundering and financing of terrorism referring to: collection, analysing and submission of data, information and documents to the competent authorities, necessary to detect money laundering and financing of terrorism; identifying standards and methodologies for establishing and developing policy, procedures and practice of identifying suspicious transactions; developing special programmes for prevention of money laundering and financing of terrorism, with procedures, programmes on control and training of the staff to identify suspicious transactions; checking of transactions and persons suspected to be involved in money laundering or financing of terrorism; temporary aborting transactions; initiating amendments to the legislation on prevention and detection of

money laundering and financing of terrorism; developing international cooperation with competent authorities of other countries and international organisations; participating in preparation and compilation of the list of indicators for identifying suspicious transactions; participating in training of the staff and competent persons within competent authorities, establishing guidelines for drawing up risks analyses; compilation of statistics in the field of prevention and detection of money laundering; monitoring implementation of the Law on Prevention of Money Laundering and Financing of Terrorism within its competences; initiating and conducting first instance misdemeanour procedure for violation of the Law on Prevention of Money Laundering and Financing of Terrorism provisions; and other activities within its competences.

Currently the Administration has 25 civil servants and employees, however according to the Rulebook on Organisation and Job Descriptions, 34 positions are provided for. The staff within the Administration is mostly composed of economics, lawyers, IT experts.

The Act on Internal Organisation and Job Descriptions provides for the following organisational units within the Administration:

1) Department for Data Reception, Processing and Analysing

- Analyses Section
- Suspicious Transactions Section
- IT and Data Reception Section

2) Department for Control, International and Internal Cooperation

- Section for control of the reporting entities
- Section for International and Internal Cooperation

3) Office for Conducting First Instance Misdemeanour Procedure

4) Service for General Matters, Finances and Public Relations

If collected data, information and documents are assessed as connected to a transaction or a person suspected to be involved in money laundering, financing of terrorism or other offence prosecuted *ex officio*, the Administration is obliged to inform, i.e. to submit information in written to the competent authorities, the Supreme Public Prosecutor's Office and the Police Directorate, and other competent authorities.

The Administration is an intermediary between the financial and non-financial sector on the one hand, and the Supreme Public Prosecutor's Office and the Police Directorate on the other hand.

As far as cooperation with the banking sector is concerned, pursuant to the Rulebook on the Submission of Data to the Administration on Cash Transactions of EUR 15,000 and more, and Suspicious Transactions, the banks, as well as other reporting entities, submit to the Administration data on each cash transaction of EUR 15,000 and more (immediately, and at the latest within three working days from the transaction is made), as well as on each suspicious transaction, regardless the amount and type (before transaction is made, and they state the deadline within which the transaction is supposed to be made).

The Administration participates in education and training of competent persons and employees of the reporting entities having direct contacts with clients, through seminars and meetings, it gives opinions and answers to the questions in regard to implementation of the Law on Prevention of Money Laundering and Financing of Terrorism, and it passes guidelines for uniform implementation of the Law.

Cooperation is also fostered through working meetings between the Administration representatives and the persons competent for prevention of money laundering and financing of terrorism within the business Banks and other reporting entities.

In implementing measures for the prevention of money laundering and financing of terrorism, in addition to the cooperation with the reporting entities, the Administration cooperates with the supervision authorities referred to in Article 86 of the Law on Prevention of Money Laundering and Financing of Terrorism: Central Bank, Securities Commission, Tax Administration, Administration



for Games of Chance, Insurance Supervision Agency, Administration for Telecommunication and Postal Activity, as well as with other authorities (National Security Agency, Customs Administration, Real-Estate Administration, Commercial Court).

Aimed at strengthening inter-agency cooperation, the Administration signed the Agreement on Cooperation with: Ministry of Interior, Tax Administration, Customs Administration, Central Bank of Montenegro, Securities Commission, Basic Court in Podgorica and State Audit Institution.

Within the **Supreme Public Prosecutor's Office**, pursuant to the provisions of Article 66 of the Law on Public Prosecution Office (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08), special Division for Suppressing Organised Crime, Corruption, Terrorism and War Crimes (hereinafter referred to as "the Division") was set up. Division is centralised authority competent for the whole of Montenegro for organised crime, corruption, terrorism and war crimes, and it acts before two High Courts - in Podgorica and Bijelo Polje. In the field of detection of corruption, which also involves money laundering criminal offences and prosecution of perpetrators of these offences, Division cooperates with the following authorities pursuant to the provisions of the Criminal Procedure Code and the Law on Public Prosecution Office: Police Directorate, Customs Administration, Administration for Prevention of Money Laundering and Financing of Terrorism, Tax Administration and financial institutions. Cooperation with the Administration is developed in detection and suppression of money laundering, and in this regard, the Administration submits to the Division and Police Directorate information in written – notification on financial transactions, being suspected to relate to money laundering, pursuant to the Law for Prevention of Money Laundering and Financing of Terrorism. Pursuant to the Supreme Public Prosecutor's Office Instructions, Division keeps special records on notifications on suspicious transaction, submitted by the Administration. The notifications are received by special prosecutor, and they are submitted to further processing. Upon receipt of the notification, actions are taken immediately. Special Prosecutor (or Deputy assigned by him) is coordinator of all issues regarding to money laundering and developing cooperation with relevant domestic and international institutions.

**Police Directorate** is organisationally divided into several Departments, out of which Criminal Police Department, i.e. Section for Suppression of Organised Crime and Corruption (having five officers directly involved in fight against money laundering/financing of terrorism) and Section for Suppression of Economic Crime (five officers), are the most relevant ones. There are eight regional units and 23 local units within the Criminal Police Department, within which branches for suppression of economic crime are set up, being directly involved in fight against all forms of economic crime, money laundering/financing of terrorism herewith being included. There are 72 officers assigned within the regional units.

Pursuant to the provision of Article 21 of the Law on Amendments to the Law on Courts (Official Gazette of Montenegro 22/08), which laid down establishment of a specialised division for trials of organised crime, corruption, terrorism and war crimes cases (money laundering offence is a corruptive offense) within the High Courts, specialised divisions for trials of organised crime, corruption, terrorism and war crimes cases were set up in September 2008 within the High Court in Podgorica and High Court in Bijelo Polje. Trial proceedings for money laundering offences are within the jurisdiction of those specialised divisions.

There are six Judges within the High Court Specialised Division in Podgorica, and three Judges within the High Court Specialised Division in Bijelo Polje. The Judges working within the Specialised Divisions are entitled to a monthly salary equal to average salary of the Supreme Court Judge, and to special allowance due to aggravated working conditions and specificity of the job they do.

Special Divisions running the trial proceedings of money laundering cases have skilled human resources, and the equipment for efficient functioning.

In the proving process of the money laundering cases, cooperation with the banking sector and other financial sectors run smoothly.

Representatives of the Administration, Prosecutor Office and Police Directorate, are members of the Montenegrin delegation within CoE Committee for Prevention of Money Laundering and

Financing of Terrorism (MONEYVAL). In 2008, the Committee conducted Third Round of evaluation of Montenegro in implementation of anti-money laundering and financing of terrorism measures.

**135. What obligations are placed on financial institutions to prevent money laundering? Are financial institutions required to report suspicions of money laundering?**

Obligations placed on financial institutions, as well as on other reporting entities, are laid down in the Law on Prevention of Money Laundering and Financing of Terrorism (Official Gazette of Montenegro 14/07).

Financial institutions are obliged to report to the Administration all suspicions on money laundering or financing of terrorism.

Pursuant to the Law, financial institutions, as well as other reporting entities, are obliged to:

- 1) conduct identification of a client (establishing identity of a client, or if identity was already established, to check it against reliable, independent and objective sources; collecting data on a client, or if data are already collected, to check them against reliable, independent and objective sources);
- 2) apply measures of inspection and monitoring a client, especially: during establishing business relation with a client; during a single or several linked transactions in the amount of EUR 15 000; when accuracy or truthfulness of data on a client identification is doubtful; on the basis of suspicious regarding a transaction or a client, indicating it might be money laundering or financing of terrorism.
- 3) report and submit data, information and documents on each cash transaction of and exceeding EUR 15 000 (immediately, and at the latest within three working days from the transaction is made), as well as on each suspicious transaction, regardless the amount and type (before the transaction is made, and they indicate the deadline within which the transaction is supposed to be made);
- 4) apply measures to prevent and detect money laundering and financing of terrorism in their headquarters and organisational units other than headquarters;
- 5) appoint a person authorised to undertake measures pursuant this Law, as well as his/her Deputy;
- 6) provide regular specialised training and education of the staff engaged in internal control of execution of the duties laid down in this Law;
- 7) prepare and update regularly the list of indicators for identifying suspicious transactions, on the basis of suspicious indicating it might be money laundering or financing of terrorism, and of the clients;
- 8) provide storage and protection of data, and keeping of prescribed records, as well as other activities and duties, laid down in this Law and in the legislation adopted on the basis of the Law.

**136. How many money-laundering cases have been prosecuted and brought to a successful conclusion?**

From 01 January 2004 to 01 October 2009, there were 17 cases of money laundering in Montenegro against 77 persons prosecuted by the competent court.

In addition to those cases, there were three cases against five persons, where after the checks were conducted, it was established that they were not money laundering cases, and they were transferred to the competent prosecutor office.

In 2004, there was one case prosecuted against two persons. After the investigation, the indictment was brought against both persons. The case was decided by final and enforceable judgement, imposing prison sentences and a measure to seize the proceeds amounting US Dollars 895,000.

In 2005, there were three cases prosecuted against eight persons, against whom the investigation was ordered. The indictment was brought against one person, resulting in final and enforceable acquittal. Two cases against seven persons were finalised by cancellation of the investigation.

In 2006, nine cases were prosecuted against 50 persons. After the investigation, indictment was brought against 31 persons. One indictment resulted in acquittal, being revoked upon the appeal. In one case against one person, the indictment resulted in acquittal, which is not final and enforceable (the procedure upon the appeal lodged by prosecutor is ongoing). In three cases against 28 persons, the procedure following the indictment is ongoing. Two cases against eight persons are in the phase of investigation. Two investigations against 11 persons are finalised, and the prosecutor has the statutory 15 days deadline to make decision.

In 2007, one case was prosecuted against 10 persons. In this case, the investigation is finalised, and the judge is to make decision within the statutory 15 days deadline.

In 2008, three cases were prosecuted against seven persons. After the investigation, two indictments were brought against five persons. One indictment against four persons resulted in acquittal, which is not final and enforceable (the procedure upon the appeal lodged by prosecutor is ongoing). One indictment against one person is pending. In this case, the seizure of property amounting EUR 72,600.00 was proposed. One case against two persons is in the phase of investigation.

In 2009, there were no cases prosecuted for this offence. In this year, upon the indictment from 2006, after overruling the acquittal, in renewed proceedings, the court passed the imprisonment sentences against two persons. According to the judgement, seizure of the proceeds amounting EUR 161,000.00 was ordered. The judgement is not final and enforceable, the appeal procedure is ongoing.

The above-mentioned data on actions of the State Prosecutor Office and competent courts is illustrated in the following table:

**Statistics for money laundering offence from 01 January 2004 to 01 Octobre 2009**

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Year	No of cases	No of persons	Investigations		Temporary measures		Amount of proceeds of crime	Investigations cancelled		Pending investigations		Indictments brought		Confiscation proposed	Judgments		Seizure of property (confiscation) ordered by judgments	Transferred cases	
			No of cases	No of persons	No of cases	No of persons		No of cases	No of persons	No of cases	No of persons	No of cases	No of persons		No of cases	No of persons		No of cases	No of persons
2004	2	3	1	2			USD 895 000					1	2	USD 895 000	1	2	USD 895 000 \$	1	1
2005	3	8	3	8			Exceeding EUR 40 000	2	7			1	1		1*	1			
2006	10	53	9***	50***	4	31	EUR 5 965 000			2	8	5	31	EUR 1958000	1*	1*	EUR 161 000	1	3
2007	2	11	1***	10***			EUR 190 000****											1	1
2008	3	7	3	7	1	1	Exceeding EUR 80 000			1	2	2	5	EUR 87 600	1*	4*			

\* Acquittals, only the one from 2005 is final and enforceable.

\*\*The Judgement is not final and enforceable, and it was passed in 2009, based on indictment from 2006.

\*\*\* Out of total number of investigations, two are against 11 persons from 2006, one against 10 persons from 2007, is concluded, and the decision is to be made by prosecutor within the statutory 15 days deadline.

\*\*\*\* Temporary measure was not proposed in this case, as this measure was ordered against same persons in the case from 2006.

**137. How have you responded to requests for mutual legal assistance related to money laundering?**

Taking into account application of all relevant international and national instruments, Montenegro has wide legal framework for international legal cooperation in criminal matters, among which is cooperation in prosecution of money laundering offence. According to the Law on Mutual Legal Assistance in Criminal Matters (Official Gazette of Montenegro 4/08), central authority for communication in mutual legal assistance is the Ministry of Justice, through which domestic judicial authority forwards letters rogatory for international legal assistance to foreign judicial authorities, and it receives the letters rogatory for international legal assistance of the foreign judicial authorities. The Ministry of Justice sends letters rogatory immediately to the territorially competent

High Court or Supreme Public Prosecutor's Office, depending on the nature of the actions requested in the letters rogatory. The Law provides for the option, in urgent cases, provided that there is reciprocity, that letter rogatory for international legal assistance may be delivered and received through the INTERPOL National Central Bureau.

For the purposes of international legal assistance in fight against money laundering, judicial authorities are authorised to use all investigative techniques provided for in the Criminal Procedure Code for domestic investigations – including provision of, requesting and collection of information, evidence and documents from natural and legal persons, and financial institutions, interviewing witnesses, experts, suspects, handing summons, as well as freezing, seizure and confiscation of proceeds being the objects of “laundering”, or planned to be “laundered”, as well as all proceeds of crime. In addition, the Law on Prevention of Money Laundering and Financing of Terrorism (Official Gazette of Montenegro 14/07 and 4/08) provides for collection and submission of data and information, and documents on persons or cash transactions, and in justified cases, upon the request of relevant authorities of a requesting country, it can suspend transaction up to 72 hours.

When letter rogatory for international legal assistance refers to Money laundering, competent authorities act without delay, pursuant to the legal provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS.141) and Council of Europe Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS.198) to which Montenegro acceded.

Letters rogatory for prosecution of money laundering offence mostly refer to checks of bank accounts holders, cash transactions, submission of birth certificates, etc. High Courts collect requested data from the banks and other competent authorities, and they send replies to the Ministry of Justice, which immediately communicates them to the competent authorities of a requesting country. So far, no difficulties were registered in the practice regarding to timely acting upon letters rogatory referring to money laundering.

In addition, Montenegro does not reject acting upon the letters rogatory, due to a fact that an offence for which international legal assistance is requested is a fiscal one.

Pursuant to the Montenegrin legal order, money laundering is an offence which can be the subject of extradition.

## **Fight against terrorism**

### **138. Please provide information on legislation or other rules governing this area, and their adhesion to relevant international conventions.**

**The area of fight against terrorism is regulated by the following regulations:** Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 13/04 and 47/06), Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03, 07/04, 47/06), Law on Public Prosecution Office (Official Gazette of the Republic of Montenegro 40/08), Law on Courts (Official Gazette of the Republic of Montenegro 5/02, 49/04 and Official Gazette of Montenegro 22/08), and Law on Witness Protection (Official Gazette of the Republic of Montenegro 65/04).

Criminal Code incriminates as special criminal offences - terrorism, international terrorism and financing of terrorism, as well as the criminal offences with elements of terrorism, such as: causing general danger, endangering safety with nuclear substances, unlawful processing, disposal and storage of dangerous substances, serious offences against general safety, endangering air traffic safety, hijacking an aircraft, vessel or other means of transportation, diversion, associating for unconstitutional activities, serious offences against constitutional order and security of Montenegro.

Criminal Procedure Code provides for the procedure of detection and criminal prosecution of perpetrators of crimes. The Codes especially lays down procedural actions which can be undertaken by the Police Directorate, public prosecutor and judiciary in preliminary criminal procedure and criminal procedure. Criminal Procedure Code regulates provision of witness protection within criminal procedure, and application of special investigative techniques (secret surveillance measures); the Law on Witness Protection regulates provision of witness protection out of criminal procedure, i.e. inclusion of witness in special witness protection programme . Law on Witness Protection provides for the following measures of witness protection: physical protection of person and property, relocation, concealing identity and information on ownership and change of identity.

The latest amendments to the Law on Courts set up special divisions for trial proceedings of cases of organised crime, corruption, terrorism and war crimes within High Courts in Podgorica and Bijelo Polje, whilst the Law on Public Prosecution Office introduces special prosecutor for suppression of organised crime, corruption, terrorism and war crimes.

Criminal legislation in regard to terrorism is to a great extent harmonised with relevant international conventions, taking into account that Montenegro ratified the great number of the following terrorism related conventions: 1977 European Convention on Suppression of Terrorism, 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on Financing Terrorism, 1997 International Convention for the Suppression of Terrorist Bombings, 1980 Convention on the Physical Protection of Nuclear Material, 1999 International Convention for Suppression of the Financing of Terrorism, 2005 Council of Europe Convention on the Prevention of Terrorism, 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, 1979 International Convention against the Taking of Hostages.

Although Montenegrin criminal legislation is to a large extent harmonised with the most of international conventions, activities on amendments to the Criminal Code are ongoing, involving of obtaining experts opinions and analyses of the experts of the Council of Europe, United Nations Office on Drugs and Crime (UNDOC), Organisation for Security and Cooperation in Europe (OSCE), as well as of domestic experts, based on which the text will be fully harmonised with all relevant international documents.

**139. In view of implementing the Union's commitments and strengthening its capabilities in the fight against terrorism, it would be useful to receive information about the relevant international conventions signed and ratified by your country and its efforts in the fight against terrorism.**

Montenegro is signatory to most of the United Nations and Council of Europe conventions against terrorism. Aiming for accession to the European Union, Montenegro implements Common Position 2001/931/CFSP referring to the application of specific measures to combat terrorism. Also, to this end, Montenegro enhances cooperation pursuant to 1373 Resolution (2001), 1535 Resolution (2004), 1624 Resolution (2005) and other relevant UN resolutions, international conventions and other instruments. Through the Permanent Representative, our country actively cooperates with UN Security Council Counter-Terrorism Committee (CTC), established pursuant to 1373 Resolution (2001). Two reports were submitted to the Committee so far.

#### Ratified and signed international documents

So far, Montenegro ratified or signed:

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted in Rome in 1988 (Official Gazette of Serbia and Montenegro – International Treaties 02/04);

- International Convention for the Suppression of Terrorist Bombings (Official Gazette of the Federal Republic of Yugoslavia 12/02);
- International Convention for the Suppression of Acts of Nuclear Terrorism (Official Gazette of Serbia and Montenegro – International Treaties 02/06);
- International Convention for the Suppression of the Financing of Terrorism (Official Gazette of the Federal Republic of Yugoslavia 07/02);
- Convention on Offences and Certain Other Acts Committed on Board Aircraft (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 47/70);
- International Convention against the Taking of Hostages (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 09/84);
- Protocol on Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 14/89);
- Council of Europe Convention on the Prevention of Terrorism, adopted in Warsaw in 2005 (Official Gazette of Montenegro - International Treaties 5/08);
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime and on the Financing of Terrorism (Official Gazette of Montenegro - International Treaties 5/08).

Other relevant legislation and instruments:

Police Cooperation Convention for Southeast Europe (Official Gazette of Montenegro 1/08).

Agreement on Strategic Cooperation between Montenegro and European Police Office - EUROPOL (Official Gazette of Montenegro - International Treaties 2/09).

#### Bilateral Agreements

The Ministry of Interior and Public Administration and the Police Directorate are competent for fulfilling assumed commitments provided for in mutual agreements and protocols on fight against terrorism and organised crime, as well as for implementation of the following international agreements:

- 2006 Agreement on Police Cooperation between the Government of the Kingdom of Belgium and the Government of Montenegro;
- 2005 Agreement on Cooperation between Montenegro and the Government of the Republic of Bulgaria in Fight against Terrorism, Organised Crime, Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors, Illegal Migration and other Forms of Crime;
- 2003 Agreement on Cooperation between Montenegro and the Government of the Republic of Albania in Fight against Terrorism, Organised Crime, Trafficking, and other Forms of Illegal Activities;
- 2007 Agreement on Police Cooperation between the Government of Montenegro and the Government of the Republic of Turkey;
- 2005 Agreement on Police Cooperation between the Ministry of Interior of Montenegro and the Ministry of Interior of the Republic of Croatia;
- 2004 Agreement on Police Cooperation between the Ministry of Interior of Montenegro and the Federal Ministry of Interior of the Republic of Austria;
- 2006 Protocol on Police Cooperation between the Ministry of Interior and Public Administration of Montenegro and the Ministry of Interior of Romania;
- 2003 Protocol between the Ministry of Interior of Montenegro and the Ministry of Interior of the Republic of Serbia on Fight against Terrorism, Organised Crime, Illegal Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors, Trafficking in Human Beings, Illegal Migration and other Forms of Crime, as well as on Cooperation in other areas of their Jurisdiction;

- 2006 Agreement on Cooperation between the Government of the Republic of Slovenia and the Government of Montenegro in Fight against Organised Crime, Trafficking in Human Beings and Illegal Migration, Trafficking in Illicit Drugs and Precursors, Terrorism and other Forms of Crime;
- 2007 Agreement on Cooperation between the Government of Montenegro and the Council of Ministers of Bosnia and Herzegovina in Fight against Terrorism, Organised Crime, Illegal Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors, Illegal Migration and other Forms of Crime;
- 2003 Agreement on Cooperation between the Government of the Republic of Montenegro and the Government of the Republic of Macedonia in Fight against Terrorism, Organised Crime, Illegal Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors, Illegal Migration and other Forms of Crime;
- 2003 Memorandum of Understanding on Police Cooperation between the Government of the Republic of Montenegro and UN Interim Mission in Kosovo - UNMIK, and;
- 2008 Agreement on Cooperation between the Ministry of Interior and Public Administration of Montenegro and the Ministry of Interior of Russian Federation.

**140. Is your country faced with any specific form of terrorism? If so, is it of internal or external origin?**

Montenegro has not been faced with any specific form of terrorism. Terrorism offences have not been registered in Montenegro.

As in most of the countries, national criminal legislation provides for several offences, thus protecting social values from the most inhuman acts of violence in form of terrorism, and prescribed imprisonment sentences are severe.

**141. What is the national legal framework and legal basis for anti-terrorist action?**

Legal framework providing for efficient fight against terrorism includes several laws regarding the criminal-law field or referring to it:

Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 13/04 and 47/06, and Official Gazette of Montenegro 40/08), Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03, 07/04, 47/06), Law on Public Prosecution Office (Official Gazette of the Republic of Montenegro 69/03 and 40/08), Law on Courts (Official Gazette of the Republic of Montenegro 5/02, 49/04 and Official Gazette of Montenegro 22/08), Law on Suppression of Money Laundering and Financing of Terrorism (Official Gazette of Montenegro 14/07 and 4/08 - corrigendum); Law on Police (Official Gazette of the Republic of Montenegro 28/05); Law on National Security Agency (Official Gazette of the Republic of Montenegro 28/05); Law on Asylum (Official Gazette of the Republic of Montenegro 45/06); Law on Border Control (Official Gazette of the Republic of Montenegro 72/09); Law on Foreigners (Official Gazette of Montenegro 82/08); Law on Montenegrin Nationals Travel Documents (Official Gazette of Montenegro 21/08 and 25/08); Law on Personal Data Protection (Official Gazette of Montenegro 79/08); Law on Data Secrecy (Official Gazette of Montenegro 14/08).

Criminal Code stipulates a set of terrorism related criminal offences, such as: Article 447 (International Terrorism); Article 448 (Taking Hostages); 336 (Unlawful Acquisition and Disposing of Nuclear Substances); 337 (Endangering Safety with Nuclear Substances); 341 (Endangering Air Traffic Safety); Article 342 (Endangering Air Traffic Safety by Violence); Article 343 (Hijacking an Aircraft, Ship or Other Means of Transport); Article 365 (Terrorism); Article 449 (Financing of Terrorism).

**International Terrorism** (Article 447) is the offence involving the intention of a person to cause harm to a foreign state or international organisation, to commit abduction over a person or other



act of violence, cause explosion or fire or take other generally dangerous acts or threats by use of nuclear, chemical, bacteriological or other similar means. Prescribed penalty for this offence is from three to fifteen years of imprisonment sentence, and for qualified forms of this offense (resulting in death of one or more persons, or intentional murder of a person), a minimum term of ten years or to imprisonment of forty years (Article 447). Hereby, the Criminal Code in regard to definition of terrorism, and incrimination concerning subjective and objective element of this offence is harmonised with the Framework Decision on Combating Terrorism (Council Framework Decision of 13 June 2002 on Combating Terrorism OJL 164 of 22 June 2002).

