



**International Covenant on  
Civil and Political Rights**

Distr.: General  
22 January 2013

Original: English

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Initial reports of States parties**

**Montenegro\***

[4 October 2012]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

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\* The annex can be consulted in the files of the Secretariat.

## **I Introduction**

1. Since the proclamation of its independence on 3 June 2006, Montenegro has implemented and assumed all the international treaties and agreements it had concluded and acceded to as the State Union of Serbia and Montenegro and which refer to Montenegro and comply with its legal order, pursuant to the Decision on Proclamation of Independence of the Republic of Montenegro (Official Gazette of RMNE 36/2006) adopted by the Parliament of Montenegro.

2. Montenegro is a State party to the International Covenant on Civil and Political Rights and additional protocols thereto: Optional Protocol to the International Covenant on Civil and Political Rights (Official Gazette of FRY – International Treaties 4/01) and Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims at abolishing death penalty (Official Gazette of FRY – International Treaties 4/01).

3. Pursuant to article 40, paragraph 1, of the International Covenant on Civil and Political Rights (Official Gazette of SFRY 7/71), the initial report on implementation of the International Covenant on Civil and Political Rights was prepared, including measures taken with regard to the rights recognized in this Covenant, as well as the results achieved in the exercise of such rights.

4. The following participated in preparation of the initial report on implementation of the International Covenant on Civil and Political Rights: Ministry of Justice and Human Rights, Ministry of Minority Rights, Ministry of Interior, Ministry of Labour and Social Welfare, Ministry of Health, Ministry of Culture and Ministry of Foreign Affairs and European Integration. The report also incorporates data on activities and results of the Supreme Court of Montenegro, Police Directorate and Protector of Human Rights and Freedoms. Contribution to this report was also made by numerous non-governmental organizations active in the fields of protection of human rights and judicial system. In addition to the statistical data of competent departments, the report also contains data of the Statistical Office of Montenegro – Monstat.

## **II. General information**

5. The Constitution of Montenegro (Official Gazette of Montenegro 1/07) stipulates that Montenegro is an independent and sovereign State, with the republican form of government. Montenegro is a civil, democratic, ecological and a State of social justice, based on the rule of law. Bearer of sovereignty is the citizen of Montenegrin citizenship. The citizen exercises power directly and through the freely elected representatives.

6. The power not stemming from the freely expressed will of the citizens in democratic election in accordance with the law can neither be established nor recognized. Power is regulated in the Constitution by following the principle of the division of powers into: legislative, executive and judicial. The legislative power is exercised by the Parliament, the executive by the Government and the judicial by courts. Power is limited by the Constitution and the law. The relationship between powers is based on checks and balances.

7. Montenegro is represented by the President of Montenegro. Constitutionality and legality are protected by the Constitutional Court. Army and security services are under democratic and civil control. The official language in Montenegro is Montenegrin. Cyrillic and Latin alphabet are equal. Serbian, Bosniac, Albanian and Croatian are also in the official use.

8. Montenegro cooperates and develops friendly relations with other States, regional and international organizations, based on the principles and rules of international law. Montenegro may accede to international organizations. The Parliament decides on the manner of accession to the European Union. Montenegro may not enter into a union with another State by which it loses its independence and full international recognition.

9. Montenegro guarantees and protects rights and freedoms. The rights and freedoms are inviolable. Everyone is obligated to respect the rights and freedoms of others. The Constitution of Montenegro prohibits infliction or encouragement of hatred or intolerance on any ground, as well as any direct and indirect discrimination on any ground. The ratified and published international agreements and generally accepted rules of international law make an integral part of the internal legal order, have supremacy over the domestic legislation and are directly applicable when they regulate the relations differently from the domestic legislation.

10. Under the Constitution, anything not prohibited by the Constitution and the law in Montenegro is free. Everybody is obligated to abide by the Constitution and the law. Religious communities are separated from the State. Religious communities are equal and free in the exercise of religious rites and religious affairs.

11. The Constitution of Montenegro guarantees human rights and freedoms. Fundamental constitutional principles of human and minority rights include: grounds for the exercise of rights and freedoms and equality before the law, gender equality, right to equal protection of rights and freedoms, right to legal remedy against the decision ruling on a right or legally based interest thereof, right to legal aid, right to local governance, right to a healthy environment. Guaranteed human rights and freedoms may be limited only by the law, within the scope permitted by the Constitution and to such an extent which is necessary to meet the purpose for which the limitation is allowed in an open and democratic society. Limitations may not be introduced for any other purposes except for those for which they have been stipulated. During the proclaimed state of war or emergency, the exercise of certain human rights and freedoms may be limited to the necessary extent. The limitations may not be introduced on the grounds of sex, nationality, race, religion, language, ethnic or social origin, political or other beliefs, financial standing or any other personal feature. There may be no limitations imposed on the rights to: life; legal remedy and legal aid; dignity and respect for a person; fair and public trial and principle of legality; presumption of innocence; defence; award of damages for unlawful or unjustified deprivation of liberty and unjustified conviction; freedom of thought, conscience and religion; entry into marriage. There may be no abolishment of the prohibition of: inflicting or encouraging hatred or intolerance; discrimination; trial and conviction twice for one and the same criminal offence (*ne bis in idem*); forced assimilation. Measures of limitation may be in effect at the most for the duration of the state of war or emergency.

12. The Constitution guarantees protection of individual rights and freedoms through: prohibition of death penalty; right of a person and dignity of a human being with regard to the application of biology and medicine, prohibition of any intervention aimed at creating a human being that is genetically identical to another human being, living or dead; prohibition to perform medical and other experiments on human beings, without their permission; dignity and security of a person; right to personal freedom, respect for human personality and dignity in criminal and other proceedings in the event of deprivation of liberty or restriction of liberty and during the execution of imprisonment sentence; right to a fair and public trial; principles of legality, more lenient law, presumption of innocence, the *ne bis in idem* principle; right to defence; right to the award of damages for unlawful action; right to freedom of movement and residence; right to privacy, inviolability of home, confidentiality of correspondence, personal data protection and right to asylum.

13. The Constitution guarantees protection of political rights and freedoms: electoral right, freedom of thought, conscience and religion, freedom of expression, conscientious

objection, freedom of press, prohibition of censorship, right to access to information, freedom of assembly, freedom of association, right to address international organizations, as well as the grounds for limitation on rights and freedoms.

14. The Constitution guarantees protection of economic, social and cultural rights and freedoms: property right, freedom of entrepreneurship, right to succession, right of foreigners, right to work, prohibition of forced labour, rights of the employed, right to strike, social insurance, special protection of persons with disability, healthcare, consumer protection, protection of mother and child, child rights, right to education, freedom of creation.

15. The Constitution also guarantees protection of special minority rights. Persons belonging to minority nations and other minority communities are guaranteed the rights and freedoms which they can exercise individually or collectively with others, as follows: right to exercise, protect, develop and publicly express national, ethnic, cultural and religious particularities; right to choose, use and publicly post national symbols and celebrate national holidays; right to use their own language and alphabet in private, public and official use; right to education in their own language and alphabet in public institutions and right to have included in the curricula the history and culture of persons belonging to minority nations and other minority national communities; right, in the areas with significant share in the total population, to have the local government bodies, State and court authorities carry out the proceedings in the language of minority nations and other minority national communities; right to establish educational, cultural and religious associations, with the financial support from the State; right to write and use their own name and surname also in their own language and alphabet in the official documents; right, in the areas with significant share in total population, to have traditional local terms, names of streets and settlements, as well as topographic signs written in the language of minority nations and other minority national communities; right to authentic representation in the Parliament of Montenegro and in the assemblies of the local government units in which they represent a significant share in the population, according to the principle of affirmative action; right to proportionate representation in public services, State authorities and local government bodies; right to information in their own language; right to establish and maintain contacts with the citizens and associations outside of Montenegro, with whom they have common national and ethnic background, cultural and historic heritage, as well as religious beliefs; right to establish councils for the protection and promotion of special rights.

16. The Constitution prohibits forced assimilation of persons belonging to minority nations and other minority national communities and lays down the obligation of the State to protect persons belonging to minority nations and other minority national communities against all forms of forced assimilation.

17. Under the Constitution of Montenegro, the Protector of Human Rights and Freedoms of Montenegro is an autonomous and independent body that takes measures for protecting human rights and freedoms. The Protector of Human Rights and Freedoms discharges duties on the basis of the Constitution, the law and ratified international treaties, while observing the principles of justice and fairness.

18. Under article 145 of the Constitution, the law must be in compliance with the Constitution and ratified international treaties, while another piece of regulation must be in compliance with the Constitution and the law.

### III. Implementation of specific provisions of the Covenant

#### Article 1 – Self-determination

19. Under the Constitution, Montenegro is defined as a civil State. The territory of Montenegro is pursuant to article 3 unified and inalienable. The Constitution of Montenegro prohibits operation of political and other organizations directed towards forceful destruction of the constitutional order, violation of the territorial integrity of Montenegro, breach of guaranteed rights and freedoms or instigating national, racial, religious and other hatred and intolerance. The establishment of secret subversive organizations and irregular armies is prohibited.

20. Amendments to the articles of the Constitution referring to the State, its sovereignty, State territory and national symbols, Montenegrin citizenship, language and alphabet, relations with other States and international organizations and electoral right becomes final once the minimum of three fifths of all the voters have supported the amendments in the national referendum. The proposal to call for the national referendum may be submitted by: at least 25 Members of the Parliament, the President of Montenegro, the Government or at least 10 per cent of citizens with the right to vote. The Parliament of Montenegro decides on calling for the national referendum.

21. The Law on Referendum (Official Gazette of RMNE 9/2001) regulates calling for and administration of the referendum, as a form of prior pronouncement of citizens, as well as the authorities conducting the referendum, the manner of direct pronouncement of citizens in the referendum and protection of civil rights in the referendum. The referendum in Montenegro is called for with the aim of prior pronouncement of citizens on certain matters falling under the competence of the Parliament of Montenegro, in the territory or a part of the territory of Montenegro. The republican referendum must be called for with the aim of prior pronouncement of citizens on changes in the status of the country, changes in the form of the Government and any changes of frontiers. The republican referendum may be called for with the aim of previous pronouncement of citizens on certain matters falling under the competence of the Parliament. Referendum results are binding on the Parliament which called for the referendum. The decision on calling for the referendum is adopted by the Parliament by the majority of votes of the total number of MPs in the Parliament.

22. The Constitution of Montenegro guarantees rights and freedoms to the persons belonging to minority nations and other minority national communities, which they may exercise either individually or collectively with others. Moreover, the Constitution of Montenegro prohibits forced assimilation of persons belonging to minority nations and other minority national communities and lays down the obligation of the State to protect persons belonging to minority nations and other minority national communities against all forms of forced assimilation.

23. Article 39 of the Law on Minority Rights and Freedoms (Official Gazette of RMNE 31/06, 38/07 and Official Gazette of MNE 2/11 and 8/11) prohibits measures and activities which would change structure of the population in the areas populated by persons belonging to minority nations and other minority national communities, and which aim to limit legal rights and freedoms.

#### Article 2 - Equal protection of rights recognized in the Covenant

24. Equal protection of the rights recognized in the Covenant is guaranteed to all the persons in Montenegro by the Constitution (art. 8), which lays down the prohibition on indirect or direct discrimination on any ground.

25. Moreover, article 9 of the Constitution stipulates that the ratified and published international treaties and generally accepted rules of international law make an integral part of the internal legal order, have the supremacy over the domestic legislation and are directly

applicable when they regulate the relations differently from the domestic legislation. Not only does this definition verify legal effect of international treaties (including the International Covenant on Civil and Political Rights) by considering them a part of internal legal order with supremacy over the domestic legislation, but the State authorities are also advised of the need to harmonize domestic legislation with the international law, primarily in the fields of guaranteeing, promoting and protecting fundamental rights and freedoms.

26. The Constitutional Law for Implementation of the Constitution of Montenegro (Official Gazette of MNE 1/07) stipulates that: provisions of international treaties on human rights and freedoms acceded by Montenegro prior to 03 June 2006 apply to legal matters that occurred after signing. Implementation of international treaties on human rights in Montenegro is in this way fully ensured.

27. Legislative framework for imposing sanctions for discrimination is contained in the Criminal Code of Montenegro (Official Gazette of RMNE 70/03, 13/0 and 47/06 and Official Gazette of MNE 40/08, 25/10 and 32/11), principally in articles 159 and 443 which define criminal offences involving violation of equality and racial and other discrimination.

28. Right of appeal – The right to legal remedy is recognized in the Constitution of Montenegro by stipulating that everyone is entitled to a legal remedy against the decision ruling on the right or legally based interest thereof.

29. Position of foreigners–Under the Constitution, the movement and residence of foreigners are regulated by the law. Foreigners may enter, move and reside in the territory of Montenegro with a valid travel document which contains a visa or residence permit, unless otherwise stipulated by the law or an international treaty. Under the Law on Foreigners (Official Gazette of Montenegro 82/08, 72/09, 32/11, 53/1), the following constitutes residence of foreigners in Montenegro: residence of up to 90 days; temporary residence; 3. permanent residence.

