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UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review *

Montenegro

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

* The present document was not edited before being sent to the United Nations translation services.

RESPONSES OF MONTENEGRO TO RECOMMENDATIONS

Recommendation 1

1. The Government of Montenegro adopted Draft Law on Ratification of the United Nations Convention on the Rights of Persons with Disability with the Optional Protocol on 18 December 2008 and submitted it to the Parliament for its approval. Optional protocol to CAT was ratified on 31 December 2008.

Recommendation 2

2. Since renewal of its independence Montenegro has submitted reports on implementation of CAT, CERD, CRC, while the reports on implementation of CEDAW, ICESCR and ICPCR are being drafted.

Recommendation 4

3. International cooperation in the area of environmental protection is reflected in the membership in multilateral agreements in this area, their full implementation and in bilateral and regional cooperation.

Recommendation 5

4. According to the Constitution the international legislation is a part of the legal framework of Montenegro, and is prevailing over the national legislation and is directly applied in cases where it regulates relations in a way different from the national legislation. This implies that the rules of international law may be applied by national authorities in all cases when such rules are suitable to be directly applied and where they do not require further processing in the national legislation.

Recommendation 6

5. It is expected that the Government will soon adopt the Draft Law on Discrimination Ban upon which a public debate will be organized and draft law will be approved by the Parliament in the first quarter of 2009.

6. According to the Draft law the special cases of discrimination include: discrimination in actions before authorities; in the area of public service providing; in using facilities and areas in public use; with regard to health condition; in the area of nurture, education and professional qualification; in the area of employment and labor relations; due to disability in employment; due to disability in effectuation of rights from employment; in respect of gender, gender identity and sex orientation; in respect of use of election right; in respect of marital and family relations; in respect of religion and discrimination of minorities.

Recommendation 7

7. The Gender Equality Law and the Plan of Activities for achieving the gender equality 2008-2012, provide for solid grounds for achieving the set goals. The activities from the Plan have already been undertaken in cooperation with the civil sector. Special attention is paid to the issue of violence against women and family violence, as well as to achieving full equality in the labor market.

Recommendation 8

8. The Labor Law clearly prohibits harassment, defined as any undesirable behavior caused by any of the grounds defined in the provision on prohibition of discrimination (gender, birth, pregnancy, health condition, nationality, marital status, family obligations, sexual orientation and other). Sexual harassment is defined as any unwanted verbal, non-verbal or physical behavior aimed at or constituting violation of dignity of the person seeking employment, as well as the employed person in the sphere of sexual life, and which causes fear or creates hostile, humiliating aggressive or insulting environment.

Recommendation 9

9. The Government adopted the National Strategy for Fight against Trafficking in Human Beings in 2003.

10. The new Action Plan for Fight against Human Trafficking, adopted on 25 December 2008, gives special attention to the area of identification, aid and protection of victims, efficient criminal prosecution of perpetrators and cooperation.

11. On 15 September 2006 the „Code of conduct for the protection of children from sexual exploitation in travel and tourism“ was signed within the joint project of the Government and the OSCE „Cooperation between the Public-Private Co-operation in the prevention of trafficking and sexual exploitation of minors in travel and tourism“.

12. With a view of improving the system of protection of human trafficking victims, since the beginning of 2006 the Government has been allocating funds for smooth functioning of the Shelter for human trafficking victims in order to provide: health, psychological, social and legal aid, accommodation, food and other necessary aid.

13. Montenegro cooperates with INTERPOL, EUROPOL and SECI Center in the fight against human trafficking and also has signed number of bilateral agreements in this area. In 2008 there were two cases of human trafficking detected and both in cooperation with neighboring countries.

14. The Agreement on Cooperation between Supreme State Prosecutor, Governmental institutions and NGOs was signed in 2007 with the purpose of prevention, education, reporting and criminal prosecuting of perpetrators and protection of potential human trafficking victims.

Recommendation 10

15. The Criminal Code prescribes the criminal liability for a criminal act – Family or Domestic Violence. More serious form of this criminal act is envisaged for a perpetrator committing acts that endanger bodily and emotional integrity of a minor person. The measures for protection of a child from violence are established in the family law.

16. The Draft Law on Family Violence was prepared in cooperation with the civil secotr and its adoption by the Government is planned for the first quarter of 2009.

Recommendation 11

17. Educational programs and training are regularly organized for judicial officials and police officers in cooperation with the CoE and OSCE. The educational programs are related to the

implementation of international standards in human rights, particularly the ban of discrimination and equal treatment, family violence, right to freedom of expression, tactics and technique for conduct of informative interviews and basic training of the police for control of mass gatherings.