Pursuant to Article 448 of the **Criminal Code**, in compliance with the Convention against the Taking of Hostages, taking hostages is sanctioned in its basic and two qualified forms. Basic form of this offence is implied in paragraph 1 of this Article. Anyone who commits abduction of a person or threats to kill that person hurt or keep as hostage with the intention of forcing a state or international organisation to do or not to do something, shall be punished by an imprisonment sentence of two to ten years.

If the offence resulted in death of the hostage, the offender shall be punished by an imprisonment sentence of three to fifteen years (Article 448), or if during the commission of the offence, the offender committed intentional murder of the hostage, the offender shall be punished by an imprisonment sentence for a minimum term of ten years or a imprisonment sentence of forty years (Article 448).

In compliance with the Convention on Protection of Nuclear Material, Criminal Code provides for the following offences:

- **Unlawful Acquisition and Disposing of Nuclear Substances** (Article 336) which implies unlawful acquisition, possession, use, transport, handing over to another person nuclear substances or making possible for another person to acquire them. Prescribed penalty for this offence is to three years imprisonment.

- **Endangering Safety with Nuclear Substances** (Article 337) which implies endangering persons by threat to use nuclear substances. Prescribed penalty for this offence is from six months to five years imprisonment.

In compliance with the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Criminal Code provides for the following offences:

- **Endangering air traffic safety** (Article 341) involves irregular or improper management of a flight, by omitting duty or supervision related to the safety of air traffic, by giving incorrect information important for the flight of an aircraft, or in some other manner endangering the safety of air traffic. Prescribed penalty for this offence is from one to six years imprisonment.

- **Endangering air traffic safety by violence** (Article 342) is the offence involving use of violence to persons in an aircraft, by setting or bringing into the aircraft explosive or other dangerous devices or substances, or by destroying or damaging navigation devices or causing other damage to the aircraft, so as to put safety of air traffic into danger. Prescribed penalty for this offence is from two to ten years imprisonment, and for qualified forms of this crime from two to twelve years imprisonment, i.e. from five to fifteen years imprisonment.

- **Hijacking an Aircraft, Ship or Other Means of Transport** (Article 343) is the offence involving use of force or threat that force will be used to take over the control over an aircraft during flight or of a ship when sailing, or other means of public transport while they are in motion. For basic form of this offence prescribed penalty is from two to ten years imprisonment, while for qualified form of this offence is from five to fifteen years imprisonment.

Article 365 of the Criminal Code prescribes **terrorism offence**, and it implies the intention of endangering the constitutional order and security of Montenegro, by causing explosion or fire or by undertaking other general dangerous measures, or kidnapping a person, or committing other act of violence, or threatening to undertake some general dangerous action, or to use nuclear, chemical, bacteriological or other generally dangerous substance and whereby may causing fear or feeling of insecurity of citizens. The perpetrator of this offence shall be punished by imprisonment sentence of three to fifteen years.

In accordance with the provision of Article 2 of UN Convention against Transnational Organised Crime, Article 401 of the Criminal Code provides for the offence of **criminal alliance** (Anyone who organises a group or other association aimed at committing criminal offences punishable by an imprisonment sentence depending on whether he/she is the organiser or member of the association). Paragraph 1 of Article 401 sanctions basic form of this offence with the imprisonment sentence up to three years.

Paragraphs 2, 3 and 4 prescribe more severe forms of this offence. Their qualification depends on the severity of the offence the criminal association has been established for. Therefore, paragraph 2 refers to the offences punishable with the imprisonment sentence of five years or more severe one.

In compliance with the signed and ratified international conventions, Article 385 of the Criminal Code incriminated **the offence of Failure to Report Preparation of a Criminal Offence**. Anyone who has information that preparation is underway for commission of a criminal offence punishable under law by an imprisonment sentence of five years or more, but fails to report it when such an offence could have been prevented, and the crime is attempted or committed, shall be punished by a fine or imprisonment not exceeding one year (Article 385). For failure to report preparation of a criminal offence punishable under law by an imprisonment sentence of forty years, the offender shall be punished by imprisonment of three months to three years.

Pursuant to the Amendments to the Criminal Code of 2006, Article 387 qualifies and sanctions an offence of **Assistance to Offender after the Commission of a Criminal Offence**. Basic form of this offence is provided for in paragraph 1 of Article 387, therefore anyone hiding the offender or hiding means or traces of a criminal offence, or assisting him/her in any other manner to avoid detection, and who hides a convicted person or takes any other measures with the intention to avoid the enforcement of a sanction, a security measure, or committal to a correctional institution or reformatory, shall be liable to a fine or imprisonment up to two years. Paragraphs 2 and 3 of this Article prescribe qualified forms of this offence, and they refer to offences punishable by imprisonment sentence up to five years, i.e. 40 years imprisonment sentence.

Aimed at more efficient combating terrorism by special means – reducing its financial power, the Criminal Code prescribes in Article 449 as a separate offence – **Financing of Terrorism**. Anyone who provides or raises funds intended for financing offences of terrorism, taking hostages and international terrorism shall be liable to imprisonment of one year to ten years.

The Criminal Code also sanctions the offences with elements of terrorism, such as: causing general danger, serious offences against general safety, diversion, associating for unconstitutional activities, serious offences against constitutional order and security of Montenegro.

Obtained expert opinions and analyses made by experts of Council of Europe, UN Office on Drugs and Crime, Organisation for Security and Cooperation in Europe, as well as by domestic experts, are very important taking into account ongoing intensive activities on amending the Criminal Code. All of the above-mentioned will ensure full implementation of international standards in this area, thus contributing to more efficient fight against terrorism.

**Criminal Procedure Code** provides for the procedure for detection and criminal prosecution of crimes perpetrators. The Code especially regulates procedural actions to be taken by the Police Directorate, public prosecutor and judiciary during preliminary criminal procedure and criminal procedure. The Criminal Procedure Code provides for provision of witness protection within criminal procedure and implementation of special investigative measures (secret surveillance measures).

**Law on Witness Protection** regulates provision of witness protection out of criminal procedure, and inclusion of a witness into special witness protection programme.

Pursuant to the **Law on Public Prosecution Office**, specialised authority for suppression of organised crime, corruption, terrorism and war crimes cases is established within the Division for suppression of organised crime, corruption, terrorism and war crimes, headed by Special Prosecutor.

Pursuant to the amendments to the **Law on Courts** (Official Gazette of Montenegro 22/08), within High Courts in Bijelo Polje and Podgorica, specialised division for trials of organised crime, corruption, terrorism and war crimes cases is established.

**The Law on Prevention of Money Laundering and Financing of Terrorism** provides for measures and actions for detection and prevention of money laundering and financing of terrorism.

Pursuant to the **Law on Police**, among other, police activities are the following: 1) protection and security of the citizens, and of freedoms and rights provided in the Constitution; 2) protection of property; 3) prevention from committing and detection of crimes and misdemeanours; 4) locating and apprehending crimes and misdemeanours perpetrators, and bringing them before competent authorities; 5) state border surveillance and security, and conducting border checks; and 6) control of foreigners movements and staying.

**Law on National Security Agency** provides for the competences of the National Security Agency to collect data on activities of organisations, groups and individuals, directed to conducting acts of domestic and international terrorism, organised crime and the most serious crimes against humanity and international law.

**Law on Asylum** deprives a foreigner from granting refugee or asylum status, if there are serious reasons indicating the foreigner committed: a crime against peace, a war crime or a crime against humanity, within the meaning of international instruments containing provisions on such crimes; serious crime under international law outside Montenegro and prior to arrival in Montenegro, or he/she is guilty of an act contrary to goals and principles of the United Nations.

**Law on Border Control** regulates the manner of performing control encompassing supervision of state border, border checks and assessment of threats for state border safety and it is performed for the following purposes: securing the state border; protection of life and health of people; prevention and detection of crimes and misdemeanours, locating and apprehending perpetrators of crimes and misdemeanours; prevention of illegal migrations; prevention and detection of other activities and acts which endanger the public safety.

**Law on Foreigners** regulates limitations or prohibition of movement in certain area of Montenegrin territory, if required for national security and public order.

**Law on Travel Documents of Montenegrin Nationals** provides for so called biometric indicators in passports and visas, thus providing conditions for more efficient suppression of trans-border crime and terrorism.

**Law on Data Secrecy** provides for single system of establishing data secrecy, access to classified data, storage, use, records and protection of classified data, under the terms and conditions provided by the Law.

## **142. Which national departments and agencies are involved in the fight against terrorism?**

### State of play at the institutional level

Pursuant to the existing legislation in Montenegro, the following institutions are entrusted with competences for fighting terrorism:

Public Prosecution Office, as a unique and autonomous state body in charge of prosecution of the perpetrators of crimes and other punishable acts prosecuted *ex officio*.

Special Prosecutor, within its jurisdiction, has the same rights and duties as prosecutor, unless otherwise provided in the Law on Public Prosecution Office regarding individual issues. Special Prosecutor informs the body competent for internal affairs (the Police Directorate) on taking over criminal prosecution of cases of organised crime, corruption, terrorism and war crimes.

Special Prosecutor undertakes actions having jurisdiction before the subject matter jurisdiction or territorial jurisdiction court, or other state body before which it acts pursuant to the law.

### Courts

Specialised divisions for trial proceedings in cases of organised crime, corruption, terrorism and war crimes are set up within High Courts in Podgorica and Bijelo Polje

Pursuant to the Rulebook on Internal Organisation and Job Descriptions, the following organisational units within the Police Directorate are in charge of fight against terrorism:

- Criminal Police Department, which has the following three organisational units in charge of detection and apprehension of perpetrators of terrorism offences: Section for Fighting Organised Crime and Corruption (Group for Suppression of General Organised Crime and Suppression of Terrorism and International Terrorism), General Crime Section (Group for Suppression of Terrorism Related Crimes, Protection of Fire, Explosives and Accidents), and at regional and local level, in regional units (Groups for Suppression of Terrorism Related Crimes, Protection of Fire, Explosives and Accidents). Criminal Police Department undertakes measures of counter-terrorism protection, aimed at collecting and processing intelligence to prevent terrorist acts, and in case these acts are committed, to conduct investigation together with the competent judicial authorities, and to conduct activities of apprehending and prosecuting the perpetrators;
- Within the VIPs and Vital Facilities Protection Department, Anti-Terrorist Inspection Group has been established;
- Special Anti-Terrorist Unit, entrusted with the task to prevent terrorists from conducting terrorist act, and to respond in a case of a conflict with individuals or terrorist groups, and
- Special Police Unit .

Ministry of Justice, among others, within the Department for Judiciary, conducts tasks of the state administration regarding the criminal legislation, international legal assistance, etc. The Department draws up strategies, projects and programmes, and monitors their implementation; it participates in preparation of strategies, projects and programmes within special working groups; it monitors process of harmonisation of legal system in the field of judiciary with EU standards and regulations (*acquis communautaire*); it draws up required reports and measures for implementation of ratified conventions in the field of judiciary; it prepares, draws up and implements international treaties in the field of international assistance; it establishes and implements cooperation programmes with international and regional organisations, institutions and other regional entities, as well as with judicial authorities in implementation of the mentioned programmes; it participates in international and regional forums, bodies, working meetings, conferences, etc; draws up laws and by-laws, and implementation of those referring to the organisation, jurisdiction and functioning of courts, misdemeanour bodies, public prosecution office, law practice and legal aid, notaries public, mediators, expert witnesses, court fees, proceedings before courts; it organises public, expert, specialist and other required debates, and it provides participation of foreign and domestic experts.

Department for Emergency Situations and Civil Security is established within the Ministry of Interior and Public Administration. This Department has a key role in rehabilitating consequences not only of possible terrorist attacks, but also of earthquakes, floods, chemical, nuclear and other forms of accidents.

National Security Agency, among other things, is also in charge of detection, investigation and documentation of the most serious forms of organised crime, especially regarding the prevention and suppression of domestic and international terrorism.

The Army of Montenegro, pursuant to the Defence Strategy of Montenegro and the Law on Defence, in execution of its secondary mission, provides the following: support to the civil institutions in the country during natural and man-made disasters, as well as in other crisis situations, involving crisis as a result of a terrorist act, and it provides assistance to the police in the fight against terrorism. Pursuant to the organisational-formational structure, Division for Intelligence Scouting Tasks is set up, at the level of General Staff of the Army of Montenegro, in charge of planning, organising, managing and controlling intelligence security of the Army of Montenegro.

In execution of tasks and activities in the field of defence, Intelligence-Security Service of the Ministry of Defence cooperates with the Police Directorate and National Security Agency. Pursuant to the Rulebook on Internal Organisation and Job Descriptions of the Ministry of Defence,

Intelligence-Security Service was established, and is in charge of: provision of intelligence, counter-intelligence and security support in making decisions and conducting defence activities of Montenegro in peace, emergency and war.

Administration for Prevention of Money Laundering and Financing of Terrorism, pursuant to the Law on Prevention of Money Laundering is organised as a financial intelligence unit. The Administration conducts activities in regard to detection and prevention of money laundering and financing of terrorism, referring to collection, analysing and submitting information and documents, required for detection of money laundering and financing of terrorism.

Directorate for Protection of Classified Data pursuant to the Law on Data Secrecy, organises the activities of the authorities concerning exchange of classified data with foreign countries and international organisations, exchanged through the Central Registry, it conducts activities of issuing clearances for access to classified data to natural (Personal Security Clearance) and legal persons (Facility Security Clearance), as well as conducting supervision over the implementation of the Law and implementation of international treaties. Pursuant to the Agreement on Security of Information, in regard to exchange and protection of NATO classified data, the Directorate is indicated as NSA (National Security Authority).

### **143. Which national bodies co-ordinate the fight against terrorism?**

The role of coordinator of criminal processing in a case of commission of a crime with elements of terrorism is assumed by the competent public prosecutor, who requests the measures to be undertaken, needed for locating the perpetrator, undertaking of actions for proving the crimes, and delegates conducting of individual investigative actions and measures to collect information necessary for initiation of criminal procedure. Within his/her activities, public prosecutor coordinates activities of all bodies involved in criminal processing, primarily the Police Directorate, which is carrying out most of the activities, as well as other agencies possibly being involved (Administration for Prevention of Money Laundering and Financing of Terrorism, National Security Agency).

Special prosecutor for suppressing organised crime, corruption, terrorism and war crimes in compliance with his/her jurisdiction, prosecutes and coordinates activities in detecting terrorism related crimes, security, etc.

The Police Directorate, i.e. Criminal Police Department, as a special organisational unit within the Police Directorate, is a specialised unit with its scope of activity and competences regulated by the Police Rulebook on Internal Organisation and Job Descriptions. The Department is competent for the crimes with the elements of terrorism, as well as for all crimes committed by an organised group or association, as well as for the crimes with international elements.

Organisational units of the Criminal Police Department cooperate with the competent bodies of other countries and with international organisations, and they direct activities to detect crimes, by conducting joint investigations by using special investigative techniques (Article 19 of UN Convention against Transnational Organised Crime).

### **144. What is the role and input of security and intelligence services?**

Security services and agencies analyse and evaluate intelligence on individuals, groups and organisations which might use the territory of Montenegro to plan, organise and carry out terrorist attacks in other countries, and they cooperate with related security services. They also analyse and investigate crimes related to smuggling of weapons, people and drugs, as well as smuggling of radioactive, chemical and biological substances, favourable for producing weapons of mass destructions.

Aimed at timely detection of terrorist attacks, security services, within the scope of their competences, undertake the following activities:

- collecting data from the public; using data from public sources; having insight in the registries and data records; using undercover collaborators; applying undercover means and methods (cooperate with domestic and foreign nationals); conducting surveillance and observation, by using technical means for documenting; they buy documents and items, and they conduct surveillance over the parcels and other communication means; keeping records and registries on data, conducting security checks of persons, important for security of the state, and providing counter-intelligence protection of the Parliament, Government, President, other state institutions, ministries and other administration bodies; organising and coordinating implementation of the measures for protection of classified information, and respect of security standards for transmission of such information; protecting collected data and information from unauthorised release, submission, altering or destroying; conducting other activities of interest for the security of Montenegro, in conformity with the law.

Security services and agencies in Montenegro foster cooperation and coordination aimed at:

- preventing terrorism (by addressing its causes);
- developing international cooperation;
- establishing the system networking for the purpose of joint actions;
- assessing risks based on information submitted by all structures and security services;
- enhancing defence system to prevent possible terrorist attacks;
- identifying possible targets of terrorist attacks;
- continuous training and preparing to reduce consequences of terrorist attacks to the lowest possible extent;
- organising team work in investigation of terrorism related crimes, and;
- preventing terrorist groups from commission of terrorist attacks, and related single way of action.

Security services report to the public prosecutor on information indicating the preparation or commission of crimes with elements of terrorism.

Pursuant to the constitutional and legal competences, the security services report annually on their activities to the President, Parliament and Government. Data submitted to those bodies are considered as classified, unless otherwise decided.

#### **145. Are there specialised bodies dealing with the financing of terrorism?**

Montenegro, in the previous period, has not been faced with any specific forms of financing of terrorism, thus it has not set up specialised body exclusively in charge of investigating financing of terrorism.

However, analysing and investigating of financing of terrorism and illegal activities related to obtaining means for commission of offences of terrorism, international terrorism, taking of hostages and other offences with elements of terrorism pursuant to the scopes regulated in the legislation, is entrusted to the: security and security-intelligence agencies, bodies and organisations competent for supervising the implementation of the Law on Prevention of Money Laundering and Financing of Terrorism.

Within the Police Directorate, Special Anti-terrorist Unit is established, having competences over the detection and resolving most complex affairs and tasks from the area of terrorism.

The National Security Agency has, within its organisational structure, the special unit in charge of analysing data and information regarding the activities of international organisations and structures, which through the activities of illegal trafficking, money laundering or financial transactions, can provide material assumptions for financing of terrorist activities.

Ministry of Finance performs the supervision over the implementation of Article 4, paragraph 1, item 12 of the Law on Prevention of Money Laundering and Financing of Terrorism, which states that auditing firms, independent auditor, legal or natural persons providing accounting services and tax advisory services are obliged to undertake measures prescribed by the Law on detection and prevention of money laundering and financing of terrorism prior to and in the course of all activities concerning receiving, investing, exchange, keeping or other ways of dealing with money of other property, or transactions for which there are reasonable grounds that money laundering or financing of terrorism is concerned.

Administration for Prevention of Money Laundering and Financing of Terrorism: collects, analyses and submits data, information and documents to the competent authorities, necessary to detect money laundering and financing of terrorism; develops special programmes for prevention of money laundering and financing of terrorism, with procedures, control programmes, and training of the staff to identify suspicious transactions; checks transactions and persons suspected to be involved in money laundering or financing of terrorism; establishes guidelines for drafting risks analyses.

There are three specialised units set up within the Administration:

- Suspicious Transactions Division
- International and Internal Cooperation Division
- IT and Data Reception Division

Administration for Prevention of Money Laundering and Financing of Terrorism through an authorised officer, pursuant to the law which regulates inspection control, conducts inspection control over the activities of: humanitarian, non-governmental organisations and other non-profit organisations and other business organisations, legal persons, entrepreneurs and natural persons conducting the activity, i.e. businesses within financial transactions (factoring, financial leasing, real estate trade, etc.).

Public Prosecution Office is in charge of prosecution of perpetrators of crimes and other punishable offences prosecuted *ex officio*.

Central Bank of Montenegro is in charge of supervision over the implementation of the Law on Prevention of Money Laundering and Financing of Terrorism by the banks, foreign bank branches, other financial organisations, the organisations dealing with payment operations, savings banks, savings credit organisations, exchange offices and organisations for issuing electronic money.

Agency for Telecommunication and Postal Services pursuant to the Law on Electronic Communications (Official Gazette of Montenegro 50/08) is in charge of supervision over the implementation of the Law on Prevention of Money Laundering and Financing of Terrorism by the Post Office.

Securities Commission of Montenegro is in charge of supervision over the implementation of the Law on Prevention of Money Laundering and Financing of Terrorism: Company for Investment Funds Management and foreign company branches for investment funds management, Company for Pension Funds Management and foreign company branches for pension funds management, as well as the stock brokers and foreign stock broker branches.

Insurance Agency is in charge of supervision over the implementation of the Law on Prevention of Money Laundering and Financing of Terrorism by insurance companies and foreign insurance branches dealing with life insurance activities.

Administration for Games of Chance is in charge of supervision over the implementation of the Law on Prevention of Money Laundering and Financing of Terrorism by organisers of classic and special games of chance.

Tax Administration is in charge of supervision over the implementation of the Law on Prevention of Money Laundering and Financing of Terrorism by pawnshops.

Special bodies are set up within the Association of Montenegrin Banks and Association of Accountants and Auditors, in charge of making analyses on money laundering, and financing of terrorism.

Having developed institutional framework for prevention and fight against financing of terrorism in such a way, it is not planned to establish a specialised body in charge of financing of terrorism.

#### **146. What is done to provide concerned staff with specialised training?**

In accordance with annual Training Programmes continuous training of staff is being organised in Montenegro aimed at efficient fight against all forms of terrorism..

The Police Academy, in cooperation with the Police Directorate, organises continuous vocational and specialised training of the police staff for fight against terrorism. The training is delivered pursuant the Annual Programme on Vocational and Specialised Training. Special segment of the annual programme is vocational and specialised training of the border police officers, involving more than twenty different topics addressed at the seminars. Apart from lecturers from the Academy, vocational and specialised training is delivered also by lecturers and experts from the Police Directorate, Prosecutor Office, Ministry of Interior and Public Administration, University, and other scientific-education institutions, as well as by foreign experts (international organisations, such as OSCE, ICITAP, Council of Europe), US Department of Justice, Swedish Police Board, Austrian Police, Turkish Police Academy - TADOC, International Training Centre from Hungary, etc. The objective is to obtain specialised knowledge and skills to suppress and challenge specific forms of crime more efficiently.

In cooperation with the following international organisations, the following seminars were delivered:

US Programme - ICITAP, seminars on: suppression of organised crime, economic crime, cyber crime, currency counterfeiting – preventive and repressive aspect, undercover operations and special surveillance techniques;

The OSCE Mission, seminars on: suppression of trafficking in narcotic drugs, training of the border police officers on suppressing smuggling across the state border and protection of the state border from possible threats of terrorist acts;

International Training Centre in Hungary, seminars on: crisis management, undercover agents, blackmails and abductions, and tactical training;

Austrian Development Agency, the following seminars were delivered: witness protection, identification of forged documents, conducting interviews and trafficking in human beings;

US Department of Justice, through EXBIX and DETRA programmes, the seminars on: response to crisis situations, prevention of weapons for mass destruction proliferation, and prevention of cross-border smuggling;

The Council of Europe, the seminars on: conducting interviews.

Within the Special Anti-Terrorist Unit (SATU), pursuant to the Training Programme, continuous training is conducted aimed at delivering training and skills to the SATU staff for:

- conducting actions on defeating terrorists and releasing hostages in a building (room), aircraft, vessel or a road and railway transportation means;
- efficient use of equipment for special protection, counter-diversion and other equipment;
- prompt and efficient suppression of public disorders of a larger scale;
- leader of the groups to train the groups, and to lead it during operations;
- commanders of the teams in managing anti-terrorist operations and managing incidents.

Training specified pursuant the Programme, is divided in the following way:

- specialised training of anti-terrorist A and B teams (individual police officers and the teams),



- basic training and tailor made training for the tasks of police officers of anti-terrorist C team, and the team in general, and
- conducting courses.

Specialised training of anti-terrorist A and B teams is delivered a whole year around, in order for the police officers to obtain skills and be trained as the specialists, and to be able to conduct special tasks, involving individual shooting exercises and maintaining physical fitness.

Supplementary specialists training is delivered in parallel with the training. The courses are conducted through: basic and advanced anti-terrorist courses, sniper shooting courses, alpinist course, diving course, VIP security course, leader of a SATU group course, parachuting course, etc. Instructors of physical training, firearms training, counter-diversion protection training, diving and alpinism, pursuant to the Training Programme and monthly activity plan, conduct continuous training of the SATU staff within the scope of their activities. Checking of acquired knowledge is done through testing. Testing results, together with the other working results are taken into consideration while making annual work assessment of the staff.

The SATU staff actively participates in trainings, both in the country and abroad. Within the training process, the SATU actively cooperates with the leading special units from the Region and beyond (British Special Unit, French Special Units, US Special Units, etc.). The SATU staff participated in the following training courses and seminars:

- PTSS Programme on Terrorism and Security Studies - Marshal Centre, Germany;
- Analyses of terrorist groups actions and improvised devices they use;
- Managing conflict situations;
- Negotiations and negotiation skills;
- Shooting course, which implies check of the knowledge acquired at the basic course on Special Operations Tactics, which was delivered at the end of 2008 at the US Centre for Training of Special Units;
- Second part of the advance course on Special Operations Tactics;
- Workshop on "Eco Cobra" – Austria;
- Fort Myers-Florida – tactics of special operations on water;
- Negotiation techniques in crisis management - OSCE;

Training on crisis situations management at the command level, and at the direct executives level, hostage situation, hijacking aircraft, handling dogs and VIP security – organised by the Ministry of Interior of the Republic of Serbia, French Embassy in Belgrade and French Special Unit (RAID);

Basic and advanced techniques of intelligence and analyses – organised by US Embassy in Podgorica.