30. The Law on Foreigners in particular envisages integration of “displaced persons” and “internally displaced persons” through a preferential access to the residence in Montenegro. The Decree on the manner of exercising rights by displaced persons from former Yugoslav republics and internally displaced persons from Kosovo was adopted on 8 July 2010 with a view to guaranteeing these persons full access to all the rights which were restricted earlier until they gain the legal status of a foreigner with permanent residence. This interim measure envisages that these persons are able to exercise rights in the fields of healthcare, education, employment, pension, social and child care in the same manner as the citizens of Montenegro up until 30 June 2013.

31. Asylum–Foreigners who reasonably fear prosecution because of their race, language, religion or affiliation with a nation or group or because of their political beliefs may seek asylum in Montenegro. Foreigners may not be expelled from Montenegro to a place where they are threatened with death penalty, torture, inhuman and degrading treatment, prosecution or severe violation of rights guaranteed under the Constitution because of their race, language, religion or national affiliation. Foreigners may be expelled from Montenegro only on the basis of a decision by the competent authority and in a procedure specified in the law.

32. In the period from 1 January 2011 until 31 December 2011, there were 13,955 persons registered with the Ministry of Interior as having the status of the foreigner with temporary residence, 6,699 persons as having the status of the foreigner with permanent residence, while additional protection was approved for four persons /asylum seekers/.

### **Article 3 – Equal rights of men and women**

33. The Constitution of Montenegro guarantees equality between men and women and develops equal opportunities policy (art. 18). Moreover, the Constitution of Montenegro



(art. 8) prohibits any form of direct or indirect discrimination on any ground. Therefore, regulations and introduction of special measures aimed at creating conditions for achieving ethnic, gender and overall equality and protection of persons disadvantaged on any ground is not deemed discrimination.

34. According to the latest census (2011), in the total population of Montenegro amounting to 620,029 men account for 306,236 (49.4 per cent), while women account for 313,793 (50.6 per cent).

35. The Law on Gender Equality was adopted on 27 July 2007 (Official Gazette of RMNE 46/07). This law represents the first antidiscrimination law in Montenegro and the most important mechanism for eliminating gender discrimination and achieving gender equality. The law, being the most significant institutional mechanism for achieving gender equality in Montenegro, establishes a State authority competent for gender equality affairs – the Ministry of Human and Minority Rights. The Decree on amendments to the Decree on organization and manner of operations of State administration (Official Gazette of MNE 25/12) transferred a part of competences from the Ministry of Human and Minority Rights to the Ministry of Justice and Human Rights. The Law highlights the role of civil sector and gives considerable room for actions of non-governmental organizations in the overall activities aimed towards achieving gender equality.

36. Equality in certain areas, such as labour and earnings, and other labour related and labour based rights are stipulated in the Labour Law (Official Gazette of MNE 49/08, 59/2011). The Labour Law prohibits any direct and indirect gender discrimination of both, job seekers and employees. Within the meaning of this law, discrimination is prohibited in relation to the following: (a) employment requirements and selection of candidates for a job; (b) labour conditions and labour related rights; (c) education, professional development and in-service training; (d) career advancement; (e) termination of labour agreement. This same law prohibits harassment and sexual harassment at workplace and in relation to work, including mobbing. The law also defines positive discrimination. Amendments to the labour law guarantee men and women equal pay for equal work or work of equal value performed for the employer.

37. One of the segments of the in-service training programme for civil servants and State employees implemented by the Human Resources Management Authority is introduction of the equal equality principle in practice and actual implementation of the Law on Gender Equality. The Government Office for Gender Equality signed Memorandum of Understanding with ten municipalities<sup>1</sup> in Montenegro with the aim of implementing activities in the field of achieving gender equality at the local level. For statistical data on the share of women in legislative, executive and judicial powers, see annex; for data on the number of female judges in the courts of Montenegro, see annex, table 1, and for data on female prosecutors in Montenegro, see annex, table 2.

38. Civic education was introduced as a compulsory subject in VI and VII grades of elementary school. Gender equality and domestic violence are studied in the framework of this subject. Civic education is also taught in the general programme high school from I to IV grade. As for the set-up of gender/women` s studies in Montenegro, we would like to highlight that gender/women` s studies were introduced in two universities in Montenegro in 2009 and that since 2002 some civil sector organizations have implemented women` s self-awareness and feminist studies and encouraged women to take active part in public life.

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<sup>1</sup> Municipalities: Nikšić, Bijelo Polje, Pljevlja, Berane, Cetinje, Kotor, Budva, Bar, Herceg Novi and Ulcinj.

39. The Employment Office is pursuing active employment policy and by implementing measures and development projects aimed at opening open new jobs it seeks to reduce the number of the unemployed. Women account for around 57 per cent in total number of the unemployed who are trained during the year under different types of in-service trainings for a known employer and under programmes for preparation for the labour market (occupational skills trainings and programmes for acquiring specialized knowledge). Women` e enterprises increasingly record significant success also in the areas which have up until recently been considered atypical for women` s entrepreneurship (IT, mechanical industry, civil engineering) and in many others. As for the gender structure regarding the loans approved and funded under the Innovative Programme for Continuous Fostering of Employment and Entrepreneurship in Montenegro in 2012, the data is as follows: 43 loans were approved for the unemployed of which 20 for women and 23 for men, while 126 loans for the unemployed were funded of which 52 for women and 74 for men.<sup>2</sup>

40. Family and marriage–The Family Law (Official Gazette of MNE 1/07) stipulates that marriage is based on a free decision of a man and a woman to enter into marriage, on their equality, mutual respect and mutual assistance. It also stipulates that ownership relations in the family are based on the principles of equality, reciprocity and solidarity, as well as on the protection of interests of children. A community for living of a man and a woman lasting longer (common-law community) is equalled with marital community with regard to the right to mutual support and other ownership relations. The law stipulates that a marriage cannot be entered into by a person whose will is not free. Spouses are equal in marriage. Spouses are under an obligation to be faithful to each other, to assist and respect each other and develop and maintain harmonious marital and family relations.

#### **Article 4 – States of emergency**

41. Article 25 of the Constitution of Montenegro stipulates that during the proclaimed state of war or emergency, the exercise of certain human rights and freedoms may be limited to the necessary extent. The limitations may not be introduced on the grounds of sex, nationality, race, religion, language, ethnic or social origin, political or other beliefs, financial standing or any other personal feature. The Constitution stipulates that there may be no limitations imposed on the rights to: life; legal remedy and legal aid; dignity and respect for a person; fair and public trial and the principle of legality; presumption of innocence; defence; award of damages for unlawful or unjustified deprivation of liberty and unjustified conviction; freedom of thought, conscience and religion; entry into marriage. There may be no abolishment of the prohibition of: inflicting or encouraging hatred or intolerance; discrimination; trial and conviction twice for one and the same criminal offence; forced assimilation. Measures of limitation may be in effect at the most for the duration of the state of war or emergency. State of war is proclaimed when there is immediate war threat against Montenegro, when Montenegro has been attacked or when the war has been declared against it.

42. State of emergency may be proclaimed in the territory or a part of the territory of Montenegro in case of the following: big natural disasters, technical-technological and environmental disasters and epidemics; greater disruption of public peace and order; violation or attempt to violate the constitutional order.

43. The state of emergency lasts until the circumstances that have caused it have ceased to exist.

44. If the Parliament is not able to convene, the Defence and Security Council adopts the decision to proclaim the state of emergency and submits it to the Parliament for endorsement as soon as it is able to convene.

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<sup>2</sup> Source: TheEmployment Office of Montenegro.

45. Limitations on freedom of association are imposed on the basis of the decision on the prohibition of activity of a political party or non-governmental organization which is adopted by the Constitutional Court of Montenegro. The procedure that involves prohibiting activity of the political party or non-governmental organization is regulated under the Law on Constitutional Court (Official Gazette of MNE 64/08) and is initiated by a motion that may be filed by: the Protector of Human Rights and Freedoms (Ombudsman), Defence and Security Council, State authority competent for the protection of human and minority rights, as well as the authority competent for entering the political party or non-governmental organization in the register. The reasons why the Constitutional Court may render judgement on prohibiting activity of the political party or non-governmental organizations are as follows: if their action is directed against or aims at forceful destruction of constitutional order, violation of the territorial integrity of Montenegro, breach of guaranteed human rights and freedoms and instigating racial, religious and other hatred and intolerance.

46. The Constitution of Montenegro defines limitations on freedom to political organizing of judges, State prosecutors and their deputies, Protector of Human Rights and Freedoms, members of the Senate of the Central Bank, members of the Senate of the State Audit Institution, professional members of the Army, police and other security services by stipulating that these persons may not be members of any political party. Moreover, political organizing and actions of foreign nationals and political organizations with the seat outside of Montenegro are also prohibited.

#### **Article 5 – Implementation of provisions**

47. Montenegro ratified the International Covenant on Civil and Political Rights. Provisions of articles 9 and 145 of the Constitution of Montenegro stipulate that the ratified and published international agreements and generally accepted rules of international law make an integral part of the internal legal order, have supremacy over the domestic legislation and are directly applicable when they regulate the relations differently from the domestic legislation. The law must be in compliance with the Constitution and ratified international treaties, while another piece of regulation must be in compliance with the Constitution and the law.

#### **Article 6 – Right to life**

48. The Constitution of Montenegro stipulates that Montenegro is a civil, democratic, ecological and a state of social justice, based on the rule of law, that rights and freedoms are inviolable and that everyone is obligated to respect the rights and freedoms of others. For the purpose of harmonizing with provisions from the European Convention on Human Rights, and Protocol No. 6 and Protocol number 13 relating to the right to life, the amendments to the Criminal Code from 2002 abolished death penalty and laid down conditions for pronouncing the sentence of 40 years imprisonment which replaced the death penalty in Montenegro.

49. The Constitution of Montenegro prohibits death penalty (art. 26). In case law so far and during the time when the stipulation and pronouncement of death penalty were allowed for the most severe criminal offences, the death penalty was pronounced very restrictively and only in the most severe cases, while in the period after the World War Two until its abolishment it was enforced in two cases only.

50. The sentence of 40 years imprisonment may be prescribed only for the most severe criminal offences, while it may not be prescribed as the only punishment for a specific criminal offence. This punishment may not be imposed against: persons who at the time of committing criminal offence have not reached the age of twenty-one; persons whose mental capacity was considerably reduced at the time of committing criminal offence, and also for an attempt to commit criminal offence.

51. Punishment or any other criminal sanction may be imposed only for a criminal offence which was defined as the criminal offence before being committed and for which the punishment was stipulated by the law. Punishment and warning measures may be imposed only against perpetrators who are guilty of having committed the criminal offence. The Criminal Code stipulates that an act committed in legitimate self-defence, extreme necessity or under the influence of absolute force is not considered criminal offence.

52. Right to life is guaranteed in a series of provisions of the Criminal Code of Montenegro (Official Gazette of RMNE 70/03, 13/04 and 47/06 Official Gazette of RMNE 40/08, 25/10 and 32/11). The Criminal Code of Montenegro also defines criminal offences against life and limb as follows: homicide, aggravated homicide, manslaughter, killing a child at birth, mercy killing, negligent homicide, instigation to suicide and assisted suicide, unlawful termination of pregnancy (arts. 143 through 150). Punishments prescribed for these criminal offences range between 1 and 40 years.

53. As for criminal offences against life and limb, the following were incriminated as well: serious bodily injury, minor bodily injury, participation in an affray, causing dangers in affrays and brawls by means of dangerous tools, exposure to danger, abandonment of helpless person and duty to rescue (arts. 151 through 157 of the Criminal Code - CC). For statistics on the court cases involving the criminal offences of homicide, aggravated homicide, manslaughter and killing a child at birth (arts. 143 through 146), 2006 - 2011<sup>3</sup>, see table 3, annex).

54. The Criminal Code defines a group of criminal offences against humanity and other values guaranteed by international law as follows: genocide, crime against humanity, war crime against civilian population, war crime against the wounded and sick, war crime against prisoners of war, terrorism etc. (arts. 426 through 449 of CC).

55. In the period 2006 - 2011 there were no criminal proceedings for the criminal offences of genocide (art. 426) and terrorism (art. 447).

56. The Criminal Code also defines criminal offences against human health as follows: failure to act according to health regulations on suppressing dangerous communicable disease, transmission of dangerous communicable disease, medical malpractice, unlawful medical experiments and testing medicines, failure to provide medical assistance, quackery, criminal offences related to narcotic drugs etc. (arts. 287 through 302).

57. Incrimination of these offences against human health protects the right to life in a broader context. Special chapter includes criminal offences against environment, general safety of people and public road safety thus also protecting the right to life. The right to life is additionally protected in cases when a criminal action from another criminal offence results in a death of one or more persons, which is treated as a qualified – aggravated form of that criminal offence.

58. In all the above mentioned cases the State is obligated to prevent criminal offences and punish perpetrators. Pursuant to valid criminal regulations of Montenegro, the use of force which results in the loss of someone's life is not treated as a criminal offence and does not incur criminal liability in cases of legitimate self-defence, extreme necessity or threat, as concepts covered by the Criminal Code.