18. Education for judicial authorities is performed within the Center for education of judicial officials, organized as a special organizational unit of the Supreme Court. Education of judges and prosecutors is regulated by the Law on Education in Judicial Authorities.

19. Human Rights and Code of Police Ethics and a subject related to international humanitarian law are part of the curricula of the Police Academy.

Recommendation 12

20. Constitutional and law provisions envisaging autonomous and independent courts, permanence of judicial office, its incompatibility with other functions, as well as function immunity, have created the assumptions for independence of the judicial system. The introduction of the institute of the Judicial Council and Disciplinary Commission strengthened the system of independent and efficient appointing, as well as the procedure of release from duty in the judiciary. The prescribed criteria for selection of judges are aimed at strengthening independence, expertise and efficiency of courts.

21. In addition to the instance supervision by higher courts which includes regular annual control of work of all courts performed by the Supreme Court, the supervision by the officials of the Ministry of Justice over the performance of activities of the judicial administration, that is, compliance with legal deadlines, the established competence of the Judicial Council on performance of the supervision of the activities of courts and judges, the supervision by NGO was performed as well.

22. The Action Plan envisages a range of measures and activities for the purpose of strengthening judicial institutions.

Recommendation 13

23. Montenegro will continue to fully cooperate with ICTY and remains open to provide any assistance to the representatives of the Tribunal on the territory of Montenegro, and to cooperate in finding and bringing accused persons before the Court, if it is identified that they are staying on the territory of Montenegro.

Recommendations 3 and 14

24. Media-related laws regulate the right to freedom of expression.

25. The Law on Media stipulates that media in Montenegro are free and that freedom of information is guaranteed in line with standards contained in international documents on human rights and freedoms. This Law should be interpreted and applied in accordance with the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, while using the practice of the judicial precedent of the European Court of Human Rights. The Law stipulates that the court will decide, under an immediate procedure, on violations of freedom of information based on the Constitution and the Law.

26. The Constitution of Montenegro and media legislation are fully aligned with Article 19 of ICCPR, which represents a constituent part of the national legal order in accordance with Article 9 of the Constitution.

27. With regard to the criminal legislation, only a pecuniary fine is prescribed for crimes against honour and reputation and those are processed only upon a private lawsuit. The expert review of the CoE has indicated that these are common incriminations in Europe and those are not contrary to the case law of the European Court of Human Rights, nor to the Article 10 of the European Convention on Human Rights. Only two countries in Europe out of 40 whereat the research was conducted do not incriminate these acts. Defamation through media represents a form of severe crime in the Montenegrin law. It is prescribed that the unlawfulness in case of defamation and insult is excluded in case that the statement was a part of performance of journalist profession, if it could be established based on circumstance that so was not done with the intent to belittle or if the journalist proves the veracity of his/her statement or grounds of allegations.

28. In the period 2006-2008, only three cases of verbal threat to journalists over the phone were registered. In all three cases, perpetrators were identified and cases put through to a prosecutor for consideration. In one out of these three cases, the prosecutor has made a decision to file criminal charges.

29. In the same period, one case of assault on newspaper's editorial office (broken window) was also reported. A perpetrator was identified, case submitted to the prosecutor, and damaged party referred to a procedure in a private lawsuit.

30. Three cases of physical assault on journalists were registered, out of which in one case perpetrators were identified and criminal proceeding was instigated against them. In other two cases, intensive measures and activities to resolve cases and identify perpetrators are undertaken; while in one of them criminal charges were also filed against N.N. perpetrators.

31. One case of verbal threat against one human rights defender was registered up to now in Montenegro. A detailed report on undertaken actions to resolve this case was submitted to the Special Rapporteur to the United Nations High Commissioner for Human Rights. Police officers continue to undertake measures and specific actions in order to resolve the case. All forms of harassment and threats against the defender have stopped shortly after an official investigation was opened.

Recommendation 15

32. The Constitution prohibits any indirect and direct discrimination at any ground.

33. The Constitution of Montenegro uses terms minority nations and other minority national communities. The Law on Minority Rights and Freedoms defines the term "minority", which implies "any group of citizens of Montenegro, numerically smaller than the prevailing population, having common ethnical, religious, or language characteristics different than the rest of the population, having historical bond with Montenegro and motivated by the desire to express and preserve national, ethnical, cultural, language, and religious identity". The Law prohibits any indirect and direct discrimination at any ground, including also race, colour, sex, nationality, social origin, birth, or similar status, religious, political or other believes property, culture, language, age, and psychological or physical disability.

34. Pursuant to the Law on Minority Rights and Freedoms, electoral assemblies for the selection of members of following minorities' councils were held up to now: Croatian, Bosnian, Roma, Muslim, Albanian and Serbian councils.