Within the specialised training, thirteen SATU staff attended the camp for US special units training.

Within the defence system reform process, vocational and specialised training on combating terrorism for units and individuals of the Ministry of Defence and Army is organised through intensive international military cooperation with NATO member countries and the Partnership for Peace, as well as through bilateral cooperation with intelligence and military intelligence services of the partner countries. Specialised training on the fight against terrorism is delivered through:

- Training abroad (US and Turkey);
- Seminars and courses delivered at the Police Academy; and
- Courses on fight against terrorism delivered within the Plan on Military Cooperation with the US armed forces.

Administration for Prevention of Money Laundering and Financing of Terrorism has organised and participated in many seminars and workshops delivered mostly in cooperation with the following international organisations and institutions: World Bank, International Monetary Fund, European

Bank for Reconstruction and Development, European Commission, OSCE, Council of Europe, etc. Those seminars were on money laundering prevention (typology, identification of suspicious transactions, implementation of relevant international standards) and prevention of financing of terrorism. In previous and during this year, the Administration staff participated in the OSCE Conference on Public-Private Partnership in fight against terrorism and in the seminar on fight against terrorism and financing of terrorism, organised by Basel Management Institute. The seminars were mainly organised for the Administration for Prevention of Money Laundering staff, Police Directorate, Prosecutor Office, and the judiciary staff. Few seminars were organised also for the staff of the authorities competent for supervision over the implementation of the Law on Prevention of Money Laundering and persons authorised at the banks.

Customs Administration conducts specialised trainings pursuant to the Programme on Specialised Training, for general training, composed of the knowledge of the state administration system, drawn up by the Administration in cooperation with the Human Resources Administration. In addition to the above-mentioned training, the Customs Administration staff is entitled to apply for special training, when needed for the customs service functioning.

Also, every day the activities and actions are conducted to deliver specialised and vocational training to the customs staff, and to provide them with the knowledge needed for the customs staff pursuant to the Article 13 of the Customs Law (Official Gazette of the Republic of Montenegro 7/02 and 29/05). Vocational training of the customs staff is subjected to the length of working experience, degree and type of education, working status and the type and scope of the activity he/she carries out within the Administration. Training and professional education of the staff is delivered through the following three types of training:

Training and education of the staff delivered by the Customs Administration itself, and in cooperation with the Human Resources Administration.

This type of training is developed through a few basic forms of training of the customs staff. Primarily, this kind of training refers to the specialised customs courses on knowledge of the customs related issues, where the customs staff is trained for autonomous work on the customs working positions they were recruited for.

This type of training, having in mind primarily customs courses for the staff having high school, college and university degree, is organised by the Customs Administration pursuant to the Decree on the Programme and Passing of Civil Service Exam (Official Gazette of the Republic of Montenegro 29/05 and 06/07), which establishes the programme and the manner of passing civil service exam. The course is mandatory for the civil servants and employees trained for the main activity tasks and IT customs system related activities.

In 2006, the Customs Administration organised specialised training for passing the customs service exam, and it was attended by 49 civil servants and employees with university degree. In 2007 the Customs Administration organised specialised training for passing the customs service exam, and it was attended by 27 civil servants and employees with high school degree; in 2008 the training was organised for passing the customs service exam, which was attended by 45 civil servants and employees with university degree.

Specialised training courses involve the following subjects:

- Customs system and procedure;
- Customs tariff;
- External trade system and international conventions;
- Knowledge of goods in the customs clearance procedure;
- Suppression of smuggling;
- Customs IT system.

The training is conducted by the lecturers – experienced customs staff. The training lasts for 4-5 weeks, and it is delivered on the school class principle, and is composed of a theoretical and practical part, with the total of 160 lessons.

Customs Administration also delivers short training courses, which are reflected in training of the newcomers and trainees engaged in the principal activity tasks and activities, and who have not previously undergone special trainings. The training of the staff involves basic knowledge of the customs system and procedure, customs tariff, knowledge of the goods and suppression of smuggling of various kinds of goods. The training is delivered by experienced staff in the relevant fields. The above-mentioned training courses are carried out at the border crossing points and the customs regional and local offices. This kind of specialised training was delivered to 105 employees of the Customs Administration. Upon finalised training, civil servants and state employees pass civil service exam – special part, pursuant to the Decree on the Programme and Passing of Civil Service Exam (Official Gazette of the Republic of Montenegro 29/05 and 06/07), before the Commission established by the Ministry of Justice, composed of the lecturers who were teaching at the customs training course.

Special kind of training is delivered by experienced staff, who participated in the various seminars and study visits of modern customs services. This kind of training is delivered exclusively by the customs staff who attended courses and seminars in modern customs services. The experience obtained by the staff referred to those training courses, is transferred to the Administration staff, especially to those engaged in the principal activity tasks. This kind of training is the short one, and it is delivered in the regional units.

Another kind of specialised training is targeted to the newcomers and trainees recruited at the Administration. Special attention is paid to the training and professional development of the trainees, which is carried out pursuant to the Programme on Training and Professional Development of Trainees No 6103-05 of 28 December 2005, aimed at ensuring a trainee autonomous work with constant supervision and training by the mentor.

Training and professional development of the staff, is carried out by the Customs Administration in cooperation with the modern customs services it closely cooperates with.

This kind of training is carried out by various organisers, representatives of different organisations, missions and agencies the Customs Administration cooperates with, and as a such it is directed towards gathering the largest possible number of staff, depending on the need and on the issues addressed. Specialised courses and seminars were organised by the European Agency for Reconstruction, USAID, TAIEX, Ministry for International Economic Relations and European Integration, Administration for Prevention of Money Laundering, French Customs Service, EXBS Programme of the US Embassy in Belgrade and Podgorica, TACTA and CAFAO.

Special focus was put on courses on suppression of smuggling, intelligence, detection of narcotic drugs, weapons and military equipment, road transportation, transit procedure, border protection, use of special equipment, use of new customs seal, detection of smuggled goods, use of hi-tech devices, risk analyses, searches in various kinds of transportation, intellectual property, customs cooperation, and cross-border cooperation.

In 2007, 304 state employees and civil servants of the Customs Administration participated in 144 various types of training; in 2008, 393 staff participated in 136 various types of training.

From 01 January 2009 to 31 July 2009, 296 state employees and civil servants of the Administration, participated in 102 various type of specialised training, out of which 46 were organised by international partners.

In cooperation with the Police Academy in Danilovgrad, the Customs Administration organised and delivered training of the staff engaged in main activity of handling firearms, in the light of adherence to the provisions of the Rulebook on Conditions and Carrying Weapons and Ammunition by the Customs Officers (Official Gazette of the Republic of Montenegro 48/04), which envisages conditions and manner of carrying weapons and ammunition by the customs officers for the purpose of carrying out the tasks. This kind of training was attended by 129 state employees and civil servants of the Customs Administration.

Special kind of professional development of the customs staff is done through participation in seminars, workshops and debates on main activity of the Administration. Depending on capacities, the Administration made efforts to send the largest possible number of the staff to the short study tours of developed customs administrations, and subsequently to transfer obtained knowledge and

experience to other customs staff. Also, this kind of training involves the training in English or some other foreign language of the Administration staff, which is one of the priorities. This kind of training is delivered by the Customs Administration in cooperation with the Human Resources Administration and Foreign Languages Institute.

Supplementary training of the Administration staff is planned to be delivered in near future, by the experts team, established in cooperation with the Police Academy.

This training will be one of the key elements of professional development of the customs staff, in addition to the specialised basic training, to be organised by the Administration through the training unit of the school class type.

**147. Provide information on existing bilateral and international co-operation (including liaison officers and magistrates).**

Montenegro contributes to the suppression of money laundering and financing of terrorism at the regional and global level, and by implementing commitments arising from the membership in international organisations, as well as by exchanging intelligence.

The Ministry of Interior and Public Administration and the Police Directorate are competent for fulfilling assumed commitments provided for in bilateral agreements and protocols on fight against terrorism and organised crime, as well as for implementation of the following international agreements:

2005 Agreement on Cooperation between Montenegro and the Government of the Republic of Bulgaria in Fight against Terrorism, Organised Crime, Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors, Illegal Migration and other Forms of Crime;

2003 Agreement on Cooperation between the Government of Montenegro and the Government of the Republic of Albania in Fight against Terrorism, Organised Crime, Trafficking, and other Forms of Illegal Activities;

2007 Agreement on Police Cooperation between the Government of Montenegro and the Government of the Republic of Turkey;

2005 Agreement on Police Cooperation between the Ministry of Interior of Montenegro and the Ministry of Interior of the Republic of Croatia;

2004 Agreement on Police Cooperation between the Ministry of Interior of Montenegro and the Federal Ministry of Interior of the Republic of Austria;

2006 Protocol on Police Cooperation between the Ministry of Interior and Public Administration of Montenegro and the Ministry of Interior of Romania;

2003 Protocol between the Ministry of Interior of Montenegro and the Ministry of Interior of the Republic of Serbia on Fight against Terrorism, Organised Crime, Illegal Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors, Trafficking in Human Beings, Illegal Migration and other Forms of Crime, as well as on Cooperation in other areas of their Jurisdiction;

2006 Agreement on Cooperation between the Government of the Republic of Slovenia and the Government of Montenegro in Fight against Organised Crime, Trafficking in Human Beings and Illegal Migration, Trafficking in Illicit Drugs and Precursors, Terrorism and other Forms of Crime;

2007 Agreement on Cooperation between the Government of Montenegro and the Council of Ministers of Bosnia and Herzegovina in Fight against Terrorism, Organised Migration Crime, Illegal Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors, Illegal Migration and other Forms of Crime;

2003 Agreement on Cooperation between the Government of the Republic of Montenegro and the Government of the Republic of Macedonia in Fight against Terrorism, Organised Crime, Illegal Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors, Illegal Migration and other Forms of Crime;

2003 Memorandum of Understanding on Police Cooperation between the Government of the Republic of Montenegro and UN Interim Mission in Kosovo - UNMIK, and;

2008 Agreement on Cooperation between the Ministry of Interior and Public Administration of Montenegro and the Ministry of Interior of Russian Federation.

The Police Directorate develops efficient cooperation with three liaison police officers posted in Montenegro (two from Italy and one from Slovenia). Active cooperation is also developed with the liaison officers posted in the Republic of Serbia, representing the following countries: Republic of Austria, Republic of Bulgaria, French Republic, Hellenic Republic, Kingdom of the Netherlands, United Kingdom of Great Britain and Northern Ireland, Kingdom of Denmark, Republic of Finland, Kingdom of Sweden, Slovak Republic, Czech Republic, Kingdom of Spain and Kingdom of Belgium.

By the Government of Montenegro Decision of 23 July 2009, liaison officers are posted to SECI Centre in Bucharest, Romania and INTERPOL in Lyon, France.

**Administration for Prevention of Money Laundering and Financing of Terrorism**, as financial intelligence unit of Montenegro, aimed at enhancing further international cooperation and facilitating exchange of information regarding money laundering and financing of terrorism, has concluded agreements with the following counterparts:

FIU of Serbia - Agreement on Mutual Cooperation with Financial Intelligence Unit of Serbia of 16 April 2004;

FIU of Albania - Agreement on Mutual Cooperation with Financial Intelligence Unit of Albania of 16 April 2004;

FIU of BiH - Agreement on Mutual Cooperation with Financial Intelligence Unit of Bosnia and Herzegovina of 19 April 2005;

FIU of Macedonia - Agreement on Mutual Cooperation with Financial Intelligence Unit of Macedonia of 29 October 2004;

FIC-UNMIK Kosovo - Agreement on Mutual Cooperation with UNMIK Financial Information Centre of 07 December 2004;

FIU of Slovenia - Agreement on Mutual Cooperation with Financial Intelligence Unit of Slovenia of 28 December 2004;

FIU of Croatia - Agreement on Mutual Cooperation with Financial Intelligence Unit of Croatia of 24 March 2005;

FIU of Bulgaria - Agreement on Mutual Cooperation with Financial Intelligence Unit of Bulgaria of 11 April 2006;

FIU of Portugal - Agreement on Mutual Cooperation with Financial Intelligence Unit of Portugal of 11 June 2007;

FIU of Russia - Agreement on Mutual Cooperation with Financial Intelligence Unit of Russia of 07 September 2007;

FIU of Poland - Agreement on Mutual Cooperation with Financial Intelligence Unit of Poland of 15 November;

FIU of Romania - Agreement on Mutual Cooperation with Financial Intelligence Unit of Romania of 10 October 2008;

FinCEN – Agreement on Mutual Cooperation with FinCEN of 22 October 2008;

FIC EULEX - Agreement on Cooperation with FIC EULEX Mission in Kosovo of 20 February 2009;

FIU of Ukraine - Agreement on Mutual Cooperation with the State Committee for Financial Monitoring of Ukraine of 27 May 2009;

FIU of United Arab Emirates - Agreement on Mutual Cooperation with Anti-Money Laundering and Suspicious Cases Unit of United Arab Emirates of 06 July 2009;

Aimed at enhancing regional cooperation, Regional Protocol on the Fight against Money Laundering was signed at the Second Regional Conference on Fight against Money Laundering and Financing of Terrorism in April 2008 by the representatives of Financial Intelligence Units.

**The Supreme Public Prosecutor's Office** develops international cooperation in fight against terrorism in compliance with the 1959 European Convention on Mutual Assistance in Criminal Matters and its 1978 Additional Protocol and 2001 Second Additional Protocol, the Law on Mutual Legal Assistance in Criminal Matters adopted in January 2008 in Montenegro, and in compliance with signed bilateral and multilateral agreements mentioned under the question 124.

### **Customs Administration**

Pursuant to the Decree on Declaration of Independence of Montenegro (Official Gazette of the Republic of Montenegro 36/2006), Montenegro has been implementing and taking over the international treaties and agreements concluded and acceded by the state union of Serbia and Montenegro, and which refer to Montenegro, and which are in compliance with its legal order. Therefore, formerly concluded agreements on mutual cooperation in customs matters are being implemented in Montenegro. The following agreements are being implemented:

Agreement between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the People's Republic of Poland on Cooperation and Mutual Assistance in Customs Matters (signed on 9 May 1967 in Warsaw);

Agreement on Administrative Assistance in Preventing, Investigating and Suppressing Breaching of Customs Legislation between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the Republic of France (signed on 28 April 1971 in Belgrade);

Treaty between the Socialist Federal Republic of Yugoslavia and the Federal Government of the Republic of Germany on Mutual Administrative Assistance in Preventing, Investigating and Suppressing Breaching of Customs Legislation (signed on 2 April 1974 in Bonn);

Agreement between the Socialist Federal Republic of Yugoslavia and the Republic of Austria on the Administrative Assistance in Customs Matters to Suppress Breaching of Customs Legislation (signed on 15 March 1978 in Belgrade);

Agreement between the Federal Executive Council of the Socialist Federal Republic of Yugoslavia Parliament and the Government of the Republic of Greece on Cooperation and Mutual Assistance in Customs Matters (signed on 4 October 1983 in Athens);

Agreement between the Federal Executive Council of the Socialist Federal Republic of Yugoslavia Parliament and the Government of the People's Republic of China on Cooperation in Customs Matters (signed on 23 January 1989 in Belgrade);

Agreement between the Federal Executive Council of the Socialist Federal Republic of Yugoslavia and the USA Government on Mutual Assistance between the respective Customs Administrations (signed on 11 April 1990 in Belgrade);

Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Russian Federation on Cooperation and Mutual Assistance of the Customs Services (signed on 6 November 1996 in Moscow);

Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Macedonia on Customs Cooperation and Mutual Assistance (signed in 4 September 1996 in Skopje);

Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Bulgaria on Customs Cooperation and Mutual Assistance (signed on 4 June 1997 in Belgrade);

Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Czech Republic on Mutual Assistance in Customs Matters (signed on 9 September 1998 in Belgrade);

Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of Romania on Customs Cooperation and Administrative Assistance in Preventing, Investigating and Suppressing Breaching of Customs Legislation (signed on 14 January 1998 in Belgrade);

Agreement between the federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Hungary on Cooperation and Mutual Assistance in Customs Matters (signed on 24 September 1998 in Belgrade);

Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Slovak Republic on Customs Cooperation (signed on 28 March 2001 in Belgrade);

Agreement between the Federal Republic of Yugoslavia and Bosnia and Herzegovina on Customs Cooperation and Mutual Assistance (signed on 18 December 2001 in Sarajevo);

Agreement on Mutual Administrative Assistance between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Italy on Preventing, Investigating and Suppressing Breaching of Customs Legislation (signed on 10 November 1965 in Belgrade);

Agreement on Mutual Administrative Assistance between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Turkey in Preventing, Investigating and Suppressing Breaching of Customs Legislation (signed on 6 February 2002 in Istanbul);

Agreement between the Government of the Republic of Montenegro and the Government of the Republic of Croatia on Mutual Assistance in Customs Matters (signed on 9 December 2005 in Podgorica);

Agreement between the Government of the Republic of Montenegro and the Council of Ministers of the Republic of Albania on Mutual Assistance in Customs Matters (signed on 26 December 2005 in Tirana);

Agreement between the Government of the Islamic Republic of Iran, Government of the Republic of Serbia, and the Government of the Republic of Montenegro on Mutual Assistance and Cooperation in Customs Matters (signed on 1 June 2005 in Teheran);

Agreement between the Government of the Republic of Montenegro and the Government of the Republic of Slovenia on Mutual Assistance in Customs Matters (signed on 19 April 2007 in Podgorica);

Agreement between the Government of Montenegro and the Government of the Republic of Moldova on Mutual Assistance in Customs Matters (signed on 27 October 2008 in Chisinau);

Agreement between the Government of Montenegro and the Cabinet of Ministers of Ukraine on Mutual Assistance in Customs Matters (signed on 17 June 2009 in Kiev);

Customs cooperation is also carried out pursuant to the following:

Agreement between the Customs Administration of Serbia and Customs Administration of Montenegro on Customs Cooperation and Mutual Assistance (signed on 29 April 2003 in Belgrade); and

Memorandum of Understanding between the Customs Administration of Montenegro and Customs Service of United Nations Mission Interim in Kosovo (UNMIK) on Cooperation and Mutual Administrative Assistance in Customs Matters (signed on 19 November 2004 in Podgorica);

Customs Administration cooperates with the European Union customs services pursuant to the Protocol 6 to the Stabilisation and Association Agreement between the European Communities and their Member States, on one side, and Montenegro, on the other (SAA), signed on 15 December 2007, and pursuant to the Protocol 5 (Protocol on mutual administrative assistance in customs matter) of the Interim Agreement which entered into force on 01 January 2008 following the signing of SAA. The Protocol provisions take precedence over the provisions of any bilateral

agreement on mutual assistance which has been or may be concluded between Montenegro and individual Member States insofar as the provisions of the latter are incompatible with those of this Agreement.

Customs Administration develops cooperation pursuant to the Annex 5 on Mutual Administrative Assistance in Customs Matters to the Agreement on Amendment of and Accession to the Central European Free Trade Agreement (CEFTA 2006). Parties of the CEFTA Agreement, between which the cooperation is developed pursuant to the Annex 5 are the following: Republic of Albania, Bosnia and Herzegovina, Republic of Croatia, Republic of Macedonia, Republic of Moldova, Montenegro, Republic of Serbia and UNMIK - Kosovo. The Agreement represents supplements agreements on mutual assistance in customs matters, to be concluded or already concluded between the CEFTA Agreement parties.

Customs Administration develops cooperation with other customs services also through membership in international organisations.

Within the World Customs Organisation, whose member Montenegro is since 24 October 2006, the Customs Administration in addition to implementing conventions and WCO recommendations, and participating in programmes offered by WCO and being important for modernisation of customs services, is represented in the Regional Intelligence Liaison Offices network for Central and Eastern Europe (RILO ECE). Within the RILO ECE, there is a Customs Enforcement Network (CEN), the database which is used by all member countries to enter data on all relevant seizures. Based on the reports, WCO draws up global reports on seizures of: narcotic drugs, precursors, psychotropic substances, cigarettes, goods breaching intellectual property rights, etc. Those global reports are distributed to all customs and security organisations. In addition, RILO makes analyses and follows smuggling trends. There is a RILO National Contact Point within the Customs Administration, and all WCO commitments are timely fulfilled.

In June 2008, Montenegro became a member of Southeast European Cooperative Initiative (SECI), which Regional Centre is seated in Bucharest, Romania. The SECI exchanges information and organises joint operations, thus developing cooperation between police and customs agencies of the SECI member countries. The following countries are represented at the SECI Centre: Albania, Bosnia and Herzegovina, Croatia, Greece, Hungary, Former Yugoslav Republic of Macedonia, Moldova, Montenegro, Romania, Serbia, Slovenia and Turkey. The following countries are represented at the SECI Centre as observers: Austria, Azerbaijan, Belgium, Canada, Czech Republic, France, Georgia, Germany, Israel, Italy, Japan, the Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Ukraine, United Kingdom, United States of America.

At the session held in Madrid, Spain in October 2007, Customs Administration obtained the status of observer in MARINFO organisations, dealing with exchange of maritime traffic information between the customs administrations of the member countries. Exchange of information is done through AFIS system, possessed so far only by EU member states. Currently, the activities are conducted on providing all MARINFO member countries with AFIS system.

In October 2008, Montenegro obtained the status of observer in CARIN (Camden Assets Recovery Inter-Agency Network), which presents the network of customs, police and judiciary, engaged in managing seized proceeds and exchange of intelligence.

### **Ministry of Justice**

The Ministry of Justice develops international cooperation pursuant to the Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 4/08), and European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959, which in regard to our country entered into force on 29 December 2009, and the Protocol thereto of 17 March 1978 (Official Gazette of the Federal Republic of Yugoslavia – International Treaties 10/01) and the Second Additional Protocol of 8 November 2001 (Official Gazette of Montenegro – International Treaties 5/08). Pursuant to the Law on International Legal Assistance in Criminal Matters, letters rogatory are submitted through the Ministry of Justice, being the central authority for communication. An option of direct communication between domestic and foreign judicial authorities is provided pursuant to the Article 15 of the European Convention on Mutual Legal Assistance in Criminal Matters, and provisions of some bilateral agreements (such as Treaty



between Montenegro and the Republic of Serbia on Legal Assistance in Criminal and Civil Matters of 29 May 2009).

In accordance with the above-mentioned, Montenegro so far received requests for legal assistance in terrorism, which are submitted to the competent judicial authorities.

**148. Provide information on the creation of electronic data banks (statistics, profiling of terrorists etc.).**

The Police Directorate, pursuant to the Law on Police, collects, processes and uses personal data, and keeps records on personal and other data, in order to prevent and detect crimes, violations and misdemeanours, and to locate the perpetrators of crimes and misdemeanours, resulting in keeping of electronic databases.

There is no special electronic database owned by the Police Directorate, referring exclusively to the terrorism, terrorist organisations, however the existing data bases refer to all perpetrators of the punishable acts, being subjects of national and international wanted notices.

Administration for Prevention of Money Laundering and Financing of Terrorism, on the basis of collected data, keeps records on:

- 1) data on persons and transactions in cash of or exceeding EUR 15,000, and on suspicious transactions, regardless of the amount and type;
- 2) received initiatives, resulted in data collecting;
- 3) notifications and information submitted to the competent authorities, and;
- 4) international letters rogatory.

In addition to using publicly available databases (CRPS and Internet ), and database of citizens, the Administration established the database on cash transactions of or exceeding EUR 15,000, suspicious transactions (regardless of the amount and type), database on certified contracts on purchase of real estate, database on capital market participants, as well as of done transactions, and database on persons being processed as suspected of being linked to financing of terrorism (including Risk Report database).

Special divisions are set up within High Court in Podgorica and High Court in Bijelo Polje, and within the prosecutor office, there is a Special Prosecutor in charge of procedures against persons who are perpetrators of organised crime, corruption, terrorism and war crimes.

By full implementation of judicial IT system (PRIS), expected to be finalised by the end of this year, all data on perpetrators of crimes, as well as on conducted procedures, will be entered in single database, to be used for compiling statistics in the field of organised crime, corruption, terrorism, war crimes (persons, crimes, etc.).

## **Fight against drugs**

**149. Please provide information on legislation or other rules governing this area, and their adhesion to relevant international conventions.**

Legislative framework in the area of fight against drugs comprises two laws of key significance, the Criminal Code (Official Gazette of the Republic of Montenegro 70/30, 13/40, 47/06 and Official Gazette of Montenegro 40/08) and the Law on Police (Official Gazette of the Republic of Montenegro 28/05).