59. Use of force by persons in official capacity in the discharge of official duties, including firearms and possible effects on someone's life, is defined in the Law on Police (Official Gazette of RMNE 28/05 and Official Gazette of MNE 88/09) and Law on the Execution of Criminal Sanctions (Official Gazette of RMNE 25/94, 29/94, 69/03, 65/04 and Official Gazette of MNE 32/11). The Law on Police stipulates that the exercise of police

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<sup>3</sup> Source: Supreme Court of Montenegro.

powers must be proportionate to the danger to be averted and that among a number of police powers, the exercised one is the power which has the least harmful consequences for the person against whom the means of coercion are used. This law also regulates the manner of and restriction on using firearms.

60. The Law on the Execution of Criminal Sanctions also regulates the manner of and restriction on the use of firearms by persons in official capacity in the institutions for enforcement of criminal sanctions.

61. One of important aspects of the right to life is environment protection. The right to a healthy environment is guaranteed under the Constitution of Montenegro (art. 23). Everyone is entitled to receive timely and full information about the status of the environment, to influence the decision-making regarding the issues of importance for the environment and to legal protection of these rights. Everyone and the State in particular, is obligated to preserve and improve the environment.

#### **Article 7 – Prohibition of torture, cruel, inhuman or degrading punishment or treatment**

62. Dignity and security of persons, inviolability of physical and mental integrity of persons, their privacy and individual rights are guaranteed under the Constitution of Montenegro, which stipulates that no one can be subjected to torture or inhuman or degrading treatment and that no one can be kept in slavery or servile position. The Constitution also guarantees respect for human personality and dignity in criminal and other proceedings, in case of deprivation or restriction of liberty and during the execution of imprisonment sentence, while any form of violence against and inhuman or degrading treatment of persons deprived of liberty or whose liberty has been limited, including any extortion of confession and statement, is prohibited and punishable. The right of a person and dignity of a human being with regard to the application of biology and medicine is guaranteed and any intervention aimed at creating a human being that is genetically identical to another human being, living or dead, is also prohibited. It is prohibited to perform medical and other experiments on human beings without their permission.

63. The laws in Montenegro which prohibit cruel, inhuman and degrading punishments are The Criminal Code (Official Gazette of RMNE 70/03, 13/04, 47/06 and Official Gazette of MNE 40/08, 25/10, 32/11), The Criminal Procedure Code (Official Gazette of MNE 57/09) and the Law on the Execution of Criminal Sanctions.

64. Enumerated criminal offences against rights and freedoms of persons and citizens (Title 15) also recognize the criminal offences of torture (art. 167) and ill-treatment (art. 166a). The imprisonment of six months to five years is prescribed for the criminal offence of torture. If this criminal offence has been committed by persons in official capacity in the discharge of duties or if the offence has been committed with their explicit or tacit consent of if the persons in official capacity have incited other persons to inflict torture, they are sentenced to one to eight years of imprisonment. One year of imprisonment is prescribed for the criminal offence of ill-treatment. If ill-treatment was inflicted by persons in official capacity in the discharge of duties, they are sentenced to three months to three years of imprisonment.

65. In the period 2006-2011, the Police Directorate registered 52 criminal charges involving 57 criminal offences of torture from article 167 of the Criminal Code.

**Table 4, annex –Statistics on the court cases involving the criminal offence of torture (art. 167), 2006 – 2011:**

66. Besides criminal offences of torture and ill-treatment, the Criminal Code of Montenegro also defines the criminal offences of unlawful deprivation of liberty (art.162)<sup>4</sup>, extortion of testimony (art. 166) and unlawful practices in medical experiments and tests on medicines (art. 291).

67. Treatment of persons deprived of liberty–The Constitution guarantees respect for human personality and dignity in criminal and other proceedings in the event of deprivation or restriction of liberty and during the execution of punishment. Any form of violence against and inhuman or degrading treatment of persons deprived of liberty or whose liberty has been limited, including any extortion of confession and statement, is prohibited and punishable. One of the fundamental rules set out in the Criminal Procedure Code is prohibition of threat to and violence against suspects, the accused and other persons participating in proceedings, including extortion of confession and other statements from these persons, while no court judgment may be based on the confession or other statement obtained by extortion, torture or inhuman or degrading treatment (art. 11). The Code also stipulates that judgments may not be based on the evidence that have been obtained by violation of human rights and fundamental freedoms guaranteed under the Constitution or ratified international treaties, or on the evidence obtained by violation of the provisions of criminal procedure as well as on other evidence obtained therefrom, nor may such evidence be used in proceedings (art. 17). Under article 154, any medical intervention on suspects, the accused or witnesses or giving them any such medication that may influence their consciousness and will in giving their statement is prohibited. Personality and dignity of detainees must not be offended in the course of criminal proceedings and the only restrictions that may be imposed against them are the ones needed to prevent their escape, incitement of third persons to destroy, conceal, alter and fabricate evidence or traces of the criminal offence or to prevent any direct or indirect contacts of detainees for the purpose of influencing witnesses, accomplices and accessories.

68. Rules of conduct in the execution of the imprisonment sentence are defined in the Law on the Execution of Criminal Sanctions and in secondary legislation. In the course of execution of the criminal sanction, perpetrators may be deprived of or denied certain rights only to the extent in which that corresponds to the nature and substance of such sanction and in the manner which guarantees respect for personality of perpetrators and their human dignity. Any actions of subjecting convicted persons to any form of torture, ill-treatment and degrading treatment and medical and scientific experiments are prohibited and punishable, while prohibited actions predominantly include those actions that are disproportionate to preserving order and discipline in a penitentiary organizational unit or that are unlawful and might therefore result in sufferance and inappropriate limitation on fundamental rights of convicted persons. In serving the imprisonment sentence, convicted persons may not be mutually disadvantaged on grounds of their race, colour of the skin, sex, religion, political or other belief, ethnic or social backgrounds, property, birth, education, social standing or other features. Coercive measures may be used against convicted persons only under the conditions and in a manner stipulated by the law and regulations adopted thereon. Means of coercion (physical force, physical restraints, isolation, rubber baton, water hoses, specially trained dogs, chemical agents and firearms) may be used only when necessary to prevent escape, physical assault on persons in official capacity or convicted persons, infliction of injuries on other persons, self-injury or physical damage, and also when it is necessary to suppress resistance to the lawful order given by persons in official capacity.

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<sup>4</sup> Statistical overview of cases involving this criminal offence is given in explanation of implementation of article 9.

69. Under the conditions laid down by the law, convicted persons are entitled to: legal aid, work, information, health care, correspondence, visits, receiving mail, marital life, religious life as well as all the other rights set forth in the law and in secondary legislation. Convicted persons are entitled to file complaint if they believe that their right in relation to serving the sentence has been violated or for any other irregularities that occurred in relation to them. Convicted persons are guaranteed protection of rights defined under this law through the protection provided by the organization competent for enforcing imprisonment sentence – Institute for the Execution of Criminal Sanctions (complaint against decision of the head of organizational unit, of which the head of the Institute decides), as well as through judicial protection of the rights of convicted persons which is afforded in administrative dispute (lawsuit against decision of the head of the Institute). In the event of using means of coercion against convicted persons, the Institute for the Execution of Criminal Sanctions is obligated to prepare a report containing facts and evaluation of overstepping the power and to deliver it to the Ministry of Justice.

70. Supervision of legality and functionality in the work of Institute for the Execution of Criminal Sanctions falls under the competence of the Ministry of Justice and Human Rights, including the control of legality in enforcing imprisonment sentence which is exercised through an authorized employee of the Ministry. In performance of such control there is a possibility of: inspecting the premises in which convicted persons reside, having conversations with convicted persons, examining general and individual acts, records and other documents regarding convicted persons, determining necessary facts and proceeding upon complaints filed by convicted persons.

71. Convicted persons and detainees have the possibility to report potential torture cases to the competent persons in the Institute through mail boxes which were installed in all the organizational units, as well as to the State authorities, Protector of Human Rights and NGO representatives.

#### **Competence of the police**

72. The Law on Police regulates activities of the police, as well as the powers and duties of the police. According to this law, police officers are obligated execute the order of their immediate superior, i.e., chief of the police and to proceed accordingly, if these are within the limits of law, except for those to perform action constituting a criminal offence. Therefore, the order of the superior may not be used by police officers as a justification in the event that their actions contain elements of ill-treatment and torture of detainees.

73. The law precisely regulates situations when police officers have the authority to use means of coercion (to prevent escape of persons deprived of liberty or caught in a commission of the criminal offence prosecuted ex officio, to overpower the resistance of persons who disturb public peace and order or who are to be taken in or deprived of liberty in the cases laid down by the law, and repulse an attack on their own person, on other persons or an object being secured). Means of coercion are: physical force, truncheon, facial bandage, devices for forcible stopping of motor vehicles, police dogs, chemical agents for temporary incapacitation, special vehicles, special types of weapons, explosive devices and firearms.

74. The Law on Police stipulates that firearms and other means of coercion may be used only if an order is given by the police officer in charge of carrying out an official assignment. Police officer who used, or ordered the use of firearms and other means of coercion is obligated to inform the Chief of Police thereof without delay. Police officer who used or ordered unlawful use of means of coercion is held personally accountable for the unlawful use of means of coercion. The Internal Affairs Division of the Ministry of Interior evaluates whether the use of the means of coercion was justified. The Internal Affairs Division of the Ministry of Interior was established as an organizational unit in 2003 in

compliance with EU recommendations and represents a modern way of the work and control of the police.

75. Besides internal control, the Law on Police also regulates civil control of the police work by the Council for Civil Control of the Police Work which represents a body that evaluates the exercise of police powers for the purpose of protecting human rights and freedoms. The law also regulates parliamentary control of the police by the Parliament of Montenegro, through an authorized working body.

**Table 5, annex –Use of means of coercion by the Police Directorate officers**

**Table 6, annex –Number of complaints concerning the use of the means of coercion**

76. Civil servants or State employees, that also include prison and police officers, have disciplinary liability for the discharge of tasks and breach of duties related to their employment, whereas if the actions of officers and State employees incorporate elements of a criminal offence they are held criminally liable.

77. Legal redress for the victims of torture and other inhuman or degrading treatment is provided in the form of the right to file complaint, right to the award of damages, right to file motions for settling property claim, right to legal remedy.

**The Protector of Human Rights and Freedoms (Ombudsman)**

78. Anyone who believes that their rights and freedoms have been violated by an act, action or failure to act of the bodies may address the Protector of Human Rights and Freedoms of Montenegro. The Law on the Protector of Human Rights and Freedoms (Official Gazette of MNE 42/11) stipulates that the Protector autonomously and independently, on the principles of justice and fairness, takes measures to protect human rights and freedoms when these are violated by the act, action or failure to act of State authorities, State administrative authorities, local government bodies and local administration, public services and other holders of public powers (hereinafter referred to as: authorities), as well as the measures to prevent torture and other forms of inhuman or degrading treatment or punishment and measures for protection from discrimination. Under the law, the Protector and the employee authorized by the Protector are entitled to: without prior notice, inspect the premises of the authorities, organizations, institutions and other places where persons deprived of liberty are or may be held; - without prior notification and permission, visit persons deprived of liberty and verify if their rights are respected; - without the presence of official or other person, either personally or through an interpreter, have conversation with persons deprived of liberty, as well as with the other persons for whom he/she thinks they can provide necessary information.

79. The Committee of the Government of Montenegro for Monitoring Action Plan for the Prevention of Torture organizes and coordinates activities of State authorities, State administrative authorities and other competent institutions in implementation of the Action Plan for the Prevention of Torture, while it also monitors priorities, dynamics and timeframes for implementation, evaluates results achieved in implementation of the Action Plan and submits to the Government of Montenegro the report on the overview of condition, assessment and proposed measures at least twice a year.

**Health care**

80. Article 69 of the Constitution of Montenegro stipulates that everyone is entitled to healthcare. A child, a pregnant woman, an elderly person and a person with disability are entitled to healthcare funded from public revenues, unless they exercise such right on some other grounds.

81. By ratifying conventions and additional protocols, Montenegro undertook to adopt relevant laws which regulate and promote protection of human rights and dignity of a human being in terms of the use of biology and medicine. The following laws were adopted



on the basis of directives and additional documents of the Council of Europe: Law on Healthcare (Official Gazette of RMNE 39/04) which sets forth institutional requirements for the healthcare system reform aimed at increasing efficiency and quality of healthcare; Law on the Protection and Exercise of Rights of the Mentally-Ill (Official Gazette of RMNE 32/05) which guarantees the exercise of rights and freedoms of the mentally-ill in accordance with international documents and general rules of international law; Law on Data Collections in the Field of Healthcare (Official Gazette of MNE 80/08, 40/11) which primarily aims to monitor health condition of the population; Law on Emergency Medical Service (Official Gazette of MNE 49/08), adopted in compliance with recommendations of the World Health Organization and European standards in the area of out-of-hospital emergency medical care; Law on Conditions and Procedure for the Termination of Pregnancy (Official Gazette of MNE 40/10, 40/11) recognized the right to freedom in decision making regarding the number and time of child births, while respecting dignity and protecting a person; Law on Infertility Treatment with Assisted Reproductive Technologies (Official Gazette of MNE 74/09) which prohibits misuse of biomedical science and harmonizes constitutional stipulations with the use of scientific achievements in medicine; Law on the Protection of Genetic Data (Official Gazette of MNE 25/2010) is fully harmonized with constitutional stipulations and the use of scientific achievements in medicine; Law on Taking and Using Biological Samples (Official Gazette of MNE 14/2010) which regulates taking, using, storage, transport and destruction of biological samples of human origin in a systemic manner; The Law on Taking and Transplantation of Human Body Parts for the Purpose of Treatment (Official Gazette of MNE 76/09) makes it possible to take necessary measures to increase the number of transplantations of body parts and improve conditions for undertaking these humane medical procedures; Law on Ratification of Additional Protocol to the Convention on Human Rights and Biomedicine concerning Biomedical Research which fully provides protection of dignity and identity of all human beings and a guarantee to everyone, without discrimination, of the respect for their integrity and other rights and fundamental freedoms in terms of the use of biology and medicine; The Law on Ratification of Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes.