35. The Fund for Minorities was established in February 2008 to support activities of preservation and development of national and ethnical specificities of minority nations and other minority national communities and their members. In 2008, the Fund had at disposal EUR 422,150, while the funds planned for 2009 amount to EUR 1,009,000.

36. The Minority Policy Strategy, dated July 2008, represents a fundamental document for improvement and protection of economic, social, and cultural minorities' rights.

Recommendations 3, 16 and 17

37. The Government of Montenegro strives, through the adoption of strategic documents and their implementation, to improve living conditions and position of the RAE population.

38. The Office for Care of Refugees keeps a database of internally displaced persons, which is updated on daily basis. There are 16,234 IDPs from Kosovo in Montenegro; out of that, 4,400 persons are RAE members. During 2007-2008 1,263 RAE population children attended elementary school, 28 secondary school, and 8 university. The Roma children cannot be educated if their parents do not understand the need for that, which represents the major obstacle to their inclusion into the formal educational system of Montenegro.

39. Statistical data on RAE population children are kept as part of the Database on Children with Special Educational Needs, based on so called international category "C / special needs", in line with their socio-economic, cultural and/or linguistic specificities.

40. As of school year 2008/09, the Ministry of Education and Science, in cooperation with the Red Cross of Montenegro, Danish Red Cross, UNHCR, and UNICEF, is carrying out a project for the education of Roma population of the largest Montenegrin refugee camp.

41. Seminars for the teaching staff were organized through the Project "Integration of Roma Children into Mainstream Educational System" in order for them to adopt methods and techniques of individual work with children with special educational needs.

42. All displaced persons, from the initial arrivals, were registered under equal conditions. Persons having no identity documents along (whatever where the reasons) were also treated in the same way as persons who presented their identity documents.

43. In March 2005, the Government adopted the Strategy for Permanent Resolution of the Problems of Refugees and Internally Displaced Persons in order to implement the overall commitment of Montenegro for permanent resolution of problems of this category of person. The Strategy contains a series of projects and funds amounting to EUR 100,000,000 are allocated for its implementation.

44. Following legislation was adopted: Law on Asylum; Decree on Pecuniary Assistance to Asylum Seekers, Persons Recognized with the Refugee Status, and Persons Approved with Additional Protection; Law on Citizenship; and Law on Foreigners. Decision on temporary preservation of status and rights of displaced and internally displaced persons in the Republic of Montenegro is still effective.

45. The Ministry of Interior and Public Administration and the Office for Care for Refugees will initiate, in cooperation with UNHCR, the procedure for re-evaluation of the status of displaced persons (from former Yugoslav republics) and re-registration of internally displaced persons from Kosovo. The re-registration will be conducted in the first half of 2009.

Recommendation 18

46. At the time of acceptance of all displaced persons, and with the intention to facilitate position of displaced persons from former Yugoslav republics and internally displaced persons from Kosovo, Montenegro enabled to all persons to enjoy large number of rights in an equal manner as is doing so for the citizens of Montenegro: employment, health protection, education, freedom of movement, and other.

47. Non-discriminatory policy was applied towards displaced persons in Montenegro.

Recommendation 19

48. The Law on Montenegrin Citizenship and secondary regulations thereof have created a legal possibility for displaced persons and refugees to acquire Montenegrin citizenship. A person recognised with the refugees status in Montenegro, in accordance with the law that governs asylum, and a person with no citizenship may acquire the Montenegrin citizenship by admission to citizenship upon meeting conditions set by the Law, among which is also a certain period of a legal and interrupted residence in Montenegro.

49. The Government has adopted the Decision on Criteria for Determining Conditions to Acquire Montenegrin Citizenship. The Decision stipulated that a person that resides on the territory of Montenegro based on the approval of the authority competent for temporary residence and habitual residences prior to the submission of the request for admission to Montenegrin citizenship has the legal residence and has: the habitual residence based on the Law on Habitual Residence and Temporary Residence and earlier laws on habitual residence and temporary residence, residence for an open-ended period (permanent settlement), residence on the account of recognised refugee status in Montenegro, residence on the account of recognised status of a displaced person from the republic of the former SFRY in Montenegro, pursuant to the Decree on Care for Displaced Persons.

50. The implementation of the Law on Montenegrin Citizenship, Law on Asylum, and Law on Foreigners created conditions for resolution of the legal status of refugees in an adequate manner, i.e. to avoid the statelessness.

Recommendation 20

51. International community has recognized a positive role of Montenegro in resolving problem of displaced persons in the region, however technical and financial assistance to continue with the implementation of the Strategy leading to sustainable resolution of the displaced persons issues is still necessary.

VOLUNTARY COMMITMENTS OF THE STATE UNDER REVIEW

52. Reference is made to the commitments of Montenegro in its report to the UPR.

16 February 2009