In the area of fight against drugs, Montenegro complies with the relevant Conventions of the UN, as follows: Single Convention on Narcotic Drugs of 1961, the 1972 Protocol Amending the Single Convention on Narcotics Drugs, United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, United Nations Convention against Transnational Organized Crime and the Protocols Thereto, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on Financing of Terrorism.

Through fulfilment of obligations assumed from international instruments, Montenegro incorporated into its national system generally accepted solutions and international standards in the area of drugs. In terms of criminal justice, Title 24 of the Criminal Code of Montenegro – Criminal Offences against Public Health, provides for two criminal offences: “Illicit Production, Possession and Distribution of Narcotic Drugs” (Article 300) and “Facilitating Consumption of Narcotic Drugs” (article 301)

“Illicit Production, Possession and Distribution of Narcotic Drugs” (Article 300) implies illicit producing, processing, selling or offering for sale, buying for the purpose of selling, possession or transporting, selling or purchasing through intermediaries, and all other manners of illicit distribution of substances or preparations classified as narcotic drugs. The punishment prescribed is imprisonment ranging from two to ten years. There is another form of this offence, if a person smuggles into Montenegro substances or preparations classified as narcotic drugs, for which the punishment imprisonment ranging from two to twelve years is prescribed. If several persons commit such offence, or the perpetrator organises a network of dealers or intermediaries, the prescribed punishment is imprisonment ranging from three to fifteen years. The law also lays down that a person illicitly manufacturing, obtaining, owning equipment, material or substances or providing them for use, knowing that they are intended for production of narcotic drugs shall be punished by imprisonment ranging from six months to five years. In this article, the Code also lays down the measure of mandatory confiscation and destruction of narcotic drugs and means for their preparation.

“Facilitating the Use of Narcotic Drugs” (Article 301) implies facilitating the use of narcotic drugs by inducing another person to consume, providing narcotic drugs for consumption, providing rooms for consuming narcotic drugs or any other manner of facilitating the use of narcotic drugs. The punishment prescribed is imprisonment ranging from six months to five years. There are more serious aspects of this criminal offence, when an offence is committed against a minor or against several persons, or in case it brought about particularly difficult consequences, in case of which imprisonment ranging from two to ten years is prescribed. In this article the Code also prescribes the measure of obligatory confiscation and destruction of narcotic drugs.

The Criminal Code prescribes a safety measure of confiscation and destruction of narcotic drugs and instruments for their production for both criminal offence of “Illicit Production, Possession and Distribution Narcotic Drugs” (Article 300 paragraph 6) and “Facilitating the Use of Narcotic Drugs” (Article 301 paragraph 3). In addition, article 112 of the Criminal Code lays down that no person can keep material gain obtained through criminal offence. Material gain is being confiscated according to a judicial decision determining execution of criminal offence.

Within the area of fight against drugs, the Criminal Code also prescribes a measure of mandatory treatment of drug addicts (Article 71), by which a court imposes mandatory treatment on a perpetrator of a criminal offence committed due to addiction to narcotics and if there is a serious threat that he/she will continue committing criminal offences. The court decides on deployment of this measure after (in accordance with article 536 of the Code of Criminal Procedure) providing an expert witness opinion, who will also explain the prospects of treating that person. This measure shall be implemented in a penitentiary institution or in an appropriate health or other specialized institution, and shall continue as long as there is a need for treatment, but not longer than three years. Should this measure be pronounced alongside a fine, suspended sentence, judicial admonition or acquittal, it will be carried out at liberty and can last not more than three years. In case a person fails to undergo treatment at liberty without a justified reason, or wilfully abandons

the treatment, the court shall order enforced implementation of such measure in an appropriate health institution or other specialized institution.

**I Code of Criminal Procedure** (Official Gazette of the Republic of Montenegro 71/03, 7/04, 47/06) prescribes a special procedure for deployment of safety measures, which includes mandatory treatment of drug addicts. Article 523 of the Code prescribes provisional confiscation of items and material gain in respect of offences of organized crime, and Article 541 prescribes provisional security measures, for all other criminal offences. Along with judgment declaring a person guilty, the court shall rule on safety measures and confiscating material gain (Article 364).

For the purpose of more efficient prosecution of criminal offences in fight against drugs and all other offences in the area of fight against drugs, the Code provides for a wide-ranging use of measures of secret surveillance. Newly-adopted Code of Criminal Procedure (Official Gazette of the Republic of Montenegro 57/2009) implies that the measures of secret surveillance, which could have been implemented only in pre-trial procedure before this Code has been adopted, can be used in stage of investigation as well.

Apart from national legislation, the policy of Montenegro in the area of combating drugs and prevention of drug abuse is defined by a document National Strategic Response to Drugs 2008/2012, adopted by the Government of Montenegro in May 2008, and Action Plan 2008/2009 for implementation of the Strategy. Ratified Conventions of the United Nations, the EU Drugs Strategy 2005/2012, and other relevant international instruments following and regulating the field of fight against drugs, psychoactive substances and precursors, have been considered in the course of drawing up these documents.

With a view to meeting obligations from the national Action Plan for Drugs, the Ministry of Health established a multi-sector work group and drafted wording of the Proposal for a Law on Precursors, which is currently being delivered to the Government of Montenegro. Adopting this law is in accordance with the Action Plan for Implementation of Recommendations from the European Partnership – Subtitle 3.3 – drugs, as well as with Stabilization and Association Agreement, Article 85 – Cooperation on Illicit Drugs.

Ministry of Health developed a Proposal of the Law on Precursors, which was adopted by the Government of Montenegro and is currently in the parliamentary procedure. The developed and adopted Law represents the meeting of obligations from the Action Plan for Drugs and is fully harmonised with European standards from this area, as well as with the UN Conventions and INCB recommendations.

**150. What are the main characteristics of your country's policy on combating drugs?**

The characteristics of national policy within this area are the following:

- constitutionality and legality,
- protection of human rights,
- comprehensive and continuous monitoring and resolving drug related problems,
- international and regional cooperation, and cooperation with neighbouring countries,
- guarantee of security,
- adapting to different population groups,
- ensuring healthy environment and healthy life styles,
- partnership,
- integrated and complementary approach,
- central coordination.

National policy is created in the National Strategic Response to Drugs 2008-2012 and it pursues two most general principles which are simultaneously general objectives – “drug demand reduction” and “drug supply reduction”. Target population is virtually total population of Montenegro, with special reference to children and the young.

Montenegrin policy in the area of combating drugs and preventing drug abuse is defined by a document National Strategic Response to Drugs, adopted by the Government of Montenegro in May 2008, which is set up on the principle of “4 pillars”, prevention, treatment and rehabilitation of drug users, the area “harm reduction” and “drug supply reduction” concerned with police and customs interventions.

The scope of police activities is defined by the Law on Police, the Criminal Code and the Code of Criminal Procedure, on the basis of which all necessary measures aimed at drug supply reduction are implemented, i.e. interception of international smuggling channels leading to Montenegro or through Montenegro to other regions, along with the police activities of reducing the volume of “street trafficking in drugs” conducted on a daily basis.

At the beginning of 2008, both technical and organizational prerequisites for implementation of special research techniques and methods have been acquired, which opened possibilities for conducting more efficient researches in respect of organized crime groups engaged in drug related criminal offences, which also impacted the results achieved during this period.

**151. Please provide information on the trends in drug trafficking in and through your country and on drug abuse.**

Montenegro is mostly a transit area, and on a significantly lower scale represents a final destination for certain kinds of drugs.

Smuggling marijuana is done by international criminal groups, formed by association of criminal structures from Albania, Montenegro and other former Yugoslav republics, which have been engaged in production, smuggling and distribution of this kind of drug for a longer period. Cannabis products are produced in Albania, and then smuggled through our region to Federation of Bosnia and Herzegovina, Republic of Croatia, Republic of Serbia, Republic of Slovenia and further towards the EU countries. During 2008 and 2009, Montenegrin police in cooperation with Special Public Prosecutor for Organized Crime and Corruption, in a police operation “Golub” (“Pigeon”), revealed and prosecuted seven such groups acting within our region, and deprived 44 persons of

liberty confiscating 590 kilograms of “skunk” marijuana strain, considerable amounts of money, illegal weapon, vehicles with forged documents used for smuggling drugs and many other objects acquired through commission of these criminal offences.

Apart from the mentioned route, the Balkan Route for smuggling Afghan heroin is by all means topical and significant for us, because a smaller arm goes through Montenegro towards the Federation of Bosnia and Herzegovina, Republic of Croatia and further towards EU countries, where entrance roads for these drugs are primarily the country’s borders with Kosovo, as well as with Albania. As for the volume, we can say that shipments of heroin smuggled along this route, in most cases comprise quantity of 1 to 5 kilograms, as well as that the biggest percentage passes through our region, and a smaller part remains in Montenegro for needs of local consumers, i.e. for our illegal market. Such smuggling is also characterized by good international links between criminals from Montenegro and their partners from the whole Balkan area, particularly from Kosovo and former republics of SFRY.

Montenegro also represents a significant geographic area in terms of smuggling cocaine coming from South America through the Mediterranean Sea to our coast, where the smuggling continues by means of continental traffic to the countries of the region and the EU countries. Based on former experiences, two *modi operandi* can be recognized in these circumstances:

- Using container goods transport and concealing cocaine among legal goods. This type of smuggling is characterised by good international links between criminal groups, large shipments, by investing considerable financial means in these sorts of business, using actual or fictional companies as well as by huge profits being distributed when cocaine is placed on illegal market of the EU countries. When a crew of a ship is involved in smuggling, its members conceal cocaine packages in ship holes and in that manner smuggle it to our coast in order to be delivered to Montenegrin criminal groups which organize further transit towards the EU countries.
- It is also important to mention smuggling through passenger air traffic, as one of the smuggling methods having minor significance, but nevertheless not negligent, in case of which our criminal groups organize so called “couriers” who bring these drugs to our region for the purpose of further distribution, hiding it in personal luggage and sometimes even in stomach or body cavities.

By collecting information on cocaine smuggling and through the international exchange of this information, we also identified involvement of our nationals in smuggling and distribution affairs conducted far from the Montenegrin borders, while the money collected in this manner is often directed towards Montenegro and invested in legitimate affairs.

Trends in drug trafficking can also be statistically analysed through the following data:

In **2007**, in 491 individual seizures within the area of Montenegro, 284.13 kilograms of narcotic drugs has been found and confiscated, comprising:

marijuana .....	273 kg and 24 g
heroin .....	9 kg and 52 g
cocaine .....	405.54 g
hashish .....	176.98 g
synthetic drugs .....	778 g and 2529 pieces.

In **2008**, in 390 individual seizures within the area of Montenegro, 353.26 kilograms of narcotic drugs has been found and confiscated, comprising:

marijuana .....	327 kg and 36 g
heroin .....	18 kg
cocaine .....	7 kg and 74 g

hashish ..... 13.12 g  
 synthetic drugs ..... 114.3 g and 860 pieces.

**In the period of 1 January to 1 October 2009**, in 217 individual seizures within the area of Montenegro 809.58 kilograms of narcotic drugs has been found and confiscated, comprising:

marijuana ..... 793 kg and 20 g  
 heroine ..... 13 kg and 275g  
 cocaine ..... 394 g  
 synthetic drugs ..... 262 pieces.

Regarding demand for treatment of addiction, a new Law on Data Collections in the Field of Health Care was adopted in December 2008, which enabled introducing a new system for data collection and reporting into medical and non-medical centres for treatment of drug users in Montenegro. In cooperation with experts of EMCDDA and in accordance with activities planned by the National Strategic Response to Drugs 2008-2012 and Action Plan for 2008/2009, a new drug users registration form has been made in accordance with standards and recommendations of EMCDDA for data collection with regard to demand for treatment of addiction, as well as a new registry of drug users which will be based on this form Pompidou form. It is in process of harmonisation. This will provide higher standards in following trends in the field of demand for treatment of drug addiction. According to the currently existing data on clients who signed up for treatment at health institutions in Montenegro, the record is as follows: 305 treated drug addicts were recorded in 2003, 562 of them in 2004, 516 in 2005, 526 drug users in 2006, and 603 drug users undertaking treatment at health institutions in Montenegro were recorded in 2007. As for drug users undergoing treatment in prison hospital at the Institution for Enforcement of Criminal Sanctions in Podgorica, 44 of them were treated in 2006, 60 in 2007, whereas by 1 July 2009, 10 drug users have been undergoing treatment in this institution.

Methadone maintenance and detoxification programme has been implemented at the Primary Health Care Centre of Podgorica as of 2006. By 2008, 164 patients were included in the programme, 145 of which were men (88.5%) and 19 were women (11.5%). In June 2009, 45 patients have been undergoing methadone treatment, 8 women (17.8%) and 37 men (82.2%).

Both National HIV/AIDS Strategy and National Strategic Response to Drugs 2008-2012, provided for establishing two additional Methadone Treatment Centres in the country. As for non-medicinal treatment of drug users, Public Institution for Accommodation, Rehabilitation and Social Reintegration of Drug Users, "Kakaricka Gora" admitted first patients in September 2008, whereas in June 2009, 39 patients were undergoing treatment. There are also, so-called "Low Threshold Programmes" which involve exchange of sterile needles and syringes, and are implemented by NGOs.

Regarding deaths related to drug use, there is only one institution in Montenegro specialized for performing autopsies - Department of Forensic Medicine of the Clinical Centre of Montenegro. During the period of 2005 to 2008, out of 1083 autopsies performed, there were 20 deaths related to drug use (18 men and 2 women). Average age was 28 (ages ranging from 17 to 44). Average figure per year was 5 deaths related to drug use, or 7.6 in a million of citizens per year. The trend is as follows:

Problem drug use is defined as "injecting drug use or long-duration/regular use of opiates, cocaine and/or amphetamines". There is no reliable estimate which would be relevant for the whole country within the field of this indicator. There is only very limited information available on research study conducted by Imperial College in 2005/2006 aiming at estimating the number of intravenous drug users in Podgorica, by use of "capture-recapture" methods from three data sources (specimens of 348 of intravenous drug users). Rough estimate provided the number of 950 injecting drug users in Podgorica, only to reckon that number to 660 in a repeated estimate after correction in methodology and data sources, comprising 0.7% of population, aged between 15 and 49.

**152. What are the principal measures deployed? How does co-ordination between law enforcement agencies work? Is there a clear allocation of tasks and coordination:**

**a) between authorities competent for drug demand reduction?**

See answer to question no. 165.

**b) between authorities involved in reducing drug supply?**

There is full coordination and cooperation between law enforcement authorities.

Police officers extensively apply repressive measures against criminal offenders engaged in smuggling and distribution of drugs, by means of collecting operational data and information on all levels and in all segments of the service, on the basis of which specialized units for fight against drugs initiate operational processing and collecting evidence with reference to individuals and criminal groups related to these offences. (See answer 165)

In a procedure laid down by the Code of Criminal Procedure, a competent Public Prosecutor becomes acquainted with the case, and further pursues investigation and directs work of the Police Directorate.

The Police Directorate has competence in preventing and combating drug related criminal offences, and in that sense carries out a very good cooperation with other state authorities, primarily with bodies - Public Prosecutor's Office, courts and Customs Administration.

In accordance with the abovementioned, in every instance of finding drugs, whether it is a case of international transit or "street trafficking", officers of specialized police units for fight against drugs take over all necessary actions, as well as the liabilities for the case and its further prosecution.

Cooperation between the Police Directorate and other authorities is normatively defined by Memorandum of Cooperation and Exchange of Information between Police Directorate of Montenegro and Supreme Public Prosecutor on preventing, detecting and prosecuting criminal offenders *ex officio*, signed on 10 June 2009, as well as Cooperation Agreement with Customs Administration concluded on 6 October 2008.

On border crossings, officers of Customs Administration, Police Directorate and inspection service conduct measures and activities within the scope of their competences, as follows - police officers are in charge of control of persons (passengers), and customs officers of inspection and control of goods. With a view to strengthening cooperation of border services, representing the basis of integrated border management, Customs Authorities, Ministry of Interior and Public Administration, Police Directorate, Veterinary Administration and Phytosanitary Administration signed Agreement on Mutual Cooperation in Integrated Border Management, which provides for efficient cooperation, joint risk analysis and exchange of information. The aforementioned institutions also signed Special Agreement on Forming Coordination Teams for Implementation of Strategy on Integrated Border Management and the associated Action Plan, which will provide for synchronized and coordinated activities of border services.

Article 24 of the Law on Customs Service (Official Gazette of the Republic of Montenegro 07/02 and 29/05) lays down that in case of finding narcotic drugs, custom officers shall temporarily restrict freedom of movement of persons and drivers of vehicles these have been found with, and immediately inform the Ministry of Interior about the matter. According to Mutual Cooperation Agreement between Customs Administration and the Police Directorate, joint controls are being initiated and carried out.

In the area of customs system, measures of improvement of passenger control efficiency and border crossings transactions are continuously implemented in all sorts of traffic. Also, regular

trainings of customs officers in all areas necessary for strengthening staff capacities for deployment of measures aimed at accomplishing even better results in intercepting roads of drug smuggling across the state border, outside border crossings, in continental part of the state border and in the area of territorial waters. In the period of 30 July 2006 to 30 July 2009, 15 courses, trainings and seminars dedicated to the matter of drug discovering have been conducted, with participation of 120 officers of Customs Administration. Towards the end of 2008, Customs Administration procured a modern mobile scanner, currently found in Port of Bar representing a significant instrument in fight against smuggling drugs.

**153. How does co-operation and exchange of information with other national authorities work? Are there any Memoranda of Understanding or Joint Agreements between the various law enforcement services with responsibility for tackling the supply of drugs? Are there similar agreements with relevant industries? If so, please provide details.**

National Drug Strategy 2008/2012 and the associated Action Plan encompass the cooperation on a multi-sector collaboration, multidisciplinary approach and coordination of all activities conducted by Montenegro in the area of fight against drugs and fight against drug abuse. All participants and persons involved, within their competences, are obliged to cooperate, fill in and exchange information towards meeting the obligations from the Action Plan for the purpose of providing comprehensive national response to drugs. Law on Public Administration prescribes the obligation of mutual cooperation and exchange of information among all state authorities and institutions.

National Office for Drugs (functioning within the Ministry of Health) accomplished a planned goal from the Action Plan by forming national network of contact points regarding drug related problems in order to provide a comprehensive insight into problems and all activities being undertaken regarding that plan, from a national level point. Thus, a necessary cooperation between state authorities, institutions, services is provided and functions perfectly.

In conducting measures and activities of their own competence regarding combating criminal activities related to drug abuse, the Police Directorate has made good cooperation and exchange of data with other relevant authorities, such as: judicial bodies, Customs Administration, National Security Agency, Ministry of Health, Public Health Institute, Agency for Pharmaceuticals, Central Bank, Administration for Prevention of Money Laundering, as well as with units of local government.

The cooperation is based on a clear division of competences and responsibilities, where the Police Directorate, by conducting investigations in cooperation with judicial bodies, use both information and data which may be requested by the aforementioned authorities, on the basis of signed memoranda and cooperation agreements, i.e.:

- Memorandum on Cooperation and Exchange of Information between Police Directorate of Montenegro and Supreme Public Prosecutor's Office,
- Cooperation Agreement between Police Directorate and Customs Administration,
- Cooperation Agreement between Police Directorate and Central Bank for providing financial assets for the purpose of implementing measures of secret surveillance, and
- Cooperation Agreement with Administration for Prevention of Money Laundering and Financing of Terrorism.

With a view to strengthening cooperation of border services which represents a basis of integrated border management, Customs Administration, Ministry of Interior and Public Administration, Police Directorate, Veterinary Administration and Phytosanitary Administration signed Agreement on Mutual Cooperation in Integrated Border Management, which provides efficient cooperation, joint risk analysis, exchange of information. The aforementioned institutions also signed Special Agreement on Establishing Coordination Teams for Implementation of Strategy on Integrated



Border Management and the associated Action Plan, which will provide synchronized and coordinated activity of border services.

#### **154. What about co-operation at the international level (liaison officers)?**

Considering the international character of smuggling drugs and the fact that Montenegro is a transit area and only at a lower scale a final destination, as well as that there are no distinctive cases of illicit drug production, but drugs always arrive from other destinations, international cooperation is of extraordinary significance and is considered an essential mechanism for interception of smuggling chain and prosecuting international criminal groups.

In the last few years, the Police Directorate significantly increased capacities for collection of operational data and exchange with police services of countries of the region and wider.

Given this exchange of information, particularly for the period of 2008 to 2009, the Police Directorate met important objectives of international recognition. When it comes to the Balkans, a successful cooperation and exchange of information has been established with police services for combating drugs from Croatia, Bosnia and Herzegovina, Serbia, Macedonia and Albania.

Apart from the well established cooperation with countries of the region, through liaison officers and police attachés at the embassies in Belgrade, the Police Directorate has established successful cooperation with many EU member states. In particular it is important to emphasize successful cooperation with representatives from the Federal Republic of Germany, Kingdom of Sweden, Norway, Denmark, France, Italy and Kingdom of Belgium, as well as with the Directorate for Anti-drug Services of the Republic of Italy. In the past period, cooperation and exchange of information has also been established with police services of the United States of America (DEA office seated in Rome), as well as with Australia, through liaison officer for this country at its embassy in Belgrade.

Modalities and channels of exchange of information are different. Depending on requirements of real-time use of data, channels of INTERPOL are used as the safest method of exchange of information, then the Department for International Police Cooperation and European Integrations in terms of coordination and concluding cooperation agreements and organization of thematic meetings, as well as direct communication between officers of the Department for Fight Against Drugs and Smuggling and liaison officers, in case of urgency.

In respect of combating international drugs smuggling, within the period of 2007 to 2009, NCB INTERPOL has had an intensive cooperation with international liaison officers which resulted in organizing controlled shipments (through Montenegro to foreign countries and from foreign countries to Montenegro), through exchange of police information and seizure of drugs. In the process of implementation, NCB INTERPOL coordinates all activities conducted on a national level required by the international police services, consolidates them and monitors implementation of national requests referred to foreign liaison officers, which enables centralized observation of progress of the matter, avoiding overlapping of different organizational activities of police units, as well as collection of all data and information obtained accordingly.

In the period of 2007 to 2009, through agency of NCB INTERPOL, in cooperation with foreign liaison officers, the following has been carried out:

- 1 controlled shipment to Montenegro (5 kg of cocaine compound seized),
- 3 controlled shipments through the territory of Montenegro,
- further information on persons and criminal groups in respect of smuggling drugs have been exchanged.

**155. How do you co-operate with international bodies operating in the drugs field, such as UNODC, INCB, Commission on Narcotic Drugs, Pompidou Group, WHO etc.?**

National Office for Drugs at the Ministry of Health established cooperation with WHO, through appointment of National Focal Point for drug addiction by the Health Minister, and the cooperation was initiated by filling in ATLAS, forwarded by WHO.

The National Office for Drugs also has cooperation with EMCDDA, through involvement in making "COUNTRY OVERVIEW MONTENEGRO", also through preparation of the document "Information Map" according to instructions and standards of EMCDDA. This will be followed by drawing up the first National Report on Drug Situation in Montenegro, according to standards of EMCDDA.

Cooperation with UNDP has also been established, through National Office for Drugs at the Ministry of Health, which arranged cooperation in opening another two centres for methadone substitution treatment in Health Care Centres in Bar and Niksic.

National Office for Drugs at the Ministry of Health established cooperation with UNODC, through participation in state delegation of Montenegro, when signing the Regional Cooperation Agreement, in Belgrade on 30 and 31 March 2009.

National Office for Drugs at the Ministry of Health expressed interest for participating in IPA Cross Adriatic Border Project, in cooperation with the region Marche of the Republic of Italy, and in accordance with National and European Drug Strategy in terms of strengthening regional cooperation and cooperation with neighbouring countries in fight against drug abuse; the timetable for implementation of the potential Project depends solely on Italian partners, and we expect to get more thoroughly acquainted with the method of implementation of this type of cooperation.

The Police Directorate has established significant cooperation with UNODC, especially through implementation of LEXPRO Project related to training of police and customs officers, in terms of prevention and detecting drug related criminal offences.

Apart from that, the Police Directorate provides UNODC and UN Commission on Narcotic Drugs with answers to annual and biennial report questionnaires on drug matters on national level (part of the questionnaire related to combating drug criminality).

Considering the fact that according to Law on Medicines (Official Gazette of the Republic of Montenegro 80/04 and Official Gazette of Montenegro 18/08) the Agency for Pharmaceuticals and Medical Devices is competent for issuing licences for import/export/transit of narcotic drugs/psychotropic substances and precursors, the first contact with INCB was established after this institution has been established. The Agency started sending regular reports (quarterly and annual) on imported/exported, seized amount of narcotic drugs/psychotropic substances and precursors, as well as on annual needs for them, which have to be approved by the Board.