**Table 7, annex – Statistical data on health care in Montenegro, 2006 - 2010**

**Article 8 – Prohibition of slavery**

82. Prohibition of slavery is guaranteed under the Constitution of Montenegro - Article 28 which stipulates that no one can be kept in slavery or servile position.

83. Article 62 of the Constitution stipulates that everyone is entitled to work, free choice of occupation and employment, fair and human working conditions and protection during unemployment.

84. The Constitution prohibits forced labour and stipulates that the following is not considered forced labour: labour customary during the sentence involving deprivation of liberty; performance of duties of military nature or duties required instead of it; work demanded in case of crisis or accident that threatens human lives or property. The following is not considered “forced and compulsory labour”: work or service of the person sentenced on the basis of enforceable court judgement or of the person who has been imposed community service by the court. Under the Law on the Execution of Criminal Sanctions, convicted persons are assigned a type of work in accordance with the needs of their treatment that corresponds to their mental and physical capacity and professional qualifications, abilities and needs for preserving order and discipline.

85. Montenegro succeeded to the Conventions of the International Labour Organization as follows: ILO Convention No. 29 (1930) concerning Forced and Compulsory Labour, Abolition of Forced Labour Convention No. 105(1957), Convention No. 182 (1999)

concerning the Worst Forms of Child Labour, Labour Inspection Convention No. 81 (1947), Labour Inspection (Agriculture) Convention No. 129 (1969).

86. Montenegro is a State party to the relevant conventions of the United Nations, amongst which there are: The Slavery Convention signed in Geneva on 25 September 1926, amended by the Protocol of 7 December 1953 (Official Gazette of FPRY, International Treaties and other Agreements no. 4/1956), Supplementary Convention on Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, adopted in Geneva on 7 September 1956 (Official Gazette of FPRY, International Treaties and other Agreements no. 7/1958), United Nations Convention against Transnational Organized Crime (Palermo Convention) and The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Official Gazette of FRY, International Treaties 6/2001).

87. In accordance with the Convention against Transnational Organized Crime and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, National Strategy of the Government of Montenegro for Fight against Trafficking in Persons and recommendations concerning cooperation between the government sector, Supreme State Prosecutor and non-governmental organizations, and also in cooperation with the Office of National Coordinator for Fight against Trafficking in Persons and Organization for Security and Cooperation in Europe mission to Montenegro, the agreement on mutual cooperation was signed between the Supreme State Prosecutor, Ministry of Labour, Ministry of Education and Science, Police Directorate and several non-governmental organizations with the aim of fighting against trafficking in persons in practice by means of prevention, education, criminal prosecution of perpetrators and protection of potential victims of trafficking in persons, especially women and children.

88. Proposal, monitoring and application of the mechanisms for efficient fight against trafficking in persons fall under the competence of the Ministry of Interior. The Office for the Fight against Trafficking in Persons is engaged in activities related to monitoring implementation of international regulations, conventions and agreements in the field of the fight against trafficking in persons, launching initiatives to harmonize domestic legislation with international standards in this field, building relationships and cooperation between national and international bodies with the aim of putting in place efficient mechanisms for the fight against trafficking in persons.

89. Title 35 of the Criminal Code of Montenegro defines criminal offences against humanity and other values protected under international law. These criminal offences include the criminal offence of trafficking in persons in article 444.

**Table 8, annex –Statistics on the court cases involving the criminal offence of trafficking in persons (art. 444), 2006-2011<sup>5</sup>**

90. Trafficking in children for adoption (art. 445) is a criminal offence which incriminated abduction of a person who has not reached the age of fourteen for the purpose of adoption as a violation of valid regulations, while it also stipulates that anyone who adopts such person or brokers such adoption or anyone who for that purpose buys, sells or surrenders another person who has not reached the age of fourteen or transports, provides accommodation for or conceals such a person, will be punished by one to five years of imprisonment. Anyone engaged in these activities, or if the offence was committed in an organized fashion together with several other persons, will be punished by minimum three years of imprisonment.

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<sup>5</sup> Source: Supreme Court of Montenegro.

**Table 9, annex – Statistics on the court cases involving the criminal offence of trafficking in children for adoption (art. 445), 2006 - 2011<sup>6</sup>:**

91. The Criminal Code defines the criminal offence of illegal crossing of State border and smuggling of persons (art. 405). In the period from 2006 to 2011, the Police Directorate registered 24 criminal charges involving 49 criminal offences of illegal crossing of State border and smuggling of persons referred to in article 405 of the Criminal Code.

**Table10, annex - Statistics on court cases involving the criminal offence of illegal crossing of State border and smuggling of persons (art. 405), 2006 - 2011:**

92. Furthermore, article 446 of the Criminal Code defines “submission to slavery and transportation of enslaved people” as a criminal offence.

**Table11, annex - Statistics on the court cases involving the criminal offence of submission to slavery and transportation of enslaved people (art. 446), 2006 - 2011:**

93. Having in mind challenges and difficulties faced by almost every country in keeping statistical records on trafficking in persons, the Office for the Fight against Trafficking in Persons set up a Tripartite Commission that gathers representatives of the Supreme State Prosecution Office, Supreme Court, Police Directorate and Office for the Fight against Trafficking in Persons and monitors statistics on trafficking in persons, gathers data and creates single statistics on trafficking in persons in Montenegro. The statistics mentioned above include data on both, perpetrators and victims of this criminal offence, as well as the overall description of the criminal process. Detailed statistics mentioned above are public and available on the website of the Office –table 12.

94. Looking at the enforceable judgments of conviction, it may be concluded that there were 37 victims of trafficking in persons in the period from 2004 to 2010. These were foreigners, except in 2 cases: the average age between 18 and 35 years; 3 juveniles – 17 years of age. Countries of origin of injured parties: Serbia, Kosovo, Albania, Ukraine, Bangladesh.

**Article 9 – Right to liberty and security of person**

95. Article 29 of the Constitution of Montenegro stipulates that everyone is entitled to individual liberty. Deprivation of liberty is allowed only for reasons and in the procedure as specified in the law. Persons deprived of liberty must be notified immediately of the reasons for deprivation of liberty, in their own language or in the language they understand. Persons deprived of liberty must be informed that they are not obligated to give any statement. At the request of persons deprived of liberty, the authority immediately informs about the deprivation of liberty the person that those deprived of liberty have chosen. Persons deprived of liberty are entitled to have the defence attorney of their own choosing present at their interrogation. Unlawful deprivation of liberty is punishable.

96. Article 30 of the Constitution of Montenegro stipulates that persons reasonably suspected of having committed a criminal offence may be detained and kept in detention only on the basis of judgement of the competent court, if so required for the conduct of criminal proceedings. Detainees must be given the explained ruling on detention at the time of being placed in detention or at the latest 24 hours from being placed in detention. Detainees have the right of appeal against the ruling on detention, upon which the court decides within 48 hours. The Constitution stipulates that duration of detention must be reduced to the shortest possible period, while also setting time limits on duration of detention by specifying that detention may last up to three months from the day of detention

<sup>6</sup> Source: Supreme Court of Montenegro.

imposed on the basis of decision of the first instance court and that this period may be extended for additional three months on the basis of the decision of the Higher Court, and if no indictment has been brought until expiry of that period detainees are released. Detention of juveniles may not exceed 60 days.

97. Article 31 of the Constitution of Montenegro guarantees respect for human personality and dignity in criminal or other proceedings in case of deprivation or restriction of liberty and during the execution of imprisonment sentence. Any form of violence against and inhuman or degrading behaviour against persons deprived of liberty or whose liberty has been limited, including any extortion of confession and statement, is prohibited and punishable.

98. Provisions of article 162 of the Criminal Code define unlawful deprivation of liberty as a criminal offence. In the period from 2006 to 2011, the Police Directorate registered 38 criminal charges involving 18 criminal offences of unlawful deprivation of liberty referred to in article 162 of the Criminal Code

**Table 13, annex –Statistics on the court cases involving the criminal offence of unlawful deprivation of liberty (art. 162), 2006 - 2011<sup>7</sup>:**

99. Rules of detention are set forth in the Criminal Procedure Code. Under article 4, during the first hearing, suspects must be informed about the criminal offence they are charged with and the grounds for suspicion against them. The accused must be provided with an opportunity to make a statement regarding all the facts and evidence against them and also to disclose all the facts and present all the evidence in their favour. During the first hearing, suspects and the accused must be informed that they not obligated to make any statements or answer the questions asked and that all the statements they give may be used as evidence. Article 5 of the Code sets forth rights of persons deprived of liberty by the competent State authority to be immediately informed in their language or in a language they understand about the grounds for detention, and also to be informed that they are not obligated to make any statement, that they have the right to a defence attorney of their own choosing and to request that a person of their choosing, a diplomatic consular representative of a State whose national they are or a representative of relevant international organization, if they are stateless persons or refugees, be informed on their detention. Persons deprived of liberty without court judgment must be brought immediately before the competent State prosecutor, except in cases provided for in this Code.

100. Article 15 of the Criminal Procedure Code defines the right to a prompt trial as one of the fundamental rules underlying criminal proceedings. According to this rule, the accused are entitled to be brought before the court in the shortest possible time and to have a prompt trial. The court is obligated to conduct proceedings without delay and prevent all abuses of rights of parties to proceedings. Duration of detention and other forms of restriction of liberty must be reduced to the shortest necessary time.

101. The Criminal Procedure Code defines reasonable suspicion as a precondition for imposing detention. Such degree of doubt indicating that a person has committed criminal offence is significant condition not only for imposing detention, but also for the conduct of criminal proceedings against the person.

102. Under the Criminal Procedure Code, authorized police officers may deprive a person of liberty if there are reasons for imposing detention, but they are obligated to notify the State prosecutor thereof, prepare official annotation with the time and place of the deprivation of liberty and escort the person before the State prosecutor without any delay. In the course of escorting, the authorized police officer hands over official annotation to the

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<sup>7</sup> Source: Supreme Court of Montenegro.

State prosecutor, while the State prosecutor enters in the record the statement of the person deprived of liberty about the time and place of deprivation of liberty. If persons deprived of liberty are not escorted before the State prosecutor within 12 hours from the deprivation of liberty, the police are obligated to release those persons. Persons deprived of liberty in accordance with the procedure above may not be deprived of liberty again for the same criminal offence.

103. Investigative detention is imposed by ruling of the investigative judge and it may last for the maximum period of up to one month, after which the accused may be kept in detention only on the basis of the ruling which extends detention. Detention may be extended on the basis of the decision of the panel for the maximum period of two months and on substantiated motion by the State prosecutor. An appeal against the ruling of the panel is allowed, however it does not suspend enforcement of the ruling. If the proceedings are conducted for a criminal offence punishable by the imprisonment sentence exceeding five years, the panel of the Supreme Court may, on substantiated motion by the State prosecutor and for relevant reasons, extend detention for the maximum period of another three months. If the indictment has not been brought until expiry of these periods, the accused are released.

104. In the course of investigation, the investigative judge may terminate detention on the motion by the State prosecutor or of the accused, or their defence attorney. An appeal against the ruling to terminate detention does not suspend enforcement of the ruling. Prior to adoption of the decision on the motion to terminate detention, filed by the accused or defence attorney, the investigative judge requests for the opinion from the State prosecutor.

105. After the indictment has been submitted to the court and up until completion of the main hearing, detention may be ordered or terminated only by the ruling issued by the panel, provided that the opinion of the State prosecutor is obtained if the proceedings are conducted on the basis of his/her charges. Detention may last for the maximum period of three years from bringing the indictment until pronouncement of the first instance judgment.

106. At the end of 2010, there were a total of 1588 convicted persons, detainees and persons serving misdemeanour sentence at the Institute for the Execution of Criminal Sanctions, as follows: convicted persons and persons serving misdemeanour sentence: 1052, person serving misdemeanour sentence: 536. As on 31 December 2010, there were a total of 536 detainees in the penitentiary system of Montenegro, accounting for 34 per cent of the total number of all categories of persons deprived of liberty. Out of 536 detainees, the most numerous group accounting for 71 per cent were detained over the period from 1 to 12 months and with equal shares in categories of 1 to 3 months, 3 to 6 months and 6 to 12 months. Somewhat smaller number of detainees, that is 13 per cent, were detained for up to 1 month period, while 10 per cent spent from 12 to 18 months in detention, and 5 per cent spent 18 to 24 months in detention. Number of persons detained for more than 24 months is merely 1 per cent.

#### **Right to the award of damages**

107. –The Criminal Procedure Code stipulates that persons who have been deprived of liberty unlawfully and unjustifiably or convicted unjustifiably are entitled to the rehabilitation, right to be awarded damages by the State and other rights as specified in the law. Convicted persons or acquitted persons are not entitled to damages if they caused the criminal proceedings to be conducted through a false confession in the preliminary investigation or otherwise, or caused their conviction with such statements during the proceedings, unless they were forced to do so.