The Agency for Pharmaceuticals and Medical Devices informs INCB about circulation of narcotic drugs/psychotropic substances and precursors through Montenegro and doing so contributes to a more detailed image of circulation of controlled substances in the world. The Ministry of Health made a proposal for a Law on Drug Precursors, which was adopted by the Government of Montenegro in September 2009 and harmonized with INCB recommendations, UN conventions and EU directives. The Law prescribes comprehensive surveillance and monitoring in this area.

Public Health Institute has had cooperation with various international organizations and bodies in the area of drugs, such as UNDP, UNODC and EMCDDA.

The cooperation has been developed through implementation of specific projects, researches and similar.

In cooperation with UNODC, project "Preparatory Assistance for the Development of a Regional Project on the Diversification of HIV Prevention and Treatment Services for Intravenous and other Drug Users in South Eastern Europe" was implemented in the period of August 2005 to December 2008.

In 2002, in cooperation with UNICEF a Rapid Assessment and Response Survey was conducted among the young consuming drugs, as well as among the young in general and among sailors. In

addition, in 2000, programme of drug abuse prevention in elementary schools prevention was developed in cooperation with UNICEF.

In cooperation with UNDP a survey on prevalence of hepatitis B, C and HIV "Research on HIV/AIDS Related Risky Behaviours, HIV, HBV, HCV Seroprevalence Among Intravenous Drug Users in Montenegro" was conducted among intravenous drug users. Also, project of introducing the subject "Healthy Lifestyles" in elementary schools was implemented in cooperation with UNDP.

Since December 2007, project "Assessment of the Capacity of Western Balkans Countries to Establish a Drug Information System Compatible with the European Monitoring Centre for Drugs and Drug Addiction" has been implemented within the CARDS programme in cooperation with EMCDDA.

Apart from the continuous strengthening of state capacities and NGOs for international cooperation, National Strategic Response to Drugs 2008-2012, provides for further encouragement and strengthening of cooperation with international organizations, institutions and other participants such as the Pompidou Group of the Council of Europe, UNODC, WHO, EMCDDA and others, as well as development of supporting measures for mechanisms of regional cooperation, which include all countries along the Balkan drug route. Within the timetable for moving towards the European Union and in accordance with it, establishment and/or continuation of cooperation with the EU members has also been planned, through CARDS and IPA programmes.

#### **156. Do you have general guidelines on the fight against drug trafficking?**

In terms of activities of all relevant subjects, general guidelines on an international level are provided by the National Strategic Response to Drugs and the associated Action Plan 2008-2009. The aforementioned documents also provide basic guidelines regarding activities directed towards drug supply reduction, i.e. police and customs intervention. Police activities in this area have been defined by the Law on Police, the Criminal Code and Criminal Procedure Code, as well as by secondary legislation (Code of Police Ethics, and others).

Also on the basis of periodical reports of specialized units for combating drugs and on the basis of information on drug abuse assessment in the area of their competences, annual Work Plans are made, which also represent one of the guidelines for implementation of planned activities directed towards individuals and groups engaged in these criminal offences.

As for the scope of activities and competences of the Customs Authorities defined by the Law on Customs Service, one of the basic tasks of the Customs Office is controlling import, export and transit of goods for which special measures are prescribed due to the interest of ensuring that health and lives of people are preserved.

In terms of conducting day to day activities and exchange of information, the Cooperation Agreement with Customs Administration is of particular significance, representing a basis for quality cooperation of Police Directorates` Department for Fight against Drugs and Smuggling and Customs Administrations Department for Fight against Smuggling, not only with regard to exchange of information, but also with regard to the necessity of establishing joint teams for control of passengers and goods on border crossings, as well as conducting other operational activities which demand mutual engagement. During 2008 and 2009, this cooperation resulted in effectuation of greater number of significant subjects, as well as in seizures of significant amounts of drug.

#### **157. Is there adequate and sufficient administrative capacity to fight drug-related crime?**

Within the Police Directorates, the Criminal Investigation Section, activities directed towards combating drug related criminality are performed by Department for Fight against Drugs and Smuggling which deals with combating drug related organized crime, international cooperation,

exchange of information and implementation of matters of international significance, as well as work on significant cases related to smuggling and distribution of drugs on a national level.

Apart from the aforementioned Department, in eight Regional Police Units, i.e. on both local and regional level, activities of combating drug related criminality are conducted by regional organizational units comprising officers specialized for performance of these matters. Total number of systematised positions for Police officers having as their basic tasks combating drugs is 57 (95% filled staff capacities), which represents a satisfactory capacity considering the problem assessments and vulnerability of Montenegro to this type of crime. In addition, certain changes in organization of this segment of service have been planned for the following period, which will provide simpler and more efficient structure and define the line of work as a single centralized organizational unit with 5 departments, thus contributing to better quality of work, accomplishing better results especially in terms of organized criminal groups, faster and more efficient flow of information, as well as better staff planning, training and technical equipping.

Training and further professional development of Police officers engaged in these matters are being conducted intensively, through numerous specialised trainings organized in cooperation with police forces of other countries and international organizations (OSCE, UNODC, DEA, FBI, INTERPOL, EUROPOL, SECI Centre).

Apart from specialised trainings, the Police Directorates in cooperation with the Police Academy in Danilovgrad, also organises basic training on drugs and drug abuse, for its officers engaged in securing state border, public peace and order, traffic, protected individuals and objects, officers of criminal investigation police forces engaged in combating all forms of criminality etc.

Regarding international smuggling of drugs, Customs Administration resources are also significant, in respect of collecting information and people and goods control on border crossings. There are 28 border crossings in Montenegro, where 316 officers are employed. Activities from the area of Customs Security are performed by the following organizational units: Department for Intelligence Affairs, Department for Customs Investigations and Department for Combating Smuggling.

Article 15 of the Rulebook on Internal Organization and Systematization of Customs Authority defines the scope of work of Department for Combating Smuggling. There have been 21 job positions systematized in the Department.

Officers of this Department have been adequately trained and prepared for preventing drug smuggling independently, and where necessary, they participate in joint teams, in cases of national and international investigations conducted by police officers, both on border crossings and within customs territory. Mobile teams of the Departments are deployed throughout the regions (southern, central and northern parts).

One of the principal tasks of the Customs Office is control of import, export and transit of goods for which special measures are prescribed due to interest of preserving health and lives of people (Customs Office Act, Official Gazette of the Republic of Montenegro, 07/02 and 29/05).

Apart from the mobile scanner installed in Port of Bar, officers of Customs Administration on border crossings and inland use various technical devices in day to day operation for the purpose of more efficient drug discovering. A fiberscope, a hand x-ray buster, sets of drug tests and a device sabbre 4000 - a high technology device able to detect most drugs, including heroin and cocaine, are distinguished as the most efficient. Trainings for the use of this device are organized within the EXBS Programme.

Two border crossings to the Republic of Albania (Bozaj and Sukobin) have been reconstructed, which represent a significant departure point of smuggling routes of drugs, especially marijuana, intended for further distribution in countries of Western Europe. The reconstruction of these crossings created optimum conditions for working of customs officers, and thereby for more efficient fight against drug smuggling.

Constant staff training in use of new equipments and application of new technologies, continuous participation on seminars and trainings related to drug discovering within the country and abroad, improvement of bilateral cooperation in the field of combating drug related crime, with customs offices of other countries, and creating better working conditions for customs officers, will represent

the basic fields in development of customs office for the purpose of strengthening capacities for fight against drug related crime.

**158. What are the relevant structures and competencies of the police, customs and judicial authorities? Please describe their functioning in day to day practice.**

Within the Criminal Investigation Section of the Police Directorate, activities directed towards combating drug related criminality are conducted by the Department for Fight against Drugs and Smuggling which deals with combating drug related organized crime, international cooperation, exchange of information and realisation of projects of international significance, as well as working on significant cases with regard to smuggling and distribution of drugs on a national level. Apart from the afore mentioned Department, in eight Regional Police Units, i.e. in local and regional level, combating drug criminality is performed by regional organizational units made of officers specialized for performance of this matters. Total number of systematized positions for Police officers engaged in drug combating is 57.

These specialized organizational units are competent for combating all forms of drug related criminality, and get involved, i.e. take over cases of drugs discovered by Customs Administration officers, Border Police Sector or any other service within the Police forces.

Police cooperation with Customs Administration has been carried out on the basis of Mutual Cooperation Agreement, in first line with Department for Combating Smuggling made of mobile teams located in northern, central and southern parts of Montenegro, which cover the total area of Montenegro. These teams perform control of: persons, vehicles and goods within entire customs territory. Control performed by these teams is conducted on the basis of intelligence information and targeting. Cooperation of these two bodies on a day to day work is reflected through: joint team formation, exchange of information, assistance, mutual field work (inspections, examinations, passenger and goods control on border crossings and similar), and exchange and common use of technical capacities for provision of evidence.

**159. What measures have been adopted at the external borders?**

Measures implemented with the aim of preventing smuggling of drugs are:

- collection of operational information on persons involved in smuggling drugs, through operations of border police and other segments of the Police Directorate;
- planned engagement of specially trained police dogs;
- joint activities of all police segments and cooperation with other Montenegrin authorities within the whole territory;
- conducting joint actions with border police forces of neighbouring countries, and
- exchange of information and mutual activities with neighbouring border police forces.

For the purpose of improving the activities of border police in prevention of smuggling drugs, in April and May 2009, 40 officers of border police completed a seminar "Prevention of Smuggling Drugs over National Border", and the plan is to organize this seminar with other officers of border police engaged in activities of border control.

Border police sector has at its disposal 10 police dogs for detecting narcotic drugs and procurement of 4 additional dogs has been planned.

Implementation of risk analysis method will significantly improve the results of prevention of smuggling drugs over national border.

In addition to the use of police dogs, up to this moment the Police Directorate has not obtained technical devices for detecting drugs in borders.

**160. Have you created electronic data banks covering seizures of drugs in the last three years and other statistics?**

In accordance with the Law on Police, Police Directorate of Montenegro keeps various sorts of records on criminal offences and their perpetrators. A precise record of all relevant data concerning drug related criminal offences, number, gender, age of offenders, amounts of seized drugs (by type), as well as other data are kept accordingly. Since each finding and seizure of drug is passed to the competence of specialised units for fight against drugs, all of the aforementioned data are delivered through daily communications, as well as monthly reports on work, to the Criminal Investigation Section Department for Fight against Drugs and Smuggling, where activities of collecting, recording and analysing data are performed, which is followed by preparation of monthly, quarterly and annual reports comprising all relevant and precise data. On the basis of these data, the work of regional organisational units is evaluated, the field problems are analysed, further activities are planned and data is delivered to interested subjects, on both national and international level.

Review of statistical data:

- In 2007, within the area of Montenegro 549 criminal offences related to narcotic drugs were detected, 409 offences of illicit production and distribution of narcotic drugs and 140 criminal offences of facilitating use of narcotic drugs.

- Due to reasonable suspicion of committing these offences 326 criminal complaints against 485 persons were filed to the competent prosecutor.

- In 491 individual seizures, 284.13 kilograms of narcotic drugs has been found and seized, comprising:

marijuana .....	273 kg and 24 g
heroin .....	9 kg and 52 g
cocaine .....	405.54 g
hashish .....	176.98 g
synthetic drugs .....	778 g and 2529 pieces

The structure of reported persons includes 394 nationals of Montenegro and 91 foreign nationals. In addition, 152 recurring offenders of these criminal offences have also been registered.

With reference to the age, 9 perpetrators of offences related to narcotic drug abuse are minors.

- In 2008, within the area of Montenegro 460 criminal offences related to narcotic drugs were detected, 363 offences of illicit production and distribution of narcotic drugs and 97 offences of facilitating the use of narcotic drugs.

- Due to reasonable suspicion of committing these offences 291 criminal complaints against 444 persons were filed to the competent prosecutor.

- In 390 individual seizures, 353.26 kilograms of narcotic drugs has been found and seized, comprising:

marijuana .....	327 kg and 36 g
heroin .....	18 kg
cocaine .....	7 kg and 74 g
hashish .....	13.12 g
synthetic drugs .....	114.3 g and 860 pieces

The structure of reported persons includes 368 nationals of Montenegro and 76 foreign nationals. In addition, 81 recurring offenders of these criminal offences have also been registered.

With reference to the age, 11 perpetrators of offences related to narcotic drug abuse are minors.

- In the period of 1 January to 1 October 2009, within the area of Montenegro 304 criminal offences related to narcotic drugs have been detected, 251 offences of illicit production and distribution of narcotic drugs and 52 offences of facilitating the use of narcotic drugs..

- Due to reasonable suspicion of committing these offences 192 criminal complaints against 285 persons have been filed to the competent prosecutor.

- In 217 individual seizures, 809.58 kilograms of narcotic drugs has been found and seized, in the following structure:

marijuana .....	793 kg and 20 g
heroin .....	13 kg and 275 g
cocaine .....	394 g
synthetic drugs .....	262 pieces

It is of considerable importance to mention that out of the total number of persons against whom criminal complaints have been filed, 53 persons have been filed criminal complaints against in respect to the offences - conspiracy to commit a crime and organised commission of unauthorized production, keeping and releasing for circulation of narcotics i.e. the offences which fall under the organised crime, during the most significant actions in 2009 (GOLUB, BM ZX and MEDVJED) taken in cooperation with the Special Public Prosecutor for Organised Crime and Corruption.

**161. Have you concluded Memoranda of understanding with concerned counterparts (ports, express delivery services, etc.)?**

For the purpose of providing continuous cooperation in accordance with positive legislation between the relevant authorities, the Police Directorate signed so far:

- Agreement with Administration for Prevention of Money Laundering and Financing of Terrorism (23 July 2004);
- Agreement on Mutual Cooperation with Tax Authorities (9 March 2007), which closely defines mutual cooperation in fight against corruption and organized crime;
- Agreement on Mutual Cooperation of Supreme Public Prosecutor and Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, the Police Directorate and non-governmental organisations: "Montenegrin Women's Lobby", "Women's Safe House" and "Centre Plus" (18 October 2007), with a view to establishing more efficient cooperation in fighting human trafficking through prevention, education, criminal prosecution of perpetrators of these offences and protection of potential victims of human trafficking, particularly women and children;
- Agreement on Mutual Cooperation with Customs Administration (6 October 2008), by which the signatory parties closer define mutual cooperation in fighting corruption and organized crime, with a view to promoting higher-quality cooperation and providing optimal conditions for exchange of information;
- Agreement on Cooperation with Central Bank (28 October 2008), which precisely defines mutual cooperation in fight against corruption and organized crime, especially in part of providing financial assets for the purpose of deployment of measures of secret surveillance and making reports on their implementation;

- Agreement of Understanding and Cooperation between Ministries and the Police Directorate (21 August 2008) on using data bases in possession of Ministries;
- Memorandum of Cooperation and Exchange of Information in Preventing, Detecting and Prosecuting Perpetrators of Criminal Offences, subject to *ex officio* prosecution, with Supreme Public Prosecutor's Office (10 June 2009), defining rules of cooperation between Police Directorate and Prosecutor's Office in the procedure of preventing, discovering and criminal offenders, subject to *ex officio* prosecution;
- Memorandum of Cooperation in Preventing, Detecting and Prosecuting Perpetrators of Environmental Criminal Offences, between the Ministry of Spatial Planning and Environmental Protection, Ministry of Justice, Supreme Public Prosecutor's Office and Police Directorate, signed on 25 September 2009 in Podgorica. The Memorandum also sets forth establishing a joint team by signatories which will coordinate the whole process.

The Police Directorate has not concluded agreements or memoranda of cooperation and understanding with ports and fast delivery services.

**162. Do your authorities make use of systematic risk-analysis? To what extent do they rely on financial investigations and on controlled deliveries?**

The Customs Administration uses the Risk-analysis System which has been entirely integrated in the organizational structure, operations and the existing Customs Information System since 24 April 2007, and is available to all organisational units of Customs Administration.

Main functions of Risk-analysis System are:

- Collecting data and information for determining risk parameters and profiles (mechanism of defining, modernising and maintaining, organisation of feedback);
- Risk analysis and assessment by means of processing data on declarations, using risk profiles, intelligence and other sources;
- Setting up an integrated data system on suspect persons and vehicles (including ships and vessels) which will be used for the purpose of inspection, auditing, tracking and security;
- Determining adequate measures (degree/number of controls); and
- Tracking results, preparing reports and providing feedback with a view to improving risk profiles.

Details on all irregularities and violations, including those obtained from financial inquiries and controlled shipments, are submitted to Department for Intelligence Matters. In this department, those details are entered into databases of offences and suspicious activities, and in addition, risk profiles are developed based on which targeting of certain shipments is done. And vice versa, data obtained from the risk-analysis system may be the basis for initiating a financial investigation.

As for the financial investigation, conducted by the Police Directorate along with the relevant institutions (competent Public Prosecutor and Administration for Prevention of Money Laundering), it is important to note that they are conducted alongside investigations of criminal offences with abuse of narcotic drugs, for the purpose of confiscating material gain acquired through commission of drug related criminal offences (Code of Criminal Procedure, Article 112 and Article 538).

Regarding controlled shipments, as an important mechanism for revealing all participants in international chain of drug smuggling, the aforementioned measure is very frequently used in accordance with the Law on Criminal Procedure (Articles 237-242) after the order has been issued by the competent Public Prosecutor.



**163. Is the EU Action Plan on Drugs 2000-2004 known?**

We are familiar with the EU Action Plan on Drugs 2000-2004.

Towards the end of 2000 and the beginning of 2001, Expert team of the Government of Montenegro drew up a five-year "Plan and Programme of Combating Addiction Diseases in Montenegro" after which the "Action Plan for Prevention of Drug Use among Children and the Young in Montenegro" was implemented.

The aforementioned programmes have been implemented whereas further steps in the same direction are taken by the National Strategy for Drugs 2008/2012, compatible with the principles of the EU Drugs Strategy 2005/2012 and by Action Plan.

**164. Does a "National Programme for the fight against drugs" exist? How is it implemented?**

Chronologically, an increase in drug use in Montenegro, as compared to the neighbouring countries, occurred latest, and during the past decade Montenegro has for the first time faced this problem arising from the war surroundings and unfavourable economic situation.

The State of Montenegro has a National Strategy for Drugs and the associated Action Plan. In accordance with affirmative policy the country conducted within this area for over a decade, the Government of Montenegro adopted "National Strategic Response to Drugs 2008-2012" on 29 May 2008. An integral part of the document is the "Action Plan for 2008/2009" specifying in more details goals and methods of their achievement, as well as the specific tasks of all stakeholders.

Following the conclusion of the Government at the same session, the Ministry of Health was entrusted with establishing National Office for Drugs, in order to provide coordination of all activities within this area from a national level point. The first goal from the Action Plan was accomplished by inception of the National Office for Drugs.

National Strategic Response to Drugs 2008-2012 complies with the international legal framework, UN conventions, directions of the Council of Europe and the European Union, as well as other international treaties and recommendations within this area, but it also considers experiences of other countries. It is based on multidisciplinary, integrated and balanced approach, which consolidates measures and interventions directed towards drug supply reduction, as well as drug demand reduction.

National Strategy for Drugs 2008-2012 represents a continuance of formerly implemented five-year Plan and Programme of Combating Addiction Diseases in Montenegro, adopted by the Government's Commission for Prevention of Drug Abuse.

The EU Drugs Strategy (2005-2012) represents a professional framework for drawing up National Strategic Response to Drugs 2008-2012. In accordance with recommendations of the Council of Europe, the professional knowledge of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) has been used, as well as that of other European experts and institutions, and experiences from the neighbouring countries.

As an initial point in drafting the strategic framework, the so called "policy of four pillars" has been elected, which provides for equal distribution of both resources and development plans in four wide areas: the area of drug use prevention, the area of treatment and rehabilitation of drug users, the area of harm reduction caused by drug use and in the area of police and customs interventions. Apart from the four mentioned areas, the National Strategic Response to Drugs 2008-2012 has been drafted in relation to the two most general principles, which at the same time represent the general goals "drug demand reduction" and "drug supply reduction".

The introductory part of the document deals with methodology of drawing up the strategy, and is followed by the principles incorporated in it (the principle of constitutionality and legality, the principle of human rights protection, the principle of comprehensive and continuous resolution of drug related problems, the principle of global aspects of drug use and global collaboration, the

principle of decentralisation, the principle of guarantying the safety, the principle of adapting to various population groups, the principle of ensuring healthy life styles, the principle of partnership – balanced and multidisciplinary approach, consistency and complementarity, and the principle of centralized coordination, funding, monitoring and evaluation).

In the field of drug demand reduction, the strategy deals with the area of drug use prevention, area of treatment and rehabilitation of drug users, as well as the area of drug related harm reduction. The area of drug use prevention defines a strategic approach within different systems – educational system, health care system, social protection system, local community, workplace and media. In the area of treatment and rehabilitation of drug users, it defines strategic framework of interventions within the health care system, as well as in the area of so called “programmes for resolving social problems of drug users”, then the area of addiction treatment in penal institutions, as well as the areas of rehabilitation and social reintegration of drug users and scientific research activities in the field of addiction diseases. The area of harm reduction is separately elaborated in this document; since it represents one of the four pillars, and considering the fact that it has been widely applied over the past years and has repeatedly proven to be beneficial, the “harm reduction” principle started developing in our surroundings few years back. Due to the significance of the matter, principles of organising and providing addiction diseases treatment are separately defined, where it is insisted on the principle of approaching addiction as a chronic recurring disease. Also, special attention is devoted to the use of opiate agonists in the treatment of heroin addiction. This part of the strategy elaborates the role of health profession and institutions in the addiction treatment, as well as the role of the civil society.

In the area of drug supply reduction, the Strategy describes strategic framework of interventions within the police services, customs offices, as well as drug use as a subject to the criminal regulation.

The area of specific targets and target interventions involves strategic framework in specific prevention programmes, treatment and rehabilitation and reduction of harmful effects of drug use, especially in the area of penal system with participation of non-governmental sector.

General goals of National Strategic Response to Drugs 2008-2012 are also defined with regards to the two most general areas of the operation – drug demand reduction and drug supply reduction.

Drug demand reduction implies measurable reduction of drug use, drug addiction and related health and social risks, by development and improvement of effective, comprehensive, scientifically founded system of drug demand reduction, through targeted interventions conducted in the area of prevention, treatment and rehabilitation, and in the area of drug use harm reduction.

Interventions in the area of drug demand reduction are directed towards achieving the following sub-goals:

- Ensuring that drug related matters are equally dealt with on national and local level as with other social, health and economic issues in the country, and that necessary systemic measures are adopted on the basis of that;
- Raising awareness of the community about problem of drug abuse and the necessity of its prevention, as well as affirmation of healthy lifestyles;
- Providing coordination of various activities on a local level and coordinating local level activities with national level activities;
- Encouraging preventive activities in this area and various drug demand reduction programmes;
- Providing higher quality and diverse capacities and drug addiction treatment programmes, by introducing different approaches to treatment of addiction diseases;
- Encouraging development of programmes contributing to maintenance or reduction of the number of persons infected with HIV and hepatitis B and C, as well as fatal cases of drug overdose;

- Creating conditions for extending institutional treatment programmes in corrective and penal institutions;
- Encouraging development of programme for social protection of drug users, therapeutic communities and communes, including harm reduction programmes, which will contribute to reduction of social exclusion of drug users. This to an equal extent refers to the programmes and activities of social care in prisons and corrective institutions.
- Raising the level of knowledge and skills of all subjects involved, dealing with prevention of drug use, treatment and rehabilitation of drug users and measures and programmes of harm reduction due to drug use;

Drug supply reduction implies creating basis for conducting efficient police and customs interventions directed towards reduction of availability and supply of drugs in Montenegro. Targeting interventions within this area are directed towards accomplishing the following:

- Strengthening activities against organized crime, illicit drug trafficking, money laundering and other forms of drug related crime;
- Intensifying cooperation between the Police Directorate, Customs and Judiciary;
- Improving collection and analysis of information in revealing of criminal activities;
- Raising the level of skills and knowledge of staff within the bodies engaged in detection and criminal prosecution;
- Implementing all available measures for interception of drug flow through the "Balkan route", and creating and strengthening new ones;
- Participating and using the system of early detection of new synthetic drugs;
- Strengthening police intervention at the local level and preventive role of the police;
- Providing adequate border control in order to preventing import of drugs to Montenegro;
- Increasing activities of combating organized crime related to illicit drugs;
- Continuing with monitoring of precursors and developing cooperation in this area between Customs and Police Directorate and importers and transporters of precursors, Agency for Pharmaceuticals, Ministry of Health, Ministry of Environmental Protection, in implementation of legislation from the area of precursors;
- Intensifying cooperation with other countries and international organizations and maintaining active cooperation in this field;

Apart from the two abovementioned general groups of goals, the Strategy is also directed towards accomplishing the following specific goals:

- Establishing a general, comprehensive information system with a view to collecting, keeping, processing and managing information in the field of drug use;
- Developing capacities for establishing institution of National Focal Point for Drugs and Drug Addiction for EMCDDA;
- Strengthening the relevant law regulations in this area;
- Ensuring political and financial support for implementation of activities defined in the Action Plan 2008/2009, and activities that will be defined as priorities both on local and national level, in Action Plans to come.