108. The right to the award of damages also applies to persons who were in detention or who were deprived of liberty by the police or the State prosecutor or their liberty was limited by the court judgement as a consequence of a criminal offence, but criminal

proceedings were not instituted or were suspended by an enforceable ruling or they were acquitted by enforceable judgment or the charge was rejected; persons who served the imprisonment sentence, and in the course of reopening criminal proceedings or in relation to the request for judicial review, have been imposed the imprisonment sentence of a shorter duration than the sentence they served, or a non-custodial criminal sanction was imposed or they were declared guilty, but the punishment was remitted; persons who were, due to an error or an unlawful action of authorities, deprived of liberty unjustifiably or kept in detention or administrative authority competent for the enforcement of criminal sanctions or an institution for the enforcement of the measure and persons who spent in detention a longer period of time than the term of sentence pronounced against them. Persons who caused deprivation of liberty or detention by unlawful actions are not entitled to damages.

109. The Law regulates the liability for damage which is founded exclusively on objective circumstances, i.e. unjustified conviction and unjustified deprivation of liberty – which is the consequence of an endeavour to protect rights and values of human beings, their physical integrity and individual liberty. For the detention to be unjustified, the proceedings need to be suspended or completed with an enforceable acquittal or a judgment which is rejecting the charges. Pecuniary or non-pecuniary damage may result from unjustified deprivation of liberty and unjustified judgment.

110. In the cases mentioned above, the person is entitled to file claim for damages with the Ministry of Justice. The person is entitled to initiate litigation procedure before the competent court in cases when full agreement fails to be reached with the Ministry of Justice regarding the type and amount of damages. Funds for payment of damages arising from concluded agreements are paid out from the budget of the Ministry of Justice.

**Table 14, annex –Number of claims for damages on the ground of unlawful deprivation of liberty:**

111. Besides the right to the award of damages, persons whose employment was terminated or whose status of the social insurance beneficiary ended as a result of unjustified conviction or unjustified deprivation of liberty, will have their years of service and insurance record recognized as if they had been at work during the time they lost the years of service due to the unjustified conviction or unjustified deprivation of liberty. Years of service also include the time of unemployment resulting from unjustified conviction or unjustified deprivation of liberty that was not the fault of that person.

**Article 10 – Treatment of persons deprived of liberty**

112. Presumption of innocence is guaranteed under the Constitution of Montenegro which stipulates in article 35 that everyone is deemed innocent until their guilt has been established by an enforceable court judgement. The accused are not obligated to prove their innocence. Suspicion in terms of guilt is interpreted by the court in favour of the accused. This principle is one of the fundamental rules underlying criminal proceedings (art. 3 of the Criminal Procedure Code – presumption of innocence *in dubio pro reo*). Accordingly, the Criminal Procedure Code and the Law on the Execution of Criminal Sanctions stipulate that persons serving imprisonment sentence and detainees may not be placed in the same room.

113. One of the fundamental rules underlying criminal proceedings, as defined in the Criminal Procedure Code, lays down the prohibition of threatening or exerting violence over suspects, the accused or other participants in proceedings, as well as the prohibition of the extortion of confession or another statement from such persons, while the court judgement may not be based on the confession or other statement obtained by extortion, torture or inhuman or degrading treatment. Coercion, extortion of statement, ill-treatment and torture are criminal offences stipulated in the Criminal Code of Montenegro.

### Treatment of detainees

114. A special set of provisions in the Criminal Procedure Code defines treatment of detainees. Personality and dignity of detainees must not be offended during detention. The only restrictions that may be imposed on detainees are those needed to prevent their escape, incitement of third persons to destroy, conceal, alter and fabricate evidence or traces of a criminal offence or to prevent direct or indirect contacts of detainees for the purpose of influencing witnesses, accomplices and accessories (art. 181 paras. 1 and 2).

115. Article 181, paragraph 3, of the Code lays down the rule according to which detainees may not be placed in the same room as persons who are serving the imprisonment sentence. The rule states also that detainees for whom there is a well-founded suspicion that they have participated in the same criminal offence will not be placed in the same room. Moreover, detainees for whom there is a well-founded suspicion that they are recidivist will not, if possible, be placed in the same room with the other detainees on whom they might have an adverse influence. Persons of different sexes may not be detained in the same room.

116. Human treatment and respect for dignity of the personality is guaranteed to persons deprived of liberty. Rights of detainees are defined in article 182 of the Criminal Procedure Code as follows: right to at least eight hours of an uninterrupted night rest in 24-hours, right to at least two hours of movement in the open air within prison grounds, right to wear their own clothes, use their own bedding or obtain and use at their own expense food, books, professional publications, newspapers, stationary and drawing supplies and other things to satisfy their daily needs, with the exception of those suitable for infliction of injuries, impairment of health or preparation of escape. In the course of investigation, the investigative judge may, ex officio or on the motion from the State prosecutor, render the ruling to temporarily suspend or limit the right of the accused to procure and use newspapers if this could be detrimental to the conduct of proceedings. An appeal against the ruling of the investigative judge is allowed to the three-judge panel of the first instance court.

117. Detainees may undertake the obligation to maintain in clean condition the premises they are detained in. If required so by detainees, the investigative judge or the chair of the panel, with the consent of prison administration, may allow detainees to work within prison grounds in compliance with their mental and physical capacity providing that this is not detrimental for the conduct of proceedings. For such a work detainees are entitled to a remuneration determined by administrator of the prison.

118. With the approval of the investigative judge, where appropriate and under the judge's supervision or the supervision by a person designated by the judge, detainees may, in compliance with the rules of conduct, be visited by their spouse or common-law spouse and their close relatives and at their requests – by a physician and other persons. Some visits may be prohibited if they could have detrimental effect on the conduct of proceedings. If required so by detainees and with the knowledge of the investigative judge, diplomatic and consular representatives of foreign States are entitled to visit and communicate unsupervised with detainees who are citizens of their State. Detainees may be visited by representatives of the International Committee against Torture, International Committee of the Red Cross, as well as representatives of international organizations engaged in the protection of human rights, when envisaged so by a ratified international treaty. With the approval of the president of the court, detainees may be visited by representatives of domestic and foreign organizations engaged in human rights protection. Detainees may exchange letters with persons outside of prison, with the knowledge and under supervision of the investigative judge. The investigative judge may prohibit sending and receiving letters and other parcels that have detrimental effect on the conduct of proceedings. The prohibition does not apply to the letters sent by detainees to the

international courts and domestic legislative, judicial and executive bodies or those received from them. Sending a petition, complaint or appeal may never be forbidden.

119. There is no supervision of correspondence and conversation between the defence attorney and the accused placed in detention. Defence attorney is entitled to a private conversation with the suspects deprived of liberty and before the suspects are heard, while control of this conversation is allowed only in the form of observing, but not in the form of listening.

120. In cases of disciplinary offences committed by detainees, the prison administrator or the person authorized by him/her may impose against the detainee a disciplinary sanction consisting of visitation restrictions or solitary confinement of up to 15 days. Such restriction does not apply to the communication between detainees and their defence attorney. An appeal may be lodged against the ruling on disciplinary sanction to the investigative judge within 24 hours from the receipt of the ruling. The appeal does not suspend enforcement of the ruling. The investigative judge decides on the appeal within three days from receipt of the appeal. Adoption of regulations which more closely regulate detention is competence of the ministry responsible for judiciary.

### **Detention of juveniles**

121. Treatment of a juveniles as perpetrators of a criminal offence and children and juveniles as parties to proceedings, which is based on the respect for human rights and fundamental freedoms with the recognition of best interests of juveniles and consideration of their maturity, degree of development, abilities and personal traits, as well as the severity of the criminal offence, for the purpose of their reformation and social reintegration, is regulated by the Law on the Treatment of Juveniles in Criminal Procedure (Official Gazette of MNE 64/11). This law stipulates that juveniles are placed in detention separately from adults. By exception, the judge for juveniles may order that the juveniles be placed in detention together with adults who would not have any adverse effect on them in order for isolation of juveniles not to cause any harmful consequences on the development of their personality. Juveniles placed in detention are, according to their needs and abilities, provided with the access to the curricula and psychological and social support. The judge for juveniles is obligated to attach particular attention to personal traits of juveniles placed in detention and needs to protect their personality during detention.

122. The Law on the Treatment of Juveniles in Criminal Procedure entered into force on 5 January 2012, while its implementation will start in 01 September 2012. Until the implementation starts, provisions from the Criminal Code, Criminal Procedure Code and Law on the Enforcement of Criminal Sanctions regulating execution of criminal sanctions against juveniles will remain in force, along with the Rulebook on the Execution of Attendance Orders.

123. Under the Criminal Procedure Code, juveniles are placed in detention separately from adults. By exception, the judge for juveniles may order that juveniles be placed in detention together with adults if isolation of juveniles would last longer, while there is also possibility to place juveniles in the same room with adults who would not have any adverse effect on them. The judge for juveniles exercises the same powers towards detained juveniles as those exercised by the investigative judge towards detainees.

124. The Ombudsman, being a national mechanism securing protection of persons deprived of liberty against torture and any other forms of cruel, inhuman and degrading treatment, takes measures to prevent these occurrences in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Punishment or Treatment. For the purpose of gaining insight with the condition in bodies, organizations and institutions for accommodating persons deprived of liberty or persons whose movement is restricted and also for the purpose of giving professional opinion, the



Protector sets up an advisory body composed of experts from relevant fields. The law also stipulates that the Protector cooperates directly with the United Nations Sub-Committee on Prevention of Torture and other Cruel, Inhuman and Degrading Punishment or Treatment.

125. In 2009, the Protector inspected detention premises in four regional police units and eight police branches. In 2010, premises in the regional police unit in Bijelo Polje were inspected. It was established, during inspection, that the premises were compliant with the CPT standards and Rulebook mentioned above.

### **Treatment of convicted persons**

126. Imprisonment sentence in Montenegro is served in the Institute for the Execution of Criminal Sanctions. Control of the execution of sanctions is exercised by the Ministry of Justice in accordance with the law.

127. The Institute for the Execution of Criminal Sanctions (IECS) was established in 1994 by the Decree of the Government of the Republic of Montenegro (Official Gazette of RMNE 31/94), of 19 September 1994, with the aim to put in place a single penal system in Montenegro. The Institute performs its basic function through six organizational units as follows: Penitentiary-Correctional Facility, Podgorica Prison, Bijelo Polje Prison, Medical Service, Education Centre and General Affairs Service.

128. The Penitentiary-Correctional Facility Podgorica– (CRC) – executes imprisonment sentence of 40 years, along with the juvenile imprisonment sentences and imprisonment sentences pronounced against women in criminal and misdemeanour proceedings. The Podgorica Prison executes the measure for securing presence of suspects, the accused and convicted persons in criminal proceedings – detention. The Bijelo Polje Prison executes the measure for securing presence of suspects, the accused and convicted persons in criminal proceedings – detention, up to six month of imprisonment and imprisonment sentence pronounced against men in misdemeanour proceedings. In order to reduce the load in the Podgorica Prison, in organizational terms and in terms of removing the load from accommodation capacities, a special Division was established for executing short sentences of up to six months of imprisonment and the imprisonment sentence pronounced against men in misdemeanour proceedings. Health care is provided to convicted and detained persons by the Medical Service at the primary and secondary levels through the outpatient and inpatient care. The Centre for Staff Education implements curricula for training the trainees, professional development of civil servants and State employees for the specificity of working at the Institute. The General Affairs Service operates through four offices in the following fields: legal and administrative affairs, financial and accounting affairs, commercial affairs, and ancillary and technical affairs.

129. The Law on the Execution of Criminal Sanctions stipulates that perpetrators may be denied or limited certain rights only to the extent in which that corresponds to the nature and substance of such sanction and in the manner which guarantees respect for personality of perpetrators and their human dignity. Any actions that involve subjecting convicted persons to any form of torture, ill-treatment and treatment, as well as the medical and scientific experiments, are prohibited and punishable. Prohibited actions predominantly include those actions that are disproportionate to preserving order and discipline in the organization or organizational unit or those that are unlawful and might therefore result in sufferance and inadequate limitation on fundamental rights of convicted persons. Convicted persons who have been a victim of prohibited actions are entitled to the award of damages.

130. In serving the imprisonment sentence, convicted persons may not be mutually disadvantaged on grounds of their race, colour of the skin, sex, religion, political or other belief, ethnic or social backgrounds, property, birth, education, social standing or other features. Treatment measures are adjusted, to the highest extent possible, to the personality of convicted persons and they depend on the results achieved in their treatment. Coercive

measures may be used against convicted persons only under conditions and in a manner stipulated by the law and regulations adopted thereon.

131. Convicted persons are guaranteed fulfilment of their basic cultural and religious needs, maintenance of personal hygiene and engagement in physical activities. Convicted persons are informed of all the important events in the country and worldwide through the media.

132. Convicted persons serve imprisonment sentence collectively, while they serve it separately only when so required by the health condition of convicted persons or the need to maintain discipline. Men and women serve imprisonment sentence separately. As a rule, persons sentenced to 30 years of imprisonment and imprisonment sentence serve the sentences separately. As a rule, adults and juveniles serve the imprisonment sentence separately. Persons serving imprisonment sentence may not be placed in the same room with persons in detention.