- Encouraging cooperation with various partners, and particularly improving the partner relation with the civil sector in all spheres of coordination and decision making, and encouraging programmes implemented by non-governmental organizations on the basis of professional independence;
- Encouraging research work in the area of drugs and drug use;
- Encouraging receiving relevant trainings for all professionals engaged in this field and encouraging all activities directed towards generating conditions for development of the relevant training programmes on national level;
- Providing evaluation and stable sources of financing for all accepted programmes and measures in the area of drugs, and on that basis, developing new programmes which will improve the existing ones;
- Establishing central office for drugs as a mechanism of coordination, evaluation and monitoring of activities from the National Strategic Response to Drugs 2008-2012 and the associated Action Plans, both on local and national level.

In terms of effects among the intended users, implementation of target interventions from the National Strategic Response to Drugs 2008-2012 would have the following implications:

- Improved protection of children and the young against drug use and related effects, through providing special support to the young in the age “critical” for developing addiction, to choose healthy lifestyles, by strengthening the skills of defence of children and the young in situation of exposure to drugs and the pressure of social environment in which drug use is becoming more and more “normalized”;
- Provide support for individuals with problems due to drug consumption, to accept healthy lifestyles and thereby reduce health risks;
- Increase the possibility and abilities of a community to react and resolve public health problems more efficiently;
- Availability of preventive programmes for children and the young (from 10 to 24 years) with a view to insuring better informing about consequences of drug use, as well as encouraging development and adopting positive attitudes and social skills necessary for prevention of addiction diseases;
- Strengthening institutional and functional capacities for treatment of individuals who developed an addiction disease, as well as those willing to be treated in such manner and those who are still unwilling to do so;
- Reducing the rate of new addicts;
- Improving the possibility of treatment, rehabilitation and social reintegration of existing drug users;
- Reducing recurring rate of treated drug addicts;
- Reducing mortality rate due to drug use;
- Reducing involvement of intravenous addicts in the group of people infected with HIV or having AIDS;
- Reducing the possibility of obtaining drugs in all environments.

National Strategic Response to Drugs 2008-2012 was drawn up in the process of cooperation of representatives of the following institutions: Ministry of Health, Labour and Social Welfare, Ministry of Education and Science of Montenegro, Police Directorate, Ministry of Interior and Public Administration, Ministry of Finance of Montenegro, Ministry of Culture, Sports and Media of Montenegro, Customs Administration of Montenegro, Education Office of Montenegro, Municipality of Podgorica – Municipal Office for Prevention of Drug Addiction, Podgorica, Municipality of Niksic – Municipal Office for Prevention of Drug Addiction of Niksic, Special Psychiatric Hospital “Dobrota” Kotor, Primary Health Care Centre of Podgorica, KBC Podgorica (Clinical Hospital of Podgorica) – Psychiatric Clinic, NGO sector (NGO “Preporod”, “Cazas”, “Juventas”), United Nations

Development Programme – UNDP, Health Insurance Fund of Montenegro, Ministry of Justice - Institution for Enforcement of Criminal Sanctions Podgorica, and Public Health Institute of Montenegro.

Regarding implementation of national programme of fight against drugs, Action Plan for implementation of Strategy 2008/2009 precisely defines priorities in each area defined by the Strategy, as well as the institutions in charge of those activities. Issue of coordinating implementation of National Strategic Response to Drugs 2008-2012 is defined through establishing and work of the National Office for Drugs in the Ministry of Health of Montenegro, which has the role of coordination in both monitoring and evaluation of activities from the Strategy.

National strategy is implemented and pursued through the Action Plan, in such manner that each participant has clearly defined obligations and goals to perform according to a specific timetable, in order to achieve the goals from the programme on a national level.

For that purpose, National Office for Drugs at Ministry of Health established a national network of contact points for drug related problems. State Administration bodies, local government bodies, members of health care system, and civil sector operate interactively. The network comprises representatives of the Ministry of Interiors, Police Directorate, Ministry of Justice, Ministry of Education and Science, Education Office, Customs Administration, Ministry of Finance, Ministry of Culture, Sport and Media, Ministry of Labour and Social Welfare, Public Health Institute, Agency for Pharmaceuticals, Institutions from health care system, Municipal Offices for prevention of Drug Addiction, representatives of civil sector, i.e. NGOs. The aforementioned activities lead to multi-sector division of drug related activities which implies exchange of information among different participants. This provides for horizontal and vertical coordination in this area within the country.

Professional and advisory support to the National Office for Drugs is provided by Professional Council at the Government of Montenegro whose honorary member is the President of the Country, and members are experts dealing with these matters.

### **165. What do you do to reduce demand?**

Strategic position of Montenegro regarding this matter is to achieve the reduction of demand for narcotics through the implementation of National Strategy measures and through systematic preventive work. Having regard to this, integrated programmes and subject are introduced in the school system of Montenegro related to the education of the young on harms and consequences of using drugs. In addition, parents, the young and the entire population are objectively informed on the dangers and harmful consequences of using drugs via continuous media campaigns.

Drug demand reduction implies interventions made in the areas of:

- a) prevention of drug use
- b) treatment, rehabilitation and social reintegration
- c) reduction of harmful effects of drug use

Regarding prevention of drug use, both public institutions and civil sector are involved in this area in Montenegro. Municipal Offices for Prevention of Drug Abuse are active at the local level.

In 2000, the Ministry of Education and Science, the Education Office, Health Protection Office, UNICEF and Municipal Secretariat for Labour, Health and Social Policy developed a programme for prevention of drug abuse in elementary schools, intended for students of fifth to eighth grade of elementary schools. More than 150 teachers and expert associates have been educated to implement the programme, which up to now has been included in 60 of 160 elementary schools in Montenegro, specifically - in the period from 2001 to 2004, in 95 schools, in 2005 in 48 schools, in 2006 in 52 schools, in 2007 in 46 schools.

Since the school year of 2004/2005, the Programme of Drug Abuse Prevention in elementary schools has been extended through the school project works, by which students develop school projects which would include mandatory cooperation of at least two schools, as well as of other

members of the community. In 2004, 4 such projects have been implemented with participation of 10 schools, in 2005 - 24 projects with participation of 52 schools, in 2006 - 23 school projects with participation of 46 schools, and in 2007, 13 school projects have been conducted.

Teaching syllabus for an optional subject "Healthy Lifestyles" was adopted in 2007, and introduced into the regular school system from the school year of 2008/2009. The subject is intended for students of eighth and ninth grades, and currently 1000 students in 22 schools in Montenegro have been studying it. The Capital, Podgorica, is a member of ECAD.

In the field of prevention within local communities, 9 Municipal Offices for Prevention of Drug Abuse are active: in Podgorica, Niksic, Cetinje, Zabljak, Kotor, Bijelo Polje, Berane, Bar and Pljevlja. These offices set as their general goal prevention of drug use by the young, by raising the level of information on drugs and effects of drug use through public lectures, forums, media activities, public events and similar. They also conduct local researches about drug use within a community and educational and advisory work with parents, and some of the offices also distribute tests for controlling the presence of drugs and provide assistance to self-help groups and similar.

In the area of problem research of psychoactive substances abuse by the population of the young, the most significant achievement in the last period was inclusion of Montenegro in a network of European countries participating every fourth year in survey of alcohol and drug use among students of secondary schools (ESPAD - The European School Survey Project on Alcohol and Other Drugs). In September 2009, the representatives of Montenegro participated in international ESPAD session in Warsaw, where planning of ESPAD 2011 is taking place, which will contribute to the better insight into the problems of drug use, which will serve for further planning of interventions within this field.

As for the area of treatment, the present treatment of persons dependent on psychoactive substances is performed in Psychiatric Specialized Hospital "Dobrota" in Kotor, with the capacity of 20 beds in addiction treatment ward (9 for drug users); Clinical Centre of Montenegro – Psychiatric Clinic with 5 beds intended for hospitalized treatment of dependants on psychoactive substances addicts and in General Hospital of Niksic – Psychiatric Hospital with 30 beds, 2 of which are designated for treatment of dependents on psychoactive substances. Therefore, overall Montenegrin hospitalizing capacities for treatment of drug abuse amount to 16 beds. For outpatient treatment, users of psychoactive substances may apply to the Centres for Mental Health of Primary Health Care Centres of Podgorica and Kotor, and to psychiatric surgeries of other health care centres in the Republic. Units for detoxification of overdosed drug users have been formed in seven general hospitals in Montenegro (KBC Podgorica "Clinical Hospital of Podgorica", and general hospitals of Niksic, Bar, Kotor, Bijelo Polje, Berane and Pljevlja).

Regarding rehabilitation and social reintegration of drug users, this type of treatment is conducted in Public Institution for Accommodation, Rehabilitation and Social Reintegration of Drug Users "Kakaricka Gora", of inpatient care type under professional surveillance, and having capacity for 80 clients, and 24 month programme. Two thirds of monthly fee for stay in the Institution are covered by the Municipality of Podgorica, and Ministry of Labour and Social Welfare, and one third by a client. First clients of public institution "Kakaricka Gora" were admitted in September 2008, whereas in June 2009, 39 clients have been undergoing treatment, aged between 23 and 43. We can conclude that the possibility of treatment, rehabilitation and social reintegration within the public health system in Montenegro is available to each interested addict.

In accordance with the National Strategy, cooperation with civil sector is maintained i.e. with numerous NGOs engaged in activities from the area of drug abuse (e.g. informing the young about harmful nature of drugs, healthy lifestyles by organizing sport manifestations, holding lectures and public discussions of educational character with participation of experts, printing and distributing educational material, etc.), then NGOs conducting programmes of providing support to the addicts, the so called 12 steps programmes, their agenda, programmes of counselling and assistance to the families of addicts and their members undergoing treatment etc; then NGOs engaged in harm reduction programmes: exchange of needles and syringes, distribution of condoms, field work and similar. The need for signing memoranda of cooperation with NGOs and public health institutions dealing with treatment of addicts has been recognized and supported, in order to strengthen the overall response of social community to this problem. The State recognized the need to support

activities of these NGOs in fight against drugs, so it has allocated a significant amount of assets from proceeds of Games of Chance for the work of the mentioned NGOs, which are being delegated through an open competition in order to create and implement high quality programmes.

In the area of reduction of harmful effects of drug use, the programme of methadone maintenance and detoxification has been implemented in Primary Health Care Institution of Podgorica, since 2006. By 2008, altogether 164 patients have been participating in the programme, 145 men (88.5%) and 19 women (11.5%). In June 2009, there are 45 patients, 8 women (17.8%) and 37 men (82.2%). Both National Strategy for HIV/AIDS and National Strategic Response to Drugs 2008-2012, suggest forming another two centres for methadone therapy within the country, in coastal and northern region.

There are also the so called "low threshold programmes" which include exchange of sterile needles and syringes and are implemented by NGOs. As of February 2005 to March 2009, the Primary Health Institution of Podgorica also implemented the program of needles and syringes.

NGOs have been implementing harm-reduction programmes, for the purpose of which 778 intravenous drug users were contacted, 75 commercial sex workers who are IDU at the same time, 26,000 of syringes and 36,000 of needles in total has been distributed, as well as 14,121 condoms, and 20,000 informative and educational pieces of material (middle of 2007 – end of 2008). NGOs continue with the outreach activities.

Police officers, in particular specialized units for fight against drug and smuggling, in the first line, deal with revealing and combating drug criminality, i.e. intercepting smuggling channels and reduction of distribution of drugs on streets.

Apart from that, activities directed towards prevention of drug abuse are also conducted, especially among populations of students of elementary and secondary schools, as groups which need to be protected from the effects of drugs and drug abuse. These preventive activities are implemented in several ways, as follows:

- through the concept "Police in Community"
- activities of officers for delinquency of minors, directed towards early detection and prevention of cases of drug trafficking and drug consumption in educational institutions and school yards (Project "School Police Officer" in elementary and secondary schools);
- involvement in educational workshops, seminars, round table conferences and others. For the purpose of preventive acting, police knowledge and experiences are presented to school population also on these occasions;
- cooperation with municipal offices for prevention of drug abuse in all cities of Montenegro, in organising informational public gatherings;
- constant presence of specialised officers for fight against drugs on the field, and collecting information on particularly vulnerable areas, as well as taking preventive measures.

**166. Although the acquis does not specify any administrative structures, how do you intend to prepare for participation in EMCDDA and the European Information Network on Drugs and Drug Addiction (REITOX)? Do you intend to set up a national focal point?**

One of the specific goals defined by the National Strategic Response to Drugs 2008-2012 is developing capacities for establishing National Focal Point for drugs and drug addiction for EMCDDA. In order to form National Information Unit at the National Office for Drugs of the Ministry of Health, for the purpose of participating in REITOX, we need expert and technical support from EMCDDA for standardising data and collecting indicators in line with recommendations of EMCDDA.

National Office for Drugs participates in Regional Project of Promoting the Rule of Law and Safety in South East Europe, under the auspices of UNODC.

We expressed a need for and also suggested several activities we are interested in realising within the Project, technical and professional support for establishing National Informational Unit among other things.

UNODC announces a new stage of the Project from September 2009 and we expect to specify the proposed activities.

We intend to form a national informational unit at the National Office for Drugs of the Ministry of Health for the purpose of participating in REITOX, and also, we are preparing for collecting indicators according to standards of EMCDDA.

To that effect, Montenegro has been an active participant in implementation of the project "Assessment of the Capacity of the Western Balkan Countries to Establish a Drug Information System Compatible with the European Monitoring Centre on Drugs and Drug Addictions" from the very beginning (December 2007). The aims of the project, initiated by EMCDDA, and implemented within CARDS programme (Community Assistance for Reconstruction, Development and Stabilisation), are defined by EMCDDA as:

- Informing the countries of the Western Balkans on role and activities of EMCDDA and REITOX network within the framework of the EU Drugs Strategy and Action Plan on Drugs;
- Identifying the sources of information and expertise which will be useful in establishing national system for collection of data within drug area;
- Providing assistance to the countries of Western Balkans in drawing up the first "Country Situation Summary" in accordance with guidelines and standards of EMCDDA;
- Formulating clear recommendations for establishing and strengthening national system for collecting data, including establishment of national focal point.

Within the course of former implementation of the project, Montenegro fulfilled all the activities provided for. In April 2008, an extensive mission of assessment was organized and conducted in Montenegro, when 5 representatives of EMCDDA visited and met all relevant activists and persons in charge of adopting policies from all relevant institutions in Montenegro. As a product of assessment mission, experts of EMCDDA made a "Report from the Assessment Mission" which identifies the sources of information and state expertise, as well as the main shortcomings of the existing system of information collection related to 5 epidemiologic indicators of EMCDDA and with reference to data of Police Directorate and Customs Administration. The first "Country Situation Summary" has been made in accordance with the directions and standards of EMCDDA, which will be published on the web site of this agency in September 2009. The document specifies existing data in the field of drugs in Montenegro, sources of data, as well as gaps, i.e. areas where further harmonisation of the system for collecting data with European standards. Drafting of another document within the project - "Information Maps" is underway, also in accordance with guidelines and recommendations of EMCDDA, the completion of which is planned for the end of October 2009. In addition, a new application form for drug users was prepared in accordance with the standards.

## **Customs co-operation**

### **167. Please provide information on legislation or other rules governing the customs area.**

Customs Law (Official Gazette of the Republic of Montenegro 7/02, 38/02, 72/02, 21/03, 31/03, 29/05, 66/06 and Official Gazette of Montenegro 21/08) with secondary legislation:

Decree for implementation of the Customs Law (Official Gazette of the Republic of Montenegro 15/03, 81/06 and Official Gazette of Montenegro 38/08)



Decree on the procedure of exercising right to exemption from customs duties (Official Gazette of the Republic of Montenegro 22/03)

Decree on deferred payment of customs debt (Official Gazette of Montenegro 25/09)

Decree on type, amount and manner of payment of fees for customs authorities services (Official Gazette of Montenegro 47/08)

Decree on detailed procedure and terms for opening duty free shops (Official Gazette of the Republic of Montenegro 43/05)

Decree on customs authorities' treatment of goods with reasonable doubt of violation of intellectual property rights (Official Gazette of the Republic of Montenegro 25/05, Official Gazette of Montenegro, 16/08)

Decree on terms for performing activities of representation before customs service authorities (Official Gazette of the Republic of Montenegro 20/03, 62/04)

Decree on terms and manner of customs goods sale and other procedures with customs goods (Official Gazette of the Republic of Montenegro 22/03, 62/04)

Rulebook on form, content, manner of provision and completion of customs declaration and collective registration (Official Gazette of the Republic of Montenegro 16/03, 43/04, 2/05, 14/05, 48/07)

Decree on issuing certificates following goods in export, import or transit (Official Gazette of the Republic of Montenegro 41/05)

Rulebook on types and manner of use of customs identification marks (Official Gazette of the Republic of Montenegro 49/05)

Rulebook on special measures of customs control and customs procedure for goods used for provision of means of transport in international traffic (Official Gazette of the Republic of Montenegro 78/06, 57/07)

Instructions on manner and terms under which the customs debt amount is payable by a third party on behalf of a debtor (Official Gazette of the Republic of Montenegro 19/04)

Instructions on special measures of customs control in putting goods in free trade, i.e. in procedure of sugar export and transit (Official Gazette of the Republic of Montenegro 37/03)

Instructions on special measures of customs control in putting cigarettes in transit, export and re-export procedure (Official Gazette of the Republic of Montenegro 14/07)

2. Law on Customs Tariff (Official Gazette of the Republic of Montenegro 75/05, 17/07) and secondary legislation:

Decree on harmonization of customs tariff nomenclature for 2009 (Official Gazette of Montenegro 78/08)

Law on Customs Service (Official Gazette of the Republic of Montenegro 7/02, 29/05)

### **168. Does the Customs Administration have an integrated computer system?**

The answer to this question is provided in details within the answer to the question 57 of this chapter.

**169. Is there development of risk analysis using, inter alia, information derived from Memoranda of Understanding (MoU)?**

Customs Administration signed memoranda of understanding with the Police Directorate and Administration for Prevention of Money Laundering and Financing of Terrorism. Information received from these bodies are used for risk analysis, through selectivity and targeted monitoring of the Risk Analysis System. Information is entered into the Risk Analysis System databases and then the risk profiles which select a particular shipment for a detailed inspection are created. Signing of memoranda of understanding with shipping companies, airline companies and companies dealing with express mail transport is in preparation. Even though these memoranda of understanding are not signed yet, the Customs Administration regularly receives pre-arrival information from shipping companies on containers arriving to the Port of Bar. Based on this information that is received at least 24 hours before ships enter the port, the selection of shipment for inspection is performed after the analysis. Selection of shipment for inspection is performed on two levels: in the customs office Port of Bar Free Zone and the Customs Security Department. There are two types of inspection: mobile scanner inspection and physical inspection of goods.

**170. What is done to ensure inter-agency co-operation and the implementation of mutual assistance agreements?**

In February 2006 the Government of Montenegro adopted the Integrated Border Management Strategy, and in November 2006 the Action Plan for implementation of the Integrated Border Management Strategy.

On 3 February 2009 the Ministry of Interior and Public Administration, Police Directorate, Customs Administration, Veterinary Administration and Phytosanitary Administration signed the Agreement on Mutual Co-operation in Integrated Management of State Border. This Agreement establishes basic principles of co-operation in performing activities of the mentioned services within their competencies related to the border and border crossing points. In particular, the cooperation refers to harmonisation of work and promotion of co-operation between bodies in charge of border check and protection of border, mutual risk analysis, establishment of joint work teams, performance of joint actions and other activities, provision of professional and technical assistance and mutual use of equipment, mutual training and development, cooperation with other bodies, international co-operation and exchange of information, and integration in telecommunications.

Under this Agreement, on 5 May 2009, these services signed the Special Agreement on forming coordination teams for implementation of the Integrated Border Management Strategy and the Action plan for its implementation, aimed at more efficient work of border services. Coordination teams are formed on regional and local level, and tasked with coordination and synchronisation of border services activities, exchange of information significant for suppressing all forms of organised crime, in order to ensure inviolability of state border, control of crossing of state border, internal control and co-operation of services at the state border, life and health protection, prevention and detection of criminal offences and misdemeanours, etc. Inter-agency commission prepared the Work Methodology for coordination teams on regional level and expert teams at the border crossing points in the integrated border management.

**171. Does the Customs Administration have a special investigation service with sufficient resources?**

Within the Customs Security Department of the Customs Administration there is also the Customs Investigation Section. The Section investigates customs and other misdemeanours, as well as criminal offences. It identifies investigation goals, plans and conducts investigations, examines and assesses notifications and evidence, performs surveillance and interrogation of suspects,

investigates and plans actions related to identification of customs and other misdemeanors and criminal offences, as well as other tasks related to investigation. Customs Investigation Section is the main contact point for cooperation with the Public Prosecutor, and this cooperation is conducted based on instructions of the Customs Administration D-525/1 from 18 January 2007 – “Duties and activities of customs officers towards the competent Public Prosecutor when they discover that the criminal offence was committed”.

The Customs Security Department has a special budget within the Customs Administration which is also source of financing activities of the Customs Investigation Department. Apart from this, most of the equipment necessary for the work of Customs Investigation Section was provided in the previous period.

**172. Are there adequate methods for the fight against fraud, including the introduction of mobile surveillance units?**

All Customs Administration Departments, the Customs Security Department in particular, are included in the fight against fraud.

The following are the Customs Administration organization units and teams that are particularly included in the fight against fraud, that being their basic activity:

- Anti-Smuggling Section
- Customs Investigation Section
- Intelligence Section
- External Audit Section
- Internal Control Division
- Internal Audit Division
- Team for Targeted Monitoring of Risk Analysis System
- Team for Selectivity of Risk Analysis System
- Strategic Risk Commission of Customs Administration

At the local level, those are four customs houses, local intelligence customs officers, as well as the internal audit of custom-houses.

Mobile teams are positioned within the Anti-Smuggling Section, and they are located in the northern, central and southern part of Montenegro. These teams perform the check of: persons, transportation means and goods in the entire customs area. Information and targeted monitoring are the basis for checks performed by these teams. They act alone or in co-operation with the Police Directorate or other state bodies.

**173. Please provide information on the training of customs officers.**

The Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08) in Article 14 prescribes that persons employed in the Customs Administration have the right and duty to professional development and training.

Professional development is performed in accordance with the Professional Development Program established by this Administration for specialised customs training and in co-operation with the Human Resources Management Administration for trainings regarding the public administration system.

Apart from trainings organised separately within the Customs Administration and in co-operation with the Human Resources Management Administration, the professional development is also performed in co-operation with bodies and organisations closely related to the Customs Administration, those with signed Co-operation Protocols, as well as with modern customs services based on mutual assistance and correlation through signed agreements. Professional development is monitored, analysed and organised at the Customs Administration level, i.e. by organisational unit competent for the training, whereas the performed trainings are statistically recorded in the application related to the human resources information system for each candidate individually, by subjects, time and manner of organisation.

Analysing statistics, it was established that in 2007, 304 civil servants and state employees of the Customs Administration underwent 144 different types of training, whereas in 2008, 393 officers underwent 136 different types of training.

In the period from 1 January 2009 to 31 July 2009, 296 civil servants and state employees of this Administration underwent 102 different types of vocational training, 46 of which were conducted in international organisation.

In the following period special attention will be paid to long-term planning of professional development of the Customs Administration civil servants and state employees, and necessary measures will be taken to strengthen training units.

#### **174. Which measures are taken to ensure the integrity of customs officers and prevent corruption?**

Since its establishment, the Customs Service of Montenegro has assumed an obligation, regarding the issue of conduct and work performance of employees, to establish and apply standards pursuant to the European Commission standards for the area of customs ethics. Application of these standards is surely of great assistance in reducing risk of corruption at border crossing points, which is one of the goals of TTFSE (Trade and Transport Facilitation in Southeast Europe) Project of the World Bank.

In co-operation with STAT team (Advisory Team from the Trade and Transport Facilitation in Southeast Europe Project), and in accordance with guidelines from the World Customs Organisation (WCO), since October 2003 we have been engaged in the Project for Development of Integrity in the Customs Service of Montenegro. Project coordinator is the Internal Control Division, and its task is to manage, organise and synchronise activities of organisational units in the implementation of the Action Plan.

Integrity program implies identification of structures and procedures exposed to risk of abuse of powers and establishment of procedures and standards to foster the integrity of customs service and also reduce the risk of corruption.

Integrity development project consisted of three phases "Self-Assessment of Integrity", "Action plan Development" and "Evaluation".

In the first phase of "Self-Assessment of Integrity", the Customs Administration used the WCO Integrity Development Guide and the Questionnaire on integrity self-assessment, based on the 12 "factors" of the Arusha Declaration from 1993, which represent the basis for development and further implementation of wide spectrum of strategies for fight against corruption in the customs.