133. In the event of using means of coercion against detainees, the Institute for the Execution of Criminal Sanctions is obligated to prepare a report containing facts and evaluation of overstepping the power and to deliver it to the Ministry of Justice, while chief of the Institute is obligated to notify the president of the court thereof, who exercises supervision regarding lawful treatment of detainees.

134. Convicted persons are entitled to elementary and vocational education. Courses in elementary education are organized for convicted persons, particularly for juveniles and young adults who have not graduated from elementary school, while courses in vocational education may also be organized. Convicted persons may be granted the opportunity to take exams outside the premises of the organization. Convicted persons are entitled to legal aid in terms of taking necessary actions to protect their rights. In accordance with the needs of their treatment, convicted persons are assigned a type of work that corresponds to their mental and physical capacity and professional qualifications, abilities and needs for preserving order and discipline. Convicted persons who work are entitled to remuneration for such work.

135. Convicted persons who are foreign citizens are entitled to address diplomatic and consular mission of their country or country protecting their interests by submitting briefs, while stateless persons or refugees may address an organization protecting their interests. If convicted persons are foreign citizens, stateless persons or refugees, they are entitled to a visit from the consular representative of their country or country protecting interests of these citizens, as well as the representative of official organization protecting refugees' interests.

136. Means of coercion may be used against convicted persons only when so required to prevent to escape, physical assault on the person in official capacity or convicted persons, infliction of injuries on another person, self-injury or causing physical damage, and also when it is necessary to suppress resistance to the lawful order given by the person in official capacity.

**Table 15, annex –Adult perpetrators by sex, 2001 -2010<sup>8</sup>**

**Treatment of juveniles**

137. The Criminal Code of Montenegro contains special provisions on juveniles. The Code stipulates that persons who at the time of commission of an unlawful act which constitutes a statutory criminal offence are younger than fourteen years (child) may not be subject to criminal sanctions. Only older juveniles who have committed the criminal

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<sup>8</sup> Source: Monstat, Department for the Statistics in the Fields of Education, Research and Development, Culture, Judiciary and Administration.

offence punishable under law by the imprisonment sentence exceeding five years may be penalized if due to the high degree of guilt of perpetrators and severity of the criminal offence it would not be reasonable to pronounce a correctional measure.

138. In the framework of the general purpose of criminal sanctions, the purpose of correctional measures and juvenile imprisonment sentence is to ensure protection and assistance to the juvenile perpetrators, supervise them, provide them with vocational training and development of individual responsibility, thus ensuring their correction, reformation and proper development. The purpose of juvenile imprisonment sentence is also to exert strong influence on juvenile perpetrators in order for them not to commit any criminal offences in the future, and also on other juveniles in order for them not to commit any offences.

139. Juvenile imprisonment sentence may not be imposed for the period of less than six months, nor may it exceed eight years. By exception, the juvenile imprisonment sentence not exceeding 10 years may be imposed for criminal offences punishable by the minimum of ten years of imprisonment. Older juveniles serve juvenile imprisonment sentence in special penitentiary-correctional facility where they may stay until they have reached the age of twenty-three. If the sentence has not been served by then, they will be referred to the penitentiary-correctional facility where the adults serve imprisonment sentence. By exception, persons who have reached the age of twenty-three may stay in the juvenile penitentiary-correctional facility if that is necessary to complete their education or vocational training, limited to the age of twenty-five. Convicted juveniles who, in the course of serving the juvenile imprisonment sentence, have displayed proper behaviour and made efforts in working and studying may be granted approval of a leave of absence by the head of organization where they are serving the sentence to visit their parents and close relatives. Approval of the leave of absence may be granted two times maximum in one year and each time it may last up to 14 days. Convicted juveniles may not be imposed a restriction on correspondence with parents and other close relatives. By exception, convicted juveniles may be imposed a disciplinary sanction in the form of referral to the confinement for a period of up to 10 days, while it may last up to 30 days if juveniles became adults in the course of serving the juvenile imprisonment sentence.

**Table 16, annex –Juvenile perpetrators by sex 2001-2010<sup>9</sup>**

**Disciplinary liability of employees of the Institute for the Execution of Criminal Sanctions**

140. The Law on Civil Servants and State Employees, as a general regulation, applies to liability of employees in penitentiary systems in the event of their breach of official duties. A total of 17 disciplinary proceedings were initiated in 2010 against 34 employees. All the proceedings were completed and 33 employees were imposed a fine, while the sanction in the form of termination of employment was imposed against three employees.

**Article 11 –Fulfilment of contractual obligation**

141. Article 29 of the Constitution of Montenegro (Official Gazette of MNE 01/07) guarantees individual liberty, while deprivation of liberty is allowed only for reasons and in the procedures specified in the law. The Constitution guarantees respect for the principle of legality (art. 33) which lays down that no one may be punished for an act that, prior to being committed, was not stipulated by the law as punishable, nor may they be pronounced a punishment which was not envisaged for that act.

<sup>9</sup> Source: Monstat, Department for the Statistics in the Fields of Education, Research and Development, Culture, Judiciary and Administration

142. The Criminal Code of Montenegro does not define failure to fulfil a contractual obligation as a criminal offence, which is why the imprisonment sentence may not be imposed on these grounds, neither is there any other possibility to impose imprisonment sentence for persons due to their inability to fulfil the contractual obligation.

143. Under the Law on Obligations (Official Gazette of MNE 47/08), the creditor in contractual obligations is authorized to claim from the debtor to fulfil the obligation, while the debtor is obligated to fulfil it in a good faith and as formulated. After the debtor fails to fulfil the obligation or is late in fulfilling it, the creditor is also entitled to claim damages for the loss sustained as a consequence.

#### **Article 12 – Freedom of movement**

144. Article 39 of the Constitution of Montenegro guarantees all the persons in Montenegro the right to freedom of movement and residence, as well as the right to leave. The freedom of movement and residence in Montenegro, as well as the freedom of leaving it, may be restricted if so required for the conduct of criminal proceedings, prevention of the spread of contagious diseases or for the security of Montenegro.

145. Violation of the right to freedom of movement and residence constitutes criminal offence under the Criminal Code of Montenegro which stipulates that anyone who unlawfully denies or restricts the right of another person to freedom of movement or residence in the territory of Montenegro will be punished by a fine or up to one year of imprisonment. If this criminal offence has been committed by persons in official capacity, they are punished by up to three years of imprisonment.

146. In the period from 2006 to 2011, the Police Directorate registered two criminal charges involving three criminal offences of violation of the right to freedom of movement and residence referred to in article 163 of the Criminal Code.

#### **Table 17, annex –Statistics on the court cases involving the criminal offence of violation of freedom of movement and residence (art. 163), 2006 - 2011<sup>10</sup>:**

147. All rights and obligations included in article 12 of the Covenant were recognized and transposed to legal regulations governing entry, movement and residence of foreigners in the territory of Montenegro, including exit of foreigners from Montenegro – Law on Foreigners (Official Gazette of MNE 82/08, 72/09 and 32/11). Articles 8 and 10 of the Law on Foreigners stipulate that foreigners are not allowed to enter Montenegro if: they have no valid travel document containing visa or residence permit, unless otherwise stipulated by the law or international treaty; they have no sufficient financial means for sustenance during the stay in Montenegro and for return to the country where they came from or for the travel to the third country; they are in transit, and also do not meet requirements for entry to the third country; the security measure of removal and security measure of expulsion are in force, or their residence permit has been cancelled; it is so required for national security, public order and public health reasons; they are registered as perpetrators of international crimes in relevant records. Prohibition on entry is registered in a valid travel document.

148. Article 9 of the Law on Foreigners stipulates that foreigners are not allowed to leave Montenegro if: they use another person's, invalid or false travel document or some other document; there is reasonable suspicion that they intend to avoid criminal offence or prosecution in misdemeanour proceedings, imprisonment sentence, execution of court order or deprivation of liberty; it is so required for national security and public order reasons. After the reasons mentioned above cease to exist, foreigners are allowed to leave Montenegro.

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<sup>10</sup> Source: The Supreme Court of Montenegro.

149. Article 33 of the Law on Foreigners regulates termination of residence to foreigners of up to 90 days: by cancellation of the term; expiry of the term for which the visa was issued; expiry of the six month term, counting from the day of the first entry to Montenegro; if they have been returned to Montenegro on the basis of readmission; for unlawful stay.

150. Article 53 of the Law on Foreigners stipulates that temporary residence in Montenegro ceases to be valid for foreigners if: their temporary residence permit has been cancelled; if they have been imposed the security measure of removal or the security measure of expulsion; the temporary residence term has expired; reasons for which the temporary residence has been approved cease to exist; during the term of temporary residence, they stayed out of Montenegro for more than 90 days. The right to permanent residence of foreigners ceases under article 59 if: they have been imposed the security measure of removal or the security measure of expulsion; it has been established that the foreigners moved out of Montenegro or spent more than one year continuously in another State without having notified the Ministry thereof; they had their permanent residence status denied; they waived their permanent residence, as on the day on giving a statement thereon; they acquired Montenegrin citizenship.

151. In the period from 5 May 2008 to 1 January 2012, the Ministry of Interior (together with the Consulates General in Frankfurt and New York) issued 304,828 passports. A total of 2,830 requests for passports were rejected. Montenegro granted asylum to four persons.

#### **Article 13 – Expulsion of aliens**

152. Up to 90 days residence permit may be cancelled to foreigners under article 32 of the Law on Foreigners if: they have no valid travel document or other document for crossing the State border; they do not meet requirements for entry and stay set forth by the law; they have no sustenance means during stay in Montenegro and for return to the country they came from or for travel to the third country; they have failed to pay a fine imposed in Montenegro; there is reasonable suspicion that they will not use residence for the purpose they applied for. The Police Directorate issues a ruling on the cancellation of residence permit. The ruling sets the timeframe in which foreigners must leave the territory of Montenegro and imposes prohibition on entry to Montenegro for a specified period of time.

153. Temporary residence permit may be cancelled to the foreigners if it has been subsequently established (art. 52 of the Law on Foreigners) that: there exist reasons from article 8 of the Law on Foreigners (already quoted in the text above); they are employed and work without a valid work permit, thus breaching provisions of the law regulating employment and work of foreigners; residence is not used for the purpose for which the temporary residence permit has been issued. In deciding on cancellation of the temporary residence permit, the following is particularly taken in consideration: duration of residence; personal, family, financial and other circumstances; timeframe in which foreigners must leave Montenegro that may not exceed 30 days; time period of validity of the prohibition on entry to Montenegro.

154. In the period from 1 January 2011 to 20 February 2012, the Ministry of Interior registered 6 cancellations of residence permits of the foreigners who had been granted temporary residence permits.

155. Permanent residence permit may be cancelled to the foreigners under article 58 of the Law on Foreigners if: they have been sentenced in Montenegro by enforceable decision to six-months of unconditional imprisonment for the criminal offence prosecuted ex officio; it is so required for national security, public order or public health reasons; it has been established that there are reasons for annulment of the permanent residence permit; they presented false identity data or concealed circumstances that are relevant for rendering decision on the acknowledgment of the right to permanent residence.

156. The Criminal Code of Montenegro stipulates expulsion of foreigners from the country as a kind of security measure imposed against perpetrators. The measure involving expulsion of foreigners from the country may be imposed if a sanction or suspended sentence has been pronounced against perpetrators. The court may expel foreigners who have committed criminal offence from the territory of Montenegro for a period of one to ten years, or for good if they repeatedly committed criminal offence. In deciding whether to impose this measure, the court gives due consideration to the nature and seriousness of the offence committed, the motives out of which the criminal offence was committed, the manner in which it was committed and any other circumstances that indicate why the foreigners should not be allowed to stay in Montenegro. The term of expulsion starts on the date when the judgment thereof becomes enforceable, provided that the time spent in prison is not credited against the term of this measure. The security measure involving expulsion of foreigners from the country may not be imposed against perpetrators who enjoy protection under ratified international treaties.

#### **Article 14 – Right to a fair trial**

##### **Equality before the court and fair trial**

157. The Constitution guarantees right to a fair and public trial within reasonable time as an individual right, which means that everyone is entitled to a fair and public trial within reasonable time before an independent and impartial court established by the law. The Constitution of Montenegro prohibits any direct or indirect discrimination, on any ground, which also refers to the prohibition of discrimination of foreign natural and legal person in access to courts in favour of domestic persons. The Constitution also guarantees the right of everyone to equal protection of their rights and freedoms. Rights and freedoms are exercised under the Constitution and ratified international agreements. Everyone is equal before the law, regardless of any particularity or personal feature. Everyone has the right of recourse to international institutions for the protection of their own rights and freedoms guaranteed under the Constitution. Equal access to courts of domestic and foreign legal and natural persons also includes equal right to legal aid which is guaranteed to everyone under the Constitution. The Constitution also stipulates that hearing before the court is public and that judgments are pronounced publicly. By exception, the court may exclude the public from the hearing or a part of the hearing for the reasons necessary in a democratic society, only to the extent necessary: in the interest of morals; public order; in judicial proceedings for juveniles; in order to protect private life of the parties; in marital disputes; in the proceedings related to guardianship and adoption; in order to protect military, business or official secrets and for the protection of security and defence of Montenegro.

158. These Constitutional principles and guaranteed rights, as aspects of the right to a fair trial, are elaborated in the Law on Courts, Law on Civil Procedure, Criminal Procedure Code, Law on Non-Contentious Procedure, Law on General Administrative Procedure, Law on Bankruptcy and Law on Protection of the Right to a Fair Trial, in accordance with the Constitution and relevant international standards applicable to the right to a fair trial.

159. Provisions of the Law on Civil Procedure and Law on Courts are applied accordingly on administrative disputes related to the right to a fair trial.

##### **Presumption of innocence**

160. The Constitution guarantees presumption of innocence by stipulating that everyone is deemed innocent until the guilt thereof has been established by an enforceable court judgement. The accused are not obligated to prove the innocence thereof. The court interprets the doubt regarding the guilt to the benefit of the accused. The Constitution also guarantees everyone the right to defence, and especially: the right to be informed in the language they understand about the charges against thereof; to have sufficient time to prepare defence and to be defended personally or through a defence attorney of their own

choosing. The Constitution also guarantees the right to legal aid stipulating that everyone is entitled to legal aid provided by the bar, an independent and autonomous profession, and by other services while provision of legal aid may be free of charge in accordance with the law.

161. Presumption of innocence is also guaranteed under the Criminal Procedure Code. State authorities, media, associations of citizens, public figures and other persons are obligated to observe the presumption of innocence principle and they may not violate other procedural rules, rights of the accused and injured parties and the principle of independence of judiciary by their public statements regarding the criminal proceedings in progress. The court renders decision that is more favourable for the accused if once all available evidence are provided and presented in the criminal proceedings, only a suspicion remains with respect to the existence of a significant feature of a criminal offence or as regards facts on which depends an application of a provision of the Criminal Code or this Code.

#### **Notification of charges and defence**

162. The Constitution of Montenegro guarantees everyone the right to be informed in the language they understand about the charges against thereof, to have sufficient time to prepare defence and to be defended personally or through a defence attorney of their own choosing.

163. The Criminal Procedure Code stipulates that, during the first hearing, suspects are informed about the criminal offence they are charged with, as well as the grounds for suspicion against them. The accused are provided with an opportunity to make a statement regarding all the facts and evidence incriminating them and to present all facts and evidence in their favour.

164. The Criminal Procedure Code stipulates that persons deprived of liberty by a competent State authority are immediately informed in their language or in a language they understand about the grounds for their apprehension and, at the same time, are informed that they are not obligated to make a statement, that they have a right to a defence attorney of their own choosing and to request that a person of their choosing, as well as a diplomatic consular representative of a State whose nationals they are or a representative of a relevant international organization if they are stateless persons or refugees be informed on their deprivation of liberty. Persons deprived of liberty without court judgement are brought before the competent State prosecutor without delay, with the exception of cases specified in this Code.

165. In addition to the right to defence guaranteed under the Constitution, this right is also laid down in the Criminal Procedure Code in a way that the accused have the right to defend themselves in person or with the professional assistance of a defence attorney of their choosing from ranks of attorneys-at-law. The accused have the right to a defence attorney during their hearing. Prior to the first hearing, the accused are informed about their right to retain a defence attorney, to agree with the defence attorney on the manner of defence and that the defence attorney may be present during their hearing. They must be cautioned that everything they say may be used as evidence against them. If the accused do not retain defence attorney by themselves they are assigned an ex officio defence attorney in accordance with this Code. The accused are ensured enough time and possibilities to prepare their defence. Suspects have the right to defence attorney in accordance with this Code.

166. The Criminal Procedure Code stipulates that if the accused are in placed in detention, the defence attorney may correspond and have conversations with them without supervision. Defence attorney enjoys the right to have private conversation with the suspect who is deprived of liberty even before suspect is interrogated. The control of this conversation before the first hearing is allowed only by observing and not by listening.

Defence attorney is authorized to undertake all actions in favour of the accused that can be undertaken by the accused in line with the provisions of this Code.

167. The Law on Courts stipulates that the court is obligated to enable parties and their representatives to examine, transcribe or copy court files immediately after the request or within three days at the latest; that another person who has been denied the right to examine files is entitled to address president of the court with an application and he/she decides, within three days, on giving the files for insight of interested parties.

#### **Trial within a reasonable time**

168. The court is obligated to conduct proceedings without delay, within a reasonable time, with the least possible expenses and to prevent any abuse of rights of the parties to proceedings. If the parties, interveners, their legal representatives or proxies intend to harm another person or pursue the objective contrary to the good practice, conscience and honesty, thus abusing their rights acknowledged by the law, they may be imposed a fine or other measures by the court as specified in this law. Under the Law on Civil Procedure, the court renders judgment within 30 days at the latest from the day the main hearing has been completed. The day when the judgment was prepared in writing is deemed the day of rendering the decision. After completion of the main hearing, the court notifies the present parties about the date when the judgment will be pronounced. Parties, or their representatives or proxies, are obligated to come in person to the court building to collect the judgment.

169. The Criminal Procedure Code stipulates that the accused have the right to be brought before the court in the shortest possible time and to a prompt trial, and that the court is obligated to conduct proceedings without delays and to prevent all abuses of rights that are vested in the participants in proceedings.

170. A special Law on Protection of the Right to a Trial in a Reasonable Time (Official Gazette of MNE 11/07) was adopted to protect the right to the trial in a reasonable time, as one of the aspects of the right to a fair trial, envisaging two legal remedies for the protection of the above mentioned right, that is the right to expedite proceedings and the claim for just satisfaction, for the purpose of ensuring more effective protection at the national level in accordance with article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitution also envisages the possibility to lodge constitutional complaint for violation of human rights and freedoms guaranteed under the Constitution, after exhausting all the effective legal remedies which represents final national means of safeguarding all human rights and freedoms guaranteed under the Constitution, including the right to a fair trial.

171. The Law on Protection of the Right to a Trial in a Reasonable Time which has been in force since 2008 has proven to be an effective legal remedy for safeguard of the above mentioned right at the national level, which will lead to a reduction of the number of cases before the European Court of Human Rights.

172. Implementation of the Law on Protection of the Right to a Trial in a Reasonable Time which defines mechanisms for safeguarding this right during the proceedings (supervisory appeal to expedite proceedings) began in 2008. A total of 40 supervisory appeals were filed during that year and all of them were resolved. After completion of judicial proceedings in compliance with the standards of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the right to file claim for just satisfaction is acquired and the lawsuit is filed with the Supreme Court of Montenegro. In 2008, there were 11 such lawsuits and all of them were resolved – the court declared it was not competent in one case, lawsuits were dismissed in nine cases and in one case the lawsuit was entered in the register of “Various Civil and Non-Contentious Cases”.



173. In 2009, a total of 73 supervisory appeals to expedite proceedings were filed and all of them were resolved.

**Table 18, annex –Data on supervisory appeals**

174. In 2009, a total of 13 claims for just satisfaction were filed and all of them were resolved - the court declared it was not competent in one case, lawsuits were rejected in 11 cases, while the lawsuit was partially accepted in one case.

175. In 2010, a total of 95 supervisory appeals to expedite proceedings were filed, of which one appeal remained unresolved by the end of 2010.

**Table 19, annex –Data on supervisory appeals:**

176. In 2010, a total of 14 claims for just satisfaction were filed and all of them were resolved – in nine cases lawsuits were dismissed, in two cases lawsuits were rejected, in two cases lawsuits were partially accepted and one case was resolved in some other way.

177. In 2011, a total of 115 supervisory appeals to expedite proceedings were filed, of which three appeals remained unresolved.

**Table 20, annex - Data on supervisory appeals:**

178. In 2011, 25 claims were filed and all of them were resolved – in four cases lawsuits were dismissed, in four cases lawsuits were rejected, in 15 cases lawsuits were partially accepted and two cases were resolved in some other way.

**Right to legal aid**

179. Under the Constitution, everyone is entitled to legal aid. Legal aid may be provided by the bar and other services and it may be provided free of charge in accordance with the law. Moreover, the Constitution of Montenegro guarantees everyone the right to defence and stipulates that everyone has the right to defend themselves in person or through a defence attorney of their own choosing.

180. The Criminal Procedure Code stipulates that the accused have the right to defend themselves in person or with the professional assistance of a defence attorney of their choosing from ranks of attorneys-at-law. Prior to the first hearing, the accused are informed about their right to retain a defence attorney, to agree with the defence attorney on the manner of defence and that the defence attorney may be present during their hearing, while such caution is entered in the record on interrogation of the accused along with their statement thereon. The Criminal Procedure Code stipulates in which cases the appointment of defence attorney is compulsory regardless of the will of the accused, because it is required so by either the nature of a criminal offense or a particularity of the accused. Defence attorney is appointed by the order on the list submitted to the president of the first instance court by the Bar Chamber. The president of the court may release the appointed defence attorney who negligently carries out duties and appoint another defence attorney, in lieu of the dismissed defence attorney.

181. When so required by the interests of fairness, the accused may be appointed, at their request, a defence attorney if they are not able to bear the costs of defence under their financial situation. Decision on the request of the accused to be assigned defence attorney due to their poor financial standing is rendered by investigative judge, chair of the panel or individual judge, depending on the stage of proceedings and type of proceedings on which the decision is to be rendered.

182. Implementation of the Law on Legal Aid (Official Gazette of MNE 20/2011) started on 1 January 2012. Under this law, natural persons who are unable, given their financial situation, to exercise the right to judicial protection without harming the minimum subsistence level for themselves and their families are provided legal aid in order to be able

to exercise the right to a fair trial. Legal aid includes provision of funds for entire or partial coverage of legal counselling, preparation of briefs, representation in judicial proceedings before the court, State Prosecutor's Office and Constitutional Court of Montenegro and in the out-of-court dispute settlement procedure, as well as the waiver from court fees. The law envisages opening the Legal Aid Services or special divisions for the provision of legal aid in all basic courts throughout Montenegro. In light of the beginning of implementation of the new Law on Legal Aid, the Ministry of Justice of Montenegro, supported by the United Nations Development Programme (UNDP) office in Montenegro and the Governments of the Kingdom of the Netherlands and Kingdom of Norway opened the first Legal Aid Office in the Basic Court in Podgorica. These offices already became operational in five basic courts in Montenegro by the end of January 2012.

#### **Hearing of witnesses**

183. Under the Criminal Procedure Code, the accused have the right to propose hearing of witnesses, expert witnesses, as well as to examine the co-accused, witnesses and expert witnesses. The accused must be given the opportunity to make a statement regarding all the facts and evidence against them and to present all the facts and evidence in their favour. Such legal provision includes the right of the accused to propose presentation of evidence, including through hearing of witnesses. The accused must be instructed about this right before the first hearing and such information must also be given to them before the beginning of the main hearing. Under this provision, the accused are informed before the beginning of the main hearing about their right to ask questions, raise objections and give explanations regarding statements of the co-accused, witnesses and expert witnesses.

#### **Right to an interpreter**

184. Right to a free aid from an interpreter if the accused do not understand or speak language of the court. The Criminal Procedure Code stipulates that criminal proceedings are conducted in official language of the court. Parties, witnesses and other participants in proceedings are entitled to the use of their own language in the proceedings. If the proceedings are not conducted in the language these persons understand, an interpretation of statements of these persons or others and translation of personal documents and any other written evidence material are provided. Persons entitled to interpretation are instructed of the right thereof and they may waive such right if they understand language of the proceedings. A note is entered in the record that the participants in proceedings have been so instructed, and their statement thereto is recorded. Interpretation is entrusted with an interpreter.

#### **Juvenile in the proceedings**

185. The Constitution stipulates that juvenile detention may not exceed 60 days and that in conducting juvenile proceedings the court may exclude the public from the hearing or from apart thereof. Please refer to the response in part of the report regarding implementation of article 10 of the Covenant.

#### **Right to a legal remedy**

186. Given that the violation of guaranteed rights, as aspects of the right to a fair trial, constitute severe violations of procedural provisions and of the right to a fair trial, regular and extraordinary legal remedies may be lodged against them in judicial proceedings.

#### **Award of damages**

187. The constitutional principle guarantees the right to the award of damages for unlawful actions, and also that persons who have been deprived of liberty unlawfully or unjustifiably or who have been unjustifiably convicted are entitled to the award of damages by the State. Please refer the Right to award of damages in part of the report regarding implementation of article 9 of the Covenant.

***Ne bis in idem***

188. The right of persons not to be tried twice (*ne bis in idem*) is set forth and guaranteed under article 36 of the Constitution of Montenegro which stipulates that no one may be tried or convicted twice for one and the same punishable offence. Moreover, the Criminal Procedure Code prohibits retrial to the effect that no one may be tried for a criminal offence they have already been convicted or acquitted of by enforceable judgment. This prohibition does not preclude reopening the criminal proceedings in accordance with this Code. Therefore, criminal proceedings that ended with an enforceable decision may be reopened the benefit of the accused if someone has been tried several times for the same criminal offence. Once the court has pronounced the judgment in retrial, it will decide whether the judgment pronounced earlier will be revoked partially or entirely or if it will remain in force.