12 "factors" of the 1993 Arusha Declaration:

Minimum of administrative regulation

Transparency

Automation (Customs Information System)

Strategic segregation (of operations and functions), rotation and relocation

Duties and responsibilities of the management

- Auditing and internal investigations
- Ethics and organisational standards of employees
- Recruitment process and selection
- Code of conduct
- Professional development
- Adequate remuneration system
- Relationships with the customs brokers and business community

Through interviews conducted with the CA management, the “Report on Integrity Self-Assessment in the Customs Service” was produced. “Findings” and “recommendations” were provided for each Arusha Declaration “factor”. The Report also included positive and negative “findings”, with purpose to point to strong, as well as weak points in the structure and functioning of the Customs of Montenegro, with regard to integrity. In line with that, the given “recommendations” either confirmed the measures taken in the fight against corruption and suggested intensifying them, or provided suggestions on how to reduce and eliminate exposure to corruption in certain areas.

Based on the Report on Integrity Self-Assessment, the Action Plan for development of integrity in the Customs Service of Montenegro was created in the second phase, and it was adopted in October 2004. This is what the Action Plan matrix looks like:

Problems/Possibilities for improvement	Proposal for the solution	Responsible section (work team)	Measurable performance indicators	Implementation time framework
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Issues/Possibilities for improvement: The project team reviewed all negative findings on each of the 12 “factors” from the Report on Integrity Self-Assessment, using the following criteria from the WCO Integrity Development Guide:

- Importance or significance
- Emergency
- Consequences of a failure
- Dedication to work both on the management level and the level of employees
- Effect of the implementation
- National/international obligations
- No obstacles in implementation
- Costs

At the end, 12 problem areas were defined on each of the 12 factors.

Solutions: For the proposed solution (solutions) for problem areas, the Project team used recommendations from the Report on Integrity Self-Assessment and included them in the Action Plan.

Responsible section (work team): Responsibility for implementation of the “solutions” on each of the 12 “problems” identified in the Action Plan is delegated to four Deputy Directors in the Customs Administration. Some of them were also conferred the secondary responsibility, for the parts of the Plan whose implementation entails interlacing of competences as well as formation of interdisciplinary work groups.

Measurable performance indicators: Objective and measurable performance indicators are defined in order to “measure” the effect or the performance of the given proposals for solutions on

targeted problem areas.

Implementation time framework: a system of monthly reports on taken measures and achieved results was applied, noting that some of the proposals for solutions require continuous activity.

In June 2006, the Research on Level and Extent of Corruption in the Customs Service was performed by the Customs Administration in the third phase, in co-operation with the World Bank, through conducted survey "Corruption level in the customs service" in June 2006. Apart from that, in co-operation with the TTFSE team, the Internal Control Division produced a Report on Implementation of the Program for Fight against Corruption, following the best standards of the World Customs Organisation (July 2006).

Namely, on the initiative of the World Bank, and for the purpose of considering results from the perspective of fight against corruption, a research on the corruption level in Montenegrin Customs Service was conducted in June 2006, particularly assessing progress in comparison to 2002 when the Customs Administration became a user of the development credit for modernisation of the service. The research was conducted by the Centre for Entrepreneurship and Economic Development (CEED) from Podgorica.

The survey was conducted at 3 border crossing points (the Airport of Tivat, the Port of Bar and Debeli Brijeg) and at the customs terminals (Podgorica, Niksic and Bijelo polje). It included the freight forwarding, transportation and trade companies, and the criteria used were the scope of work and number of declarations. Questions in the questionnaire were defined in co-operation with the World Bank. The research was conducted from 29 May to 9 June 2006. In total, 154 entities were questioned (13 production companies, 40 trade companies, 61 transport companies and 40 freight forwarding companies).

In the opinion of 92% of respondents, the Customs Administration treated them equally compared to other companies. When questioned whether the Customs Service treated the shipments equally during 2006, 93% of companies replied with yes or mainly yes.

In view of the fact that 88% of respondents said that they were informed about their rights and duties towards the Customs Administration, that every fourth respondent believes that the Customs Administration always initiates a legal procedure after receiving the appeal, and that 42% of respondents believe that the current procedure is as lawful as it was in 2002, it can be concluded that the regulations are observed. That equally contributed to the fact that 78% of respondents believe that the Customs Administration efficiently followed customs procedures in 2006, and more than half of respondents (54%) believe that customs procedures are more rapidly conducted in 2006, compared to 2002.

In the opinion of 34.4% of respondents, compared to 2002, the Customs Administration has made the greatest improvement in work with regard to other services at the border crossing points. In comparison to other customs services in the region, majority of respondents declared that the Montenegrin customs service treats the companies better.

Concerning the issue of corruption, the majority of respondents (46%) believe that corruption of customs officers is either low or very low, whereas 5.2% believe that it is very high, and 10.4% did not answer that question.

Therefore, 22.7% of the total number of respondents said that they give a bribe. The amount ranges from EUR 5 to 100. A third of respondents paid up to 10 euro, and every fourth respondent paid up to EUR 5. In most cases the respondents gave less than 5% of the value of goods as a gift/bribe.

Over 77.3% of respondents replied that they did not have to pay a bribe and that corruption in the Customs Administration is at the average level (the average value for the corruption level indicator is 2.26, whereas the indicator value ranges from 1 to 5).

The Research on corruption in the Montenegrin customs service was published on the Customs Administration website ([www.vlada.cg.yu/carine](http://www.vlada.cg.yu/carine)), after being published on the World Bank site ([www.worldbank.com](http://www.worldbank.com)).

In accordance with the commitment determined by the Innovated Action Plan for Implementation

of the Program for Fight against Corruption and Organised Crime, adopted at the session of the Government of Montenegro on 29 May 2008, the Administration adopted the Revised Action Plan on Integrity Development in the Customs Service of Montenegro in November 2008, with the professional assistance of the EU TACTA Mission (Technical Assistance to Customs and Tax Administrations) in Montenegro.

Namely, the assessment of integrity strategy results was performed, and the following are the areas which should be further considered, also in line with the 10 factors of the Revised Arusha Declaration from 2003:

Identify reasons and areas in which there is discrepancy between the law and practice. In line with the determined reasons, take measures in terms of more efficient communication between customs offices and RU customs houses, RU customs houses and the Department, as well as propose adopting and amending operating instructions.

Timely organise trainings for implementation of new regulations.

Further development of the information system, training of employees and management for use of information system, increasing security of software and hardware, more efficient communication between customs officers and CIS officers concerning technical issues, further development of efficiency and effectiveness of the risk analysis system.

Customs Information System (CIS) is implemented and it officially became operational on 1 April 2003. The Customs Information System is being continually developed. Since 4 December 2005 the Customs Information System is upgraded with the new project of "Automatic counters". The project enabled the customs declarations records in CIS to be up to date in real time. Such a project has contributed to better control and analysis of data, due to the fact that the system status corresponds to the real time status. Electronic Data Exchange (EDE) is implemented and it officially started functioning on 25 May 2006. The project on "Risk Analysis System" was implemented on 24 March 2007. Risk analysis software was integrated in the CIS and as such it represents a unique information system of the customs service.

The study on work positions which are most exposed to corruption; drawing up, adopting and implementing the plan for rotation of work tasks in line with the implemented study.

One of the measures taken by the Administration for the purpose of fight against corruption is rotation of customs officers. Rotation of persons employed in the regional units – customs houses is within the competences of the Customs Houses Manager, whereas within the Administration and among customs houses it is within the competences of the Director. Records on rotation in the service are kept by the Customs Administration. In accordance with Article 79 of the Law on Civil Servants and State Employees, an employee may be relocated to an adequate position corresponding to his/her qualifications, without the consent of the employee or at his/her request, if so required for the needs of the state authority.

Implementing control activities by the administration – performing periodic controls of complying with operating instructions aimed at eliminating weaknesses from the working methods and integrity of employees.

Establishing full effectiveness of the Internal Control Division and Customs Auditing Division – improving capacities of both Divisions – promoting regional co-operation with the Divisions in the region – periodic control of procedures.

Better recognition of positive results as well as planned activities – Upgrading the Montenegrin customs website – Co-operation with relevant educational institutions for the purpose of increasing knowledge on the scope of work of the customs service – Creating and updating the customs monthly electronic newsletter on the results of the service – Media campaign of the Customs open line.

Following examples of good practice for submission of reports and complaints of citizens, and through the project "Open line" which was launched in January 2005 (established in co-operation with the British Embassy and EU CAFAO), the customs service of Montenegro also receives complaints from citizens by phone or in written - as leaflets. Citizens can anonymously, under a pseudonym or in any other way by calling the number 080081333, provide data on possible

irregularities important for the customs service. Main goal of the project "Open Line" is to stop smuggling of goods, drugs, weapons, people and all other customs frauds with the support of the public, as well as to detect individuals who violate regulations. In most cases people report smuggling outside the registered border crossing points, complaints on work and conduct of customs officers, etc. Detailed information on complaints received through the Open Line is provided in the answer to the question number 38.

Improving work conditions, remuneration system and the system of assessing work performance.

Code of Conduct of customs civil servants and employees.

Considering distinctiveness, complexity and particularity of tasks performed by customs authorities, and pursuant to Article 25 of the Code of Ethics of Civil Servants and State Employees that prescribes a possibility of adopting a separate Code of Ethics for servants in particular state bodies, at the end of 2008 the Customs Administration produced and adopted the Code of Conduct of Customs Servants and Employees with the professional assistance of the EU TACTA Mission to Montenegro, with a view to raising awareness of customs officers on obligation to abide by ethic values, which represents an important measure for strengthening integrity and reputation of the customs service of Montenegro. The Code consists of practical and unequivocal rules of conduct expected from the customs officer, the key element in all integrity programs. The positive legal regulations, basic and general principles of the Code of Ethics of Civil Servants and State Employees, Recommendation No R(2000)10 of the Committee of Ministers of the Council of Europe, Customs Blueprints of the European Commission, UN Convention against Corruption, UN Resolution on fight against corruption, World Customs Organisation Model Code of Ethics and Conduct, as well as experience of other EU customs services were used in drawing up the Code and defining ethical standards of customs officers, in accordance with recommendations given by the TACTA Mission to Montenegro.

To Include in the comprehensive annual plan the periodic trainings on integrity, application of the Code of Conduct, and training for the fight against corruption.

Communication with the private sector – Organisation of periodic meetings of representatives of the Customs Administration and private sector;

Moreover, the Administration conducts a public campaign with a view to more active participation of citizens in the fight against corruption and raising the level of public awareness regarding the corruption issue. The campaign includes announcements in daily press, making and distribution of flyers and posters, installing billboards, holding lectures etc. The public is timely informed about all performed activities from all segments of activities of Customs Administration of Montenegro through media, in form of press release, statements to the public and press conferences, which proves that the Customs Administration of Montenegro openly fights against corruption and all other irregularities that it discovers in the work of service. This Administration created and made available to travellers and business people the following three brochures: "How to Import and Export Goods", "How to File a Complaint to the Customs" and "The Guide for Citizens". It also created electronic brochures "Rules on the Origin of Goods and Preferentiality", "Application of the Customs Tariff", "Determination of the Customs Value of Goods" and "Simplified Procedures", all published on the Customs Administration website. By creating the brochure "How to File a Complaint to the Customs", available at all customs offices, we the customs officers, clients and the public are encouraged to inform and report corruptive, unethical and illegal activities. It should be emphasised that such information is immediately and thoroughly investigated, while the source of information is protected.

As previously mentioned in this report, the Internal Control Division plays an important role in the development and implementation of the Programme for Fight against Corruption of the Customs Administration of Montenegro. It has a dual role: preventive – the Division organised activities for development and implementation of integrity self-assessment and drawing up of the Action Plan, and repressive – the Division investigates cases of abuse of powers by the persons employed in the Customs. While performing this dual function the Division was put under direct control of the Customs Administration Director. Detailed information on the scope of work as well as on the work results of the Division are provided in the answer to the question number 38 (Chapter 29, "Customs Union")



**175. What internal disciplinary procedures exist?**

The Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08) prescribes the disciplinary liability of a civil servant and state employee. According to this Law, a civil servant or state employee is liable for violation of employment duties which may be a minor or serious disciplinary violation. Therefore, there is a single disciplinary procedure conducted in all public administration bodies, including the Customs Administration, for both minor and serious disciplinary violation, in accordance with the mentioned Law.

To clarify, a disciplinary measure for the minor disciplinary violation is a fine amounting to 15% of the salary paid for the month in which the violation occurred. Disciplinary measures for the serious disciplinary violation are: a fine amounting from 20% to 30% of the salary paid for the month in which the violation occurred, and the termination of employment.

The disciplinary procedure is instituted by the Head of administration body upon the request of the superior. It is initiated by a conclusion which is served to a civil servant or state employee whose disciplinary liability is being determined. Appeal against this conclusion may not be filed. The civil servant or state employee has a right to lodge an initiative for instituting disciplinary procedure and to provide explanation, i.e. make its statement probable. The Disciplinary Commission conducts the disciplinary procedure against the civil servant or state employee and proposes the decision. On the proposal of the disciplinary commission, the disciplinary measure against the civil servant or state employee is imposed by the Head of administration body. The disciplinary procedure against the persons in management position is initiated and the disciplinary measure is imposed by the commission established by the body competent for his/her appointment or assignment.

In the disciplinary procedure there must be a discussion in the scope of which the civil servant or state employee has a right to defence. The civil servant or state employee may appear pro se, be defended by a lawyer, representative or the union representative. Provisions of the law prescribing the general administrative procedure for issues not prescribed by this law are applied in the disciplinary procedure.

Instituting disciplinary procedure for a minor disciplinary violation is barred by the statute of limitation within one month from the day the violation was discovered, or within two months from the day the violation occurred.

Instituting disciplinary procedure for a serious disciplinary violation is barred by the statute of limitation within three months from the day the violation was discovered, or within six months from the day the violation occurred.

**176. Are any statistics available on the number and type of disciplinary cases that have been undertaken in the last 3 years?**

In accordance with the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/80), the Customs Administration civil servants are disciplinary liable for violations of employment duties, which may be minor or serious disciplinary violations.

From 2006 to 7 August 2009, 63 disciplinary procedures were initiated for minor and serious disciplinary violations prescribed by the Law on Civil Servants and State Employees. After the conducted procedure for establishing disciplinary liability before the Disciplinary Commission appointed by the Customs Administration Director, for 58 servants and employees the disciplinary procedure was finalised, whereas for five servants and employees the disciplinary procedure is underway.

In accordance with Article 60 of the Law on Civil Servants and State Employees, the following disciplinary measures for minor and serious disciplinary violations were imposed:

Type of disciplinary measure	2006	2007	2008	2009	Total
Fine for a minor disciplinary violation amounting to 15% of the salary paid for the month in which the violation occurred	5	-	-	-	5
Fine for a serious disciplinary violation amounting from 20% to 30% of the salary paid for the month in which the violation occurred	12	6	3	8	29
Termination of employment due to a serious disciplinary violation	1	3	1	2	7
Exempted from disciplinary responsibility	3	2	3	9	17
<b>TOTAL</b>	<b>21</b>	<b>11</b>	<b>7</b>	<b>19</b>	<b>58</b>

### Counterfeiting of the euro

#### 177. Protection of the financial interests of the European Communities (“third pillar” aspects)

We received an explanation from the European Commission Delegation that this is not a question but a subheading, therefore the answer does not have to be provided.

**178. Does national law criminalise fraud against the Communities' financial interests, covering both expenditure and revenue?**

Frauds causing detriment to the financial interests of the European Community may be classified as important features of criminal offences against the property from the Chapter XXII (Fraud from Article 244 and Use of credit and other benefits without grounds from Article 245), criminal offences against payment operations and economic transactions from the Chapter XXIII (Evasion of taxes and contributions from Article 264 and Smuggling from Article 265), criminal offences against safety of computer data from the Chapter XXVIII (Computer fraud from Article 352), as well as criminal offences against official duties from the Chapter XXXIV of the Criminal Code of Montenegro, Official Gazette of the Republic of Montenegro, 70/2003, 13/2004, 47/2006 and Official Gazette of Montenegro, 40/2008 (Fraud in service from Article 419, Embezzlement from Article 420, Illegal mediation from Article 422, Passive bribery from Article 423, Active bribery from Article 424 and Abuse of official status from Article 416).

The criminal offence of "Fraud" is committed by a person who, intending to obtain unlawful material benefit for himself/herself or another person, misleads others by false representation or by concealing facts, or who continues misleading them and therefore induces others to do something or omit to something to the detriment of his/her property or property of others.

The criminal offence of "Fraud in service" is committed by a person in official capacity who in performing his/her duties intends to obtain unlawful benefit for himself/herself or other person by submitting false accounting or in any other way misleads an official to make an illegal payment.

The criminal offence of "Computer fraud" is committed by a person who enters a false datum, omits to enter the correct datum or in any other way conceals or falsely presents a piece of data and thereby influences the results of electronic processing, transfer of data and functioning of a computer system with an intention to obtain unlawful property gain for himself/herself or other person and thereby causes others property damage, or only intends to cause damage to others.

The criminal offence of "Use of credits and other benefits without grounds" is committed by a person who by falsely presenting facts or concealing them obtains for himself/herself or others a credit, subsidy or other benefit even though he/she does not meet the conditions prescribed for it, who uses the granted credit, subsidy or other benefit for purposes different from the one for which the credit, subsidy or other privilege was granted, as well as the responsible person in a business organisation or other business entity, if the credit, subsidy or other benefits were obtained for the business organisation or other business entity, or if they were used by the entity for purposes other than designated.

The criminal offence of "Evasion of taxes and contributions" is committed by a person who, intending to avoid for himself/herself or other person to fully or partially pay taxes, contributions and other prescribed charges, gives false information on lawfully obtained revenues, objects or other facts influencing determination of such obligations, or a person who intending the same in case of obligatory reporting, does not report lawfully obtained revenue, objects and other facts influencing determination of such obligations, or who with the same intention, in some other way, conceals data that refer to determination of the mentioned obligations.

The criminal offence of "Smuggling" is committed by a person engaged in the transport of goods over the customs line evading the customs supervision measures or a person who evading the customs supervision measures transports goods being armed, in a group or using force or threats, as well as the person selling, distributing or hiding goods that have not been cleared through custom, or organising a network of dealers or middlemen for distribution of such goods.

The criminal offence of "Embezzlement" is committed by a person who intending to obtain for himself/herself or another person unlawful material gain appropriates money, securities or other movable property entrusted to him/her by virtue of his/her office or position in a state administration, business company, institution or other entity or activity.

The criminal offence of "Illegal mediation" is committed by a person who accepts a reward or any other benefit for using his/her official or social position or influence to intercede that an official activity is or is not performed; a person who gives, offers or promises a reward or any other

benefit for using his/her official or social position or influence to intercede that an official activity is or is not performed; a person who using his/her official position or influence, intercedes that an official activity that should not be performed is performed, or that an official activity that must be performed is not performed, as well as the person who gives, offers or promises a reward or any other benefit to an official or other person for using his/her official or social position or influence to intercede to perform an official activity which should not be performed or not to perform an official activity which must be performed.

The criminal offence of "Passive bribery" is committed by an official, foreign official as well as an official in a business company 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 person for agreeing to perform within the scope of his/her official powers an act he/she should not perform, or not perform an official act which must be performed, as well as an official, foreign official or an official in a business company 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 person for agreeing to perform within the scope of his/her official powers an official act that should be performed, or to not perform an official act that must not be performed.

The criminal offence of "Active bribing" is committed by a person who gives, offers or promises a gift or other benefit to perform within his/her official powers an official act he/she should not perform, or omit to perform an official act he/she must perform, or who mediates in such a bribery of an official, as well as a person who gives, offers or promises a gift or other benefit to an official to perform within his/her official powers an official act he/she should perform, or omit to perform an official act he/she must not perform, or a person who mediates in such a bribery of an official.

The criminal offence of "Abuse of office" is committed by an official who using his/her official position or authority, exceeding the limits of his/her authority or omitting to perform his/her duties obtains for himself/herself or another person any gain, causes damage to another person or commits a serious violation of rights of another person.

Criminal legislation of Montenegro is applicable to anyone who commits a criminal offence in its territory.

Criminal legislation of Montenegro is also applicable to a national of Montenegro if he/she commits abroad other criminal offences, should he/she be caught in the territory of Montenegro or extradited to Montenegro.

Criminal legislation of Montenegro is also applicable to a foreigner who, outside the territory of Montenegro, commits a criminal offence against it or its national, should he/she be caught in the territory of Montenegro or extradited to Montenegro.

Criminal legislation of Montenegro is also applicable to a foreigner who commits abroad, against a foreign country or a foreigner, a criminal offence for which under the law of the country it was committed in, he may be imposed five year imprisonment or a more severe punishment, should he/she be caught in the territory of Montenegro but not extradited to the foreign country.

Amendments to the Criminal Code of Montenegro are in preparation, and through those amendments new legal provisions will be added, protecting the financial interests of the European Community in a more explicit manner, particularly with regard to tax and customs criminal offences against the financial interests of the European Community.

**179. Does national law provide for the concepts of criminal liability of heads of businesses and liability of legal persons for these offences?**

The Law on Criminal Liability of Legal Persons was published in the Official Gazette of the Republic of Montenegro 2/07 and 13/07.

The Law prescribes conditions for liability of legal persons for criminal offences, criminal sanctions imposed on legal persons, as well as the criminal proceedings in which those sanctions are imposed.

The grounds for liability of a legal person for criminal offence derives from the liability of a **responsible person** (that is a natural person entrusted with certain activities within the legal person, a person authorised to act on behalf of a legal person, a person reasonably assumed to be authorised to act on behalf of a legal person, as well as a natural person who acts as a shareholder on behalf of a legal person) who in acting on behalf of a legal person within his/her official powers committed a criminal offence intending to obtain gain for that legal person. The liability of a legal person also exists when the activities of that responsible person were contrary to the business policy and orders of the legal person. This means that for a liability of legal person for criminal offences to exist, the following conditions must be cumulatively met – that a criminal offence is committed by a natural person - that the natural person has a position of the responsible person in the legal person, - that the responsible natural person acted within his/her official powers, - and finally, for the liability of a legal person to exist there must be a particular intention of the responsible natural person to obtain a gain for the legal person. Apart from the abovementioned conditions, it is emphasised that liability of a legal person exists also when activities of that responsible person were contrary to the business policy or orders of the legal person. The Law also prescribes a possibility that the legal person is liable for a criminal offence even though the responsible person who committed the criminal offence was not convicted of that criminal offence (e.g. when there are procedural obstacles for criminal prosecution due to which he/she could not be convicted – the responsible person was granted immunity from prosecution, etc.)

Criminal liability of legal persons in the Montenegrin criminal legislation is extensive; therefore, according to the Law on Criminal Liability of Legal Persons, legal persons may be liable for all criminal offences from a special part of 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), therefore they are also liable for criminal offences against payment operations and economic transactions from the Chapter XXIII of the Criminal Code of Montenegro. It is also prescribed that a legal person is liable for an attempted criminal offence, if the Criminal Code prescribes that the attempt is punishable.

Sanctions which may be imposed to a legal person for a criminal offence are the following:

- 1) penalty (fine and termination of legal person);
- 2) suspended sentence;
- 3) safety measures

Types of penalties which may be imposed to a legal person are the fine and termination of legal person.

The Law on Criminal Liability of Legal Persons prescribes two systems of the fine penalty. One is prescribed based on the damage caused by the criminal offence, or the obtained material benefit, whereas the other system is prescribed in a certain amount of money. These two systems are defined alternatively; however, the system prescribing a penalty based on the damage caused by the criminal offence or the obtained material benefit is primary, whereas the system prescribing the fine in the certain amount of money is applied when there are no conditions for application of the first system, or if by committing criminal offence no material damage was caused and no gain was obtained, or the scope of damage is difficult to establish in a reasonable period of time, i.e. the period which would not delay the procedure. According to the first penalty system, a fine may not be lower than double the amount of the caused damage or unlawfully obtained material gain or higher than one-hundred-fold amount of the caused damage or unlawfully obtained material gain. Montenegrin legislation also prescribes the general minimum and general maximum for both types of fines, and it is prescribed that, based on the type of the committed criminal offence as well as other circumstances, the fine will be established in the amount not lower than thousand EUR nor higher than five million EUR (the only exception is for criminal offences committed in concurrence, when the amount may be higher). This general minimum serves to prescribe special minimum and maximum amounts within it, as well as for weighing up penalties for the most serious criminal offences for which a special maximum amount is not prescribed.

Since there are no prescribed penalties for some criminal offences for legal persons in the special part of the Criminal Code, as well as in the secondary criminal legislation, the Law on Criminal

Liability of Legal Persons also prescribes the special minimum and maximum for certain categories of criminal offences. Offences are divided into six categories and an appropriate fine is prescribed for each of them. The prescribed amount of the fine that may be imposed to a legal person under the Law on Criminal Liability of Legal Persons is related to the prescribed imprisonment sentence in the Criminal Code, whereas for the minor offences it is related to the fine. These prescribed scopes of punishments, along with the mitigating and aggravating circumstances, represent the basis for weighing up fines for a legal person by the court.