189. Article 18 of the Law on Cooperation with International Criminal Court (Official Gazette of MNE 53/09) stipulates that the accused, on whose guilt the International Criminal Court has rendered decision, may not be tried for the same offence in Montenegro, nor may the judgment of the court in Montenegro regarding the same criminal offence be enforced. At the request of the State prosecutor or the accused, on whose guilt the International Criminal Court has rendered decision, the judgment pronounced in Montenegro for the same criminal offence will be revoked by applying accordingly provisions of the Criminal Procedure Code that regulate reopening criminal proceedings (quasy criminal hearing).

**Article 15 – Prohibition of violation of the principle of legality**

190. Article 33 of the Constitution stipulates that no one may be punished for an act that, prior to being committed, was not stipulated by the law as punishable, nor may they be pronounced a punishment which was not envisaged for that act. Criminal and other punishable acts are identified and the punishments for them are imposed in accordance with the law in force at the time when the act was committed, unless the new law is more lenient for perpetrators.

191. Legality in identifying criminal offences and imposing criminal sanctions is also stipulated in the Criminal Code which states that a punishment or other criminal sanction may be imposed only for an act which constituted statutory criminal offence before the time of commission and for which punishment was authorized by the law. The Code stipulates that perpetrators are subject to the law in force at the time of commission of the criminal offence. Where a law is amended in the course of commission of a criminal offence, applicable law is the law in effect at the time of completion of the criminal offence. Where a law is amended once or several times after the commission of a criminal offence, applicable law is the law which is most lenient for perpetrators.

192. Not enforcing punishment which is more severe than that applicable at the time of commission of a criminal offence –The Constitution of Montenegro prescribes that criminal and other punishable offences are identified and the punishments for them are imposed in accordance with the law in force at the time of commission of the criminal offence, unless the new law is more lenient for perpetrators. Pursuant to the constitutional provision above, the Criminal Code stipulates that the law which was in force at the time of commission of the criminal offence is applied on perpetrators of the criminal offence. Where a law is amended in the course of commission of a criminal offence, applicable law is the law in effect at the time of completion of the criminal offence. Where a law is amended once or several times after the commission of a criminal offence, applicable law is the law which is most lenient for perpetrators.

193. Proportionality between severity of the punishment and the criminal offence—Under the Criminal Code, the general purpose of stipulating and imposing criminal sanctions is to

suppress the acts which violate or threaten the values protected by criminal legislation. In the framework of the general purpose of criminal sanctions, the purpose of the punishment is to prevent perpetrators from committing criminal offences and influencing them so that they do not commit criminal offences in the future; influencing others not to commit criminal offences; expression of social condemnation for the criminal offence and of an obligation to respect laws; strengthening morals and influencing the development of social responsibility.

194. In adoption of the Criminal Code and in stipulation of the type and duration of punishments, the legislator took in consideration proportionality between the punishment and the criminal offence. The Criminal Code gives competence to the court to fix the punishment for perpetrators of a criminal offence within the statutory limits for that particular offence taking into account the purpose of punishment and giving due consideration to any circumstances which result in lighter or more severe punishment (mitigating and aggravating circumstances) as well as the following, in particular: degree of culpability, motives for the commission of offence, degree of peril or injury to the protected good, circumstances under which the offence was committed, perpetrators' history, their personal situation, their behaviour after the commission of criminal offence, particularly their attitude towards the victim of the criminal offence as well as any other circumstances concerning the perpetrators' personality.

195. The court may impose punishment against perpetrators which is below the limit set by the law, or lighter punishment provided that: the law stipulates that perpetrators may be penalized more leniently, the law stipulates that perpetrators may be remitted from punishment and the court does not remit them from the punishment, and if it has been established that there are particularly mitigating circumstances and it is assessed that a more lenient penalty will be sufficient to achieve the purpose of punishment. In mitigating the punishment to the level below the limit set by the law, the court is obligated to take into consideration the limits prescribed for mitigation of punishment in the law (art. 46 of the Criminal Code).

#### **Article 16 – Right to legal recognition**

196. The legal system of Montenegro grants the right to recognition as person before the law to physical and legal persons. Physical persons achieve legal recognition by birth and lose it upon death. In line with the provisions from article 126 of the Inheritance Law (Official Gazette of MNE 74/08), a child that was already conceived at the time of opening the estate is recognized as a living person, if born alive.

197. The Family Law (Official Gazette of MNE 1/07) prescribes that paternity statement may be provided before the birth of the child. Such a statement has legal effect provided that the child is born alive. The Family Law prescribes that a person attains full age upon turning 18. Full business capability is acquired with full age or with entering into marriage before full age with court permission.

198. The Law on Business Organizations (Official Gazette of MNE 6/02, Official Gazette of RMNE17/07, 80/08) prescribes that joint-stock companies and limited liability companies acquire the status of legal persons on the date of registration.

#### **Article 17 – Right to privacy**

199. The Constitution of Montenegro (art. 28) guarantees inviolability of a person's physical and psychological integrity, privacy and individual rights. Article 40 of the Constitution guarantees to all persons the right to respect for private and family life, while article 41 guarantees inviolability of dwelling place and prohibits entry into dwelling place or other premises and search without court warrant and against the will of the owner. Article 42 guarantees inviolability of the confidentiality of letters, telephone conversations and

other means of communication. The principle of inviolability of the confidentiality of letters, telephone conversations and other means of communication may be breached only based on a court decision, if so required for conducting criminal proceedings or for the security of Montenegro. The Constitution guarantees personal data protection to all persons. Use of personal data for purposes other than the ones for which they were originally collected is prohibited. Everyone is entitled to being informed about the data collected on them and to court protection in case of abuse (art. 43).

200. The Law on Personal Data Protection (Official Gazette of MNE 79/08 and 70/09) ensures personal data protection in line with the principles and standards contained in the ratified international treaties on human rights and fundamental freedoms and the generally accepted rules of international law. Article 2 of this Law stipulates that personal data may be processed for the purpose set by the law or with prior consent of the data subject. The scope of personal data may not be processed to an extent beyond that which is necessary to achieve the purpose of their processing, nor in a manner that is not aligned with the purpose. Personal data protection is provided to all, regardless of nationality, domicile, skin colour, sex, language, religion, political or other belief, ethnicity, social origin, property, education, social status or any other personal attribute.

201. By prescribing protection of family community, the Family Law grants protection against unauthorized State interference with family life, on the one hand, and envisages positive obligations of the State towards family, on the other hand. Thus, along with respect for family autonomy, the situations and conditions are specified when specialized authorities (in particular courts and custodial authorities) may and should intervene to protect the interests of individual family members, especially children. Hence, the basis for such intervention is the interest of the family i.e. the need to protect the rights and interest of the parties in marital/family relationships in certain situations (mainly in conflicts). The personal nature of such relationships requires the Family Law to specify the preconditions and requirements for intervention in order to prevent the competent authorities from overstepping their powers.

202. The Criminal Code of Montenegro safeguards the mentioned constitutional principles, privacy, honour and reputation by means of stipulating a number of criminal offences: breach of inviolability of dwelling (art. 169); unlawful search (art. 170); unauthorized disclosure of secret (art. 171); violation of privacy of correspondence and other communication (art. 172); unauthorized wiretapping and recording (art. 173); unauthorized photographing (art. 174); unauthorized publication and demonstration of other person's documents, portraits or recordings (art. 175); unauthorized collection of personal data (art. 176); violation of secrecy of ballot (art. 191); dissemination of information about private and family life (art. 197), and displaying pornographic material to children and production and possession of child pornography (art. 211).

### **Search**

203. Article 41, paragraph, 3 of the Constitution stipulates that a person in official capacity may enter a dwelling or other premises even without a court warrant and conduct a search without the presence of witnesses if so necessary for the prevention of execution of a criminal offence, immediate apprehension of the perpetrator or to save people and property.

204. Articles 75 – 83, of the Criminal Procedure Code stipulate the legal concept of search, be it search of dwelling or other premises of the accused or other persons or of their movables outside the dwelling.

### **Secret surveillance measures**

205. The Criminal Procedure Code prescribes the following: types of secret surveillance measures and conditions for their application; criminal offences which may be subject to secret surveillance measures; competence for initiation and duration of secret surveillance

measures; execution of such measures; evidence which is legally invalid, and procedure for notification of the subject of secret surveillance measures in case that no criminal proceedings are initiated. Secret surveillance measures may be ordered for the criminal offences:

- Punishable by up to ten years of imprisonment or a more severe punishment;
- Containing elements of organized crime;
- Containing elements of corruption, namely: money laundering; causing false bankruptcy; abuse of assessment; passive bribery; active bribery; disclosure of official secret; trading in influence; abuse of powers in economy; misuse of office; fraud in the conduct of official duty, which are punishable by eight years of imprisonment or a more severe punishment;
- Abduction; extortion; blackmail; pandering; displaying pornographic material; usury; evasion of taxes and contributions; smuggling; unlawful processing, disposal and storage of dangerous substances; attack on a public official in discharge of official duty; interference in the production of evidence; criminal association; unlawful possession of weapons and explosive substances; illegal border crossing and smuggling of persons;
- Against computer data safety.

206. In contrast with the previous Criminal Procedure Code, the current one envisages the new secret surveillance measure of secret supervision and technical recording of persons and objects“. In line with the new concept of criminal proceedings, secret surveillance measures are ordered by the investigative judge, following the State Prosecutor’s motion that includes a statement of reasons, or by the State Prosecutor, following the police motion that includes a statement of reasons.

#### **Article 18 – Freedom of thought, conscience and religion**

207. The Constitution guarantees to all persons the freedom of thought, conscience and religion, as well as the right to change religion or belief (art. 46). In addition, everyone is guaranteed the freedom to – individually or collectively, publicly or privately – manifest religion or belief by means of prayer, preaching, customs or ceremonies. No one is obliged to declare his/her religious or other beliefs. Free manifestation of religious belief may be restricted only if necessary to protect the lives and health of people, public order and peace, and other rights guaranteed by the Constitution (art. 46).

208. Montenegro is defined as a secular State where religious communities are separate from the State. The Constitution (art. 14) guarantees to the religious communities active in the territory of Montenegro equal rights and freedom in the practice of ceremonies and religious affair. The State does not intervene with the internal organization or organization of religious affairs, but has left such affairs to be a competence and responsibility of the respective religious communities i.e. religious communities are autonomous in regulating their organization and affairs. There is no State religion in Montenegro.

#### **Table 21, annex – Population breakdown by religion<sup>11</sup>**

209. The exercise of religious rights is specifically regulated by the Law on the Legal Status of Religious Communities (Official Gazette of SRMNE 9/77 and 26/77) and Law on Celebration of Religious Holidays (Official Gazette of RMNE 56/93). Pursuant to the Law on the Legal Status of Religious Communities, establishment of religious communities and organizations i.e. religious communities is free; their establishment or termination of

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<sup>11</sup> Census of population, households and dwellings 2011; MONSTAT data.

activity need to be registered with the administrative authority competent for the interior affairs at the territory of the local government where such community that has either been established or terminated its activity has its seat. The Law explicitly prohibits abuse of religious communities and their institutions, as well as religious activities or religious feelings, for political purposes. In addition, the Law prohibits prevention or obstruction of practice of religious ceremonies and religious affairs i.e. manifestation of religious feelings. Sanctions are envisaged for non-compliance with these and other legal provisions. Given the guaranteed freedom of religion, forced enlisting in a religious community is also prohibited, as well as forced participation in religious ceremonies.

210. Religious ceremonies may be performed in churches, temples, official premises, at cemeteries, private homes etc. without authorization from competent authorities; their performance outside the mentioned premises requires authorization from the competent authority. Persons placed in health, social welfare or similar institutions may practice their religion to the extent granted by the house rules of the given institution. Upon their personal request, such persons may receive visits by priests for the purpose of performing religious ceremonies. Persons serving imprisonment sentences are guaranteed the right to practice religious life.

211. Within their work, religious communities are entitled to set up religious schools and residences to accommodate their students. Such schools are outside the education system of Montenegro, as they are managed directly by the religious communities, which determine the curricula and the teaching staff to deliver them. Each religious community exercises this right and possibility and organizes religious education at their premises. In addition, religious communities have the possibility to publish and distribute religious print material as part of their activities. This is subject to the general regulations concerning information and publishing. Religious communities exercise this right; hence, all religious communities in Montenegro have respective internal print journals.

212. Free expression of religious belief is enabled also by the legal provisions that entitle the believers to obtain leave from work during major holidays. The Law on Celebration of Religious Holidays envisages the right to paid leave to celebrate a religious holiday. This Law prescribes misdemeanor liability, punishable by a fine against the responsible person in a company, institution, another legal person, State authority or the entrepreneur failing to provide paid leave to an employee during celebration of a religious holiday.

213. State aid to religious communities is provided through co-funding of the contributions for pension, social and health insurance of priests, and mainly through investments in sacral objects, in particular protection of those objects that have the status of cultural monuments. The State provides financial support to religious events and cultural activities of religious communities. Religious communities manage their own property and may raise charity funds for religious purposes, which they manage themselves.

214. The Criminal Code includes the criminal offence of violation of freedom of worship and practice of religious ceremonies (art. 161), as one of the criminal offences against individual and civil freedoms and rights. Between 2006 and 2011, the Police Directorate registered 4 criminal reports for the criminal offence violation of freedom of worship and practice of religious ceremonies