Furthermore, the Law on Criminal Liability of Legal Persons prescribes the procedure for weighing up fines, weighing up fines for recidivism, multi-recidivism, conditions for the reduction of the fine, limits of reduction of the fine and the procedure of weighing up the punishment for concurrence of criminal offences.

The punishment Termination of legal person is the most severe sanction that may be imposed to a legal person. The condition for imposing this punishment is that a legal person is fully or partially used for commission of the criminal offence, or that activities of the legal person were entirely, or to a significant degree, used for the commission of the criminal offence.

The Law on Criminal Liability of Legal Persons also prescribes the possibility to impose a suspended sentence to a legal person, so that a court may impose a fine to the legal person not exceeding one hundred thousand euro, but that it will not be performed if the legal person is not liable for a new criminal offence during the period determined by the court that may not be less than one year and longer than three years (period of supervision).

The Law also prescribes the following safety measures which may be imposed to a liable legal person:

- 1) making and implementation of the program of effective, necessary and reasonable measures;
- 2) confiscation of objects;
- 3) publication of the judgment;
- 4) prohibition from performing certain business and other activities.

The Law on Criminal Liability of Legal Persons applies on a national and foreign legal person liable for the criminal offence committed in the territory of Montenegro, on a foreign person liable for a criminal offence committed abroad to the detriment of Montenegro, its national or a domestic legal person, as well as on a domestic legal person liable for the criminal offence committed abroad.

The Law on Criminal Liability of Legal Persons also prescribes that the provisions of the Criminal Procedure Code are accordingly applied in the criminal procedure against the legal person.

It can be inferred from the abovementioned that in Montenegrin legislation legal persons may be liable for all criminal offences of fraud against financial interests of the European Community, and that Montenegrin courts have jurisdiction over trials for all of these procedures.

#### **180. Has your country established jurisdiction over all of these offences?**

The Law on Courts prescribes that basic courts have jurisdiction to judge in criminal cases in the first instance on criminal offences for which a fine or imprisonment not exceeding 10 years is prescribed by the law as the principal penalty, regardless of the capacity, profession and position of the person against whom the proceedings are instituted, and regardless of whether the criminal offence was committed in peace, during the state of emergency, in a state of imminent war danger or in a state of war, unless for the particular types of these criminal offences the law stipulates the jurisdiction of another court.

The same Law also prescribes that the High Court has jurisdiction to judge in criminal proceedings in the first instance on criminal offences for which imprisonment exceeding 10 years is prescribed by the law as the principal penalty, regardless of the capacity, profession and position of the person against whom the proceedings are instituted, and regardless of whether the criminal

offence was committed in peace, during the state of emergency, in a state of imminent war danger or in a state of war, as well as in criminal proceedings for criminal offences of organised crime, regardless of the scope of the imposed penalty, and in the criminal proceedings for criminal offences with the elements of corruption (e.g. abuse of office), for which eight year imprisonment or more severe penalty is prescribed.

Concerning criminal offences with elements of corruption and organized crime, it should be taken into consideration that specialised departments for proceeding of criminal offences of organized crime, corruption, terrorism and war crimes have been established within High Courts in Podgorica and Bijelo Polje with competencies to bring verdicts. Also, the department has been established within the Supreme Public Prosecutor's Office on the basis of the Law on Public State Prosecutor, published in Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 40/08, for performing tasks of suppressing of organized crime, terrorism and war crimes with competences for prosecuting offenders of these criminal offences.

Regarding applicability of the criminal legislation of Montenegro, it is applicable to anyone who commits a criminal offence in its territory.

Criminal legislation of Montenegro is also applicable to a national of Montenegro when he/she commits abroad other criminal offences, should he/she be caught in the territory of Montenegro or extradited to Montenegro.

Criminal legislation of Montenegro is also applicable to a foreigner who, outside the territory of Montenegro, commits a criminal offence against it or its national, should he/she be caught in the territory of Montenegro or extradited to Montenegro.

Criminal legislation of Montenegro is also applicable to a foreigner who commits abroad, against a foreign country or a foreigner, a criminal offence for which under the law of the country it was committed in, a five year imprisonment or a more severe penalty may be imposed, should he/she be caught in the territory of Montenegro but not extradited to the foreign country.

It can be inferred from the abovementioned that Montenegrin courts have jurisdiction to judge on all criminal offences of fraud against the financial interests of the European Community, regardless of the capacity, profession or position of a person against whom the proceedings are instituted, and regardless of that whether the criminal offence was committed in peace, during the state of emergency, in a state of imminent war danger or in a state of war.

## **Protection of the euro against counterfeiting (“third pillar aspects”)**

### **181. Has your country acceded to the 1929 International Convention on the Suppression of Counterfeiting?**

Montenegro has been a member of the International Convention for the Suppression of Counterfeiting since 29 April 1929. The Convention was signed by the Kingdom of Serbs, Croats, and Slovenes. However, Montenegro has not performed notification of this Convention. In practice, Montenegro acts in compliance with the mentioned Convention, and its provisions are embedded in the national criminal legislation, primarily in the Criminal Code.

### **182. Does national law criminalise the making and altering of counterfeit currency and related offences? Does it ensure that such activity is punished by appropriate criminal penalties, including imprisonment and the possibility of extradition?**

According to the Criminal Code of Montenegro, making and altering of counterfeit currency and related offences are criminalised as offences against payment operations and economic transactions. Criminalised offences defined by the Code are the following: counterfeiting money;

counterfeiting securities; counterfeiting and abuse of credit cards and non-cash payment cards; counterfeiting value bearing marks; making, obtaining and providing others with means for counterfeiting; issuing uncovered checks and non-cash payment means; issuing uncovered securities; counterfeiting signs for marking goods, measures and weights.

Counterfeiting money (Article 258 of the Criminal Code), i.e. banknotes and coins or money made from some other material, which is, under the law, in circulation in Montenegro or a foreign country in a way the concept of money is prescribed by the Criminal Code, is criminalised if a person makes false money with the intention to put it into circulation as real money, or who alters real money with the same intention, for which he/she will be sentenced with two to twelve years of imprisonment. A person who obtains false money with the intention to put it into circulation as real money, or who puts counterfeit money into circulation, will be sentenced with ten years of imprisonment. More serious form of this offence is when by the mentioned acts the counterfeit money exceeding fifteen thousand EUR is made, altered, put into circulation or obtained, and the offender will be punished with five to fifteen years of imprisonment. Lenient form of this offence, for which a fine or imprisonment not exceeding one year is prescribed, is when a person received false money as real, and after realizing it is false puts it into circulation, or if he/she is aware that false money was made or put into circulation and does not report it. False money made by the defined acts is confiscated.

Characteristic of this criminal offence is that the general principle of application of criminal legislation on anyone who commits a criminal offence in its territory is expanded, so for this criminal offence the criminal legislation of Montenegro is applicable to anyone who commits this offence abroad, if the counterfeiting refers to the money which was the legal means of payment in Montenegro at the time the criminal offence was committed.

Counterfeiting securities (Article 259), i.e. documents which with relation to issuers give right to owners, in accordance with the law and under conditions of issuance, as the concept of securities was defined by the Law on Securities, is criminalised if a person makes false securities or alters real securities with the intention to use them as real or give them for use to others, or who uses such false securities as real, or who obtains them with that intention, and for which he/she will be punished by one to five years of imprisonment. More serious forms of this criminal offence are when the total amount of the value of counterfeited securities, made by the defined acts, exceeds three thousand EUR, and the offender will be punished by one to eight years of imprisonment, or, if the total amount of the value of counterfeited securities exceeds thirty thousand EUR, the offender will be punished by two to ten years of imprisonment. Lenient form of this criminal offence, for which the a fine or imprisonment not exceeding one year is prescribed, is when a person puts into circulation false securities which he/she received as real, after becoming aware that they are false. False securities made by the defined acts are confiscated. Also connected to the defined offence is an act of issuing uncovered securities, which is criminalised as followed. If a responsible person in a bank allows issuance of securities to a business company or other entity engaged in business activities who issues securities, even though he/she knew, could have known or was obliged to know that duties of the issuer resulting from the issuance cannot be performed under conditions, terms and manner prescribed by the Law and the decision on issuance, will be punished by a fine or imprisonment not exceeding one year. An official who approves issuance of securities, even though he/she knew, could have known or was obliged to know that duties of the issuer resulting from the issuance cannot be performed under conditions, terms and manner prescribed by the Law and the decision on issuance, will be punished by a fine or imprisonment not exceeding one year, and a responsible person in a bank who approves a guarantee on a certain issuance of securities even though he/she knew, could have known or was obliged to know that duties of a bank assumed with the guarantee cannot be performed under conditions and terms or in a manner prescribed by the law or guarantee, will be punished by a fine of imprisonment not exceeding six months.

Counterfeiting and abuse of credit cards and non-cash payment cards (Article 260) is criminalised if a person makes a false credit card or alters a real credit card with the intention of using it a real one, or who obtains such a false credit card in order to use it or who uses it as a real one, and he/she will be punished by imprisonment not exceeding three years. A special, more severe form of this criminal offence is when an offender of the abovementioned offence obtained unlawful



material benefit by using the card, for which the law prescribes six months to five years of imprisonment; if the amount of the obtained unlawful material benefit exceeds three thousand EUR the prescribed penalty is one to eight years of imprisonment, or if the amount exceeds thirty thousand EUR the prescribed penalty is two to ten years of imprisonment. Moreover, if the offence was committed by unauthorised use of cards property of other people, the law prescribes penalty for all forms of this criminal offence. Related to this criminal offence is the issuance of uncovered checks and non-cash payment means, which is criminalised as followed. If a person uses an uncovered debit card or uses a credit card for which he/she cannot provide cover in the agreed term, thereby obtaining for himself/herself or another person unlawful material benefit in the amount exceeding one hundred and fifty EUR, he/she will be punished by a fine or imprisonment not exceeding three years. The same penalty applies on a person who issues or puts into circulation a check, promissory note, guarantee or any other payment means or means ensuring payment, even though he/she is aware it is not covered, and thereby obtains for himself/herself an unlawful material benefit in the amount exceeding five hundred EUR. If by committing these offences a person obtains material benefit in the amount exceeding three thousand EUR the offender will be punished by one to eight years of imprisonment, whereas if the amount exceeds thirty thousand EUR he/she will be punished by two to ten years of imprisonment.

Counterfeiting value bearing marks (Article 261) is criminalised if a person makes counterfeit or alters real value bearing marks, marks issued based on the state authority and in a prescribed form, and have a certain money value and are use as payment means, with the intention of using them as real ones, or who obtains them with that intention, for which he/she will be punished by imprisonment not exceeding three years. More severe forms of this offence is when the value of signs exceeds the amount of three thousand EUR or thirty thousand EUR, for which the offender of the defined offence will be punished by six months to five years of imprisonment, or one to eight years of imprisonment. Lenient form of this criminal offence is when an offender annuls the value bearing marks by removing the seal or acts in any other way intending to reuse them or sell them as valid, for which he/she will be punished by a fine or imprisonment not exceeding one year. Counterfeit value bearing marks made by the defined acts are confiscated.

Preparation for the defined acts – counterfeiting money, counterfeiting securities, counterfeiting and abuse of credit cards and non-cash payment cards, and counterfeiting value bearing marks, is criminalised by making, obtaining or providing others with counterfeiting means (Article 262). When a person makes, obtains, sells or gives others to use means for making counterfeit money, payment cards or securities, he/she will be punished by six months to five years of imprisonment. Lenient form of this offence is when a person makes, sells or gives others for use means for making counterfeit value bearing signs, when he/she will be punished by a fine of imprisonment not exceeding two years.

Extradition of defendants or convicted persons is requested and performed in compliance with the Law on International Legal Assistance in Criminal Matters from 2008, unless otherwise stipulated by an international treaty. Considering the before mentioned characteristic with relation to the criminal offence of counterfeiting money, for which it is of no significance whether the national committed the offence in Montenegro or in a foreign country, he/she will be prosecuted in Montenegro if the counterfeiting refers to the money which was a legal means of payment in Montenegro at the time the criminal offence was committed and if the offender is caught in the territory of Montenegro. However, for a foreigner who committed the criminal offence abroad and is caught in the territory of Montenegro, there are no obstacles for extradition or for application of the Montenegrin legislation.

With the aim of further harmonisation of criminal legislation of Montenegro with the *acquis communautaire* and other relevant international instruments and good practice, revision of the existing Criminal Code is underway; dispositions of several criminal offences, including criminal offences of counterfeiting, will be supplemented by adding import, export and transport of counterfeit money into forms of committed criminal offences. Furthermore, if banknotes and coins made by using legal means and materials, by violation of rights and conditions under which the authorities may issue currency, without the consent of those authorities. Possession of means for counterfeiting money will be introduced as an additional form of committed criminal offence Making, obtaining and providing others with means for counterfeiting money, as well as non-cash

payment means, whereas holograms and other currency components for protection against forfeiting will be added as additional object of committed criminal offence.

**183. Does national law ensure that it has the appropriate jurisdiction over offences involving counterfeiting, both of the euro and of other currencies?**

The Law on Courts prescribes that basic courts have jurisdiction to run trial proceedings in criminal cases in the first instance on criminal offences for which a fine or imprisonment not exceeding 10 years is prescribed by the law as the principal punishment, regardless of the capacity, profession and position of the person against whom the proceedings are instituted, and regardless of whether the criminal offence was committed in peace, during the state of emergency, in a state of imminent war danger or in a state of war, unless for the particular types of these criminal offences the law stipulates the jurisdiction of another court. The same Law also prescribes that the High Court has jurisdiction to judge in criminal proceedings in the first instance on criminal offences for which imprisonment exceeding 10 years is prescribed by the law as the principal punishment, regardless of the capacity, profession and position of the person against whom the proceedings are instituted, and regardless of whether the criminal offence was committed in peace, during the state of emergency, in a state of imminent war danger or in a state of war, as well as in criminal proceedings for criminal offences of organised crime, regardless of the scope of the imposed punishment, and in the criminal proceedings for criminal offences with the elements of corruption (e.g. abuse of office), for which eight year imprisonment or more severe punishment is prescribed.

Regarding applicability of the criminal legislation of Montenegro, it is applicable to anyone who commits a criminal offence in its territory. Criminal legislation of Montenegro is also applicable to anyone who commits abroad a criminal offence of counterfeiting money, if counterfeiting refers to the money which was lawful means of payment in Montenegro at the time the criminal offence was committed. Criminal legislation of Montenegro is also applicable to a national of Montenegro when he/she commits abroad other criminal offences, should he/she be caught in the territory of Montenegro or extradited to Montenegro.

Criminal legislation of Montenegro is also applicable to a foreigner who, outside the territory of Montenegro, commits a criminal offence against it or its national, should he/she be caught in the territory of Montenegro or extradited to Montenegro.

Criminal legislation of Montenegro is also applicable to a foreigner who commits abroad, against a foreign country or a foreigner, a criminal offence for which under the law of the country it was committed in, a five year imprisonment or a more severe punishment may be imposed, should he/she be caught in the territory of Montenegro but not extradited to the foreign country.

It can be inferred from the above mentioned that Montenegrin courts have jurisdiction to judge on all of these criminal offences, regardless of the capacity, profession or position of a person against whom the proceedings are instituted, and regardless of that whether the criminal offence was committed in peace, during the state of emergency, in a state of imminent war danger or in a state of war.

**184. Does national law provide for the concept of criminal liability of legal persons for these offences?**

The Law on Criminal Liability of Legal Persons was published in the Official Gazette of the Republic of Montenegro 2/07 and 13/07.

The Law prescribes conditions for liability of legal persons for criminal offences, criminal sanctions imposed on legal persons, as well as the criminal proceedings in which those sanctions are imposed.

The grounds for liability of a legal person for criminal offences derives from the liability of a

responsible person (that is a natural person entrusted with certain activities in the legal person, a person authorised to act on behalf of a legal person, a person reasonably assumed to be authorised to act on behalf of a legal person, as well as a natural person who acts as a shareholder on behalf of a legal person) who in acting on behalf of a legal person within his/her official powers committed a criminal offence intending to obtain gain for that legal person. The liability of a legal person also exists when the activities of that responsible person were contrary to the business policy and orders of the legal person. This means that for a liability of legal person for criminal offences to exist, the following conditions have to be cumulatively met – that a criminal offence is committed by a natural person - that the natural person has a position of the responsible person in the legal person, - that the responsible natural person acted within his/her official powers, - and finally, for the liability of a legal person to exist there must be a particular intention of the responsible natural person to obtain a gain for the legal person. Apart from the abovementioned conditions, it is emphasised that liability of a legal person exists also when activities of that responsible person were contrary to the business policy or orders of the legal person. The Law also prescribes a possibility that the legal person is liable for a criminal offence even though the responsible person who committed the criminal offence was not convicted of that criminal offence (e.g. when there are procedural obstacles for criminal prosecution due to which he/she could not be convicted – the responsible person was granted immunity from prosecution, etc.)

Criminal Liability of Legal Persons in the Montenegrin criminal legislation is extensive; therefore, under the Law on Liability of Legal Entities for Criminal Offence, legal persons may be liable for all criminal offences from a special part of 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), therefore they are also liable for criminal offences against payment operations and economic transactions from the Chapter XXIII of the Criminal Code of Montenegro. It is also prescribed that a legal person is liable for an attempted criminal offence, if the Criminal Code prescribes that the attempt is punishable.

Sanctions which may be imposed to a legal person for a criminal offence are the following:

- 4) penalty (fine and termination of legal person);
- 5) suspended sentence;
- 6) safety measures

Types of penalties which may be imposed to a legal person are the fine and termination of legal person.

The Law on Criminal Liability of Legal Persons prescribes two systems of the fine penalty. One is prescribed based on the damage caused by the criminal offence, or the obtained material benefit, whereas the other system is prescribed in a certain amount of money. These two systems are defined alternatively; however, the system prescribing a penalty based on the damage caused by the criminal offence or the obtained material benefit is primary, whereas the system prescribing the fine in the certain amount of money is applied when there are no conditions for application of the first system, or if by committing criminal offence no material damage was caused and no gain was obtained, or the scope of damage is difficult to establish in a reasonable period of time, i.e. the period which would not delay the procedure. According to the first penalty system, a fine may not be lower than double the amount of the caused damage or unlawfully obtained material gain or higher than a one-hundred-fold amount of the caused damage or unlawfully obtained material gain. Montenegrin legislation also prescribes the general minimum and general maximum for both types of fines, and it is prescribed that, based on the type of the committed criminal offence as well as other circumstances, the fine will be established in the amount not lower than a thousand EUR nor higher than five million EUR (the only exception is for criminal offences committed in concurrence, when the amount may be higher). This general minimum serves to prescribe special minimum and maximum amounts within it, as well as for meting out penalties for the most serious criminal offences for which a special maximum amount is not prescribed.

Since there are no prescribed penalties for some criminal offences for legal persons in the special part of the Criminal Code, as well as in the secondary criminal legislation, the Law on Criminal Liability of Legal Persons also prescribes the special minimum and maximum for certain

categories of criminal offences. Offences are divided into six categories and an appropriate fine is prescribed for each of them. The prescribed amount of the fine that may be imposed to a legal person under the Law on Criminal Liability of Legal Persons is related to the prescribed imprisonment sentence in the Criminal Code, whereas for the minor offences it is related to the fine. These prescribed scopes of penalties, along with the mitigating and aggravating circumstances, represent the basis for weighing up fines for a legal person by the court.

The penalty Termination of legal person is the most severe sanction that may be imposed to a legal person. The condition for imposing this penalty is that a legal person is fully or partially used for commission of the criminal offence, or that activities of the legal person were entirely, or to a significant degree, used for the commission of the criminal offence.

The Law on Criminal Liability of Legal Persons also prescribes the possibility to impose a suspended sentence to a legal person, so that a court may impose a fine to the legal person not exceeding one hundred thousand EUR, but that it will not be performed if the legal person is not liable for a new criminal offence during the period determined by the court that may not be less than one year and longer than three years (period of supervision).

The Law also prescribes the following safety measures which may be imposed to a liable legal person:

- 5) making and implementation of the program of effective, necessary and reasonable measures;
- 6) confiscation of objects;
- 7) publication of the judgment;
- 8) prohibition from performing certain business and other activities.

The Law on Criminal Liability of Legal Persons applies on a national and foreign legal person liable for the criminal offence committed in the territory of Montenegro, on a foreign person liable for a criminal offence committed abroad to the detriment of Montenegro, its national or a domestic legal person, as well as on a domestic legal person liable for the criminal offence committed abroad.

The Law on Criminal Liability of Legal Persons also prescribes that the provisions of the Criminal Procedure Code are also accordingly applied in the criminal procedure against the legal person.

It may be inferred from the abovementioned that in Montenegrin legislation legal persons may be liable for all criminal offences against payment operations and economic transactions from the Chapter XXIII of the Criminal Code of Montenegro, and that Montenegrin courts have jurisdiction to judge on all of these procedures.

**185. Does your country recognise, for the purposes of establishing habitual criminality, sentences handed down in other Member States for these offences?**

According to the Criminal Code provisions (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06 and Official Gazette of Montenegro 40/08), repetition of offence exists when, after being convicted of the previous offence, an offender commits the criminal offence again. Repetition of offence is a facultative aggravating circumstance in the process of weighing up a penalty, meaning that in considering all circumstances of a particular case and the previous conviction, a court may impose a severe penalty to the offender, but within the limits of a special minimum and special maximum for the committed offence. In deciding whether to regard repetition as an aggravating circumstance, the court takes special account of the similarity between the offence previously convicted of and the new offence, or whether the previous offence was the same type as the new offence, whether both offences were committed from the same motives, the circumstances under which the offences were committed, as well as what period of time has passed since the previous conviction, i.e. the sentence served, remitted or statute barred.

Montenegrin criminal legislation considers multi-recidivism as facultative basis for a more severe penalty. To consider an offender of a criminal offence a recidivist, several cumulatively prescribed

conditions are to be met. The court may, but does not have to impose a more severe penalty. As prescribed by the Code, in considering the court should take into account certain circumstances such as the similarity between the criminal offences, motives from which they were committed, circumstances under which they were committed and the need to impose a more severe penalty in order to achieve the purpose of the penalty.

In accordance with Article 88 of the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 7/04 and 47/06), for the purposes of criminal proceedings ex officio the court procures the extract from criminal records, based on which it is established whether the person tried was previously convicted.

If the defendant is a foreign national, the court procures the extract from criminal records of that person through International Legal Assistance.

According to the Rulebook on Criminal Records (Official Gazette of the Socialist Federative Republic of Yugoslavia 5/79), criminal records are kept for all persons convicted of criminal offences committed in the territory of Montenegro, as well as for persons convicted of criminal offences by foreign courts, if the judgments by foreign courts are submitted to the Montenegrin authorities.

For nationals of Montenegro born in Montenegro, as well as for foreign nationals and stateless persons born in Montenegro, criminal records are kept according to the place of birth of convicted persons, whereas for nationals of Montenegro born abroad and for foreign persons born abroad, as well as for persons whose place of birth is unknown, criminal records are kept according to the seat of the court of the first instance which passed the judgment. The new Criminal Code Procedure (Official Gazette of Montenegro 57/09), whose implementation will start a year after its entering into force, prescribes that criminal records of persons convicted of criminal offences committed in the territory of Montenegro, as well as those convicted of criminal offences by foreign courts, will be kept by the ministry competent for judicial matters.

The Law on International Legal Assistance in Criminal Matters (Official Gazette of Montenegro 4/08) prescribes that in the event of recognition of the foreign judgment, pursuant to the national regulations, the national court having jurisdiction over the recognition, imposes a criminal sanction the most approximate in type and severity to the criminal sanction imposed by the foreign court, which must not be more severe than the criminal sanction imposed by the foreign court.

Based on the defined normative framework in the event of a repetition of offence, judgments passed in other states for these types of criminal offences, as well as for any other criminal offence, shall be recognised.

**186. Have you formally designated a National Central Office on currency counterfeiting in line with Article 12 of the 1929 Geneva Convention and Regulation 1338/2001?**

The Central Bank of Montenegro (CBM) has not formally designated the National Counterfeit Centre (NCC). Article 4 of the Co-operation Agreement between ECB and CBM (January 2009), prescribes the obligation of the Central Bank of Montenegro “to establish, or that it will establish as soon as practically possible, the internal function, similar to the one in the NCC of the national central bank, as defined by the Decision ECB/2001/11...” The Agreement was signed at the end of 2008, that is, the beginning of 2009, but NCC has not been officially established yet (a legal regulation is needed), and a part of NCC activities are currently performed by the Division for Numismatics and Expertise. This obligation will be fulfilled as soon as the necessary legal conditions are met.

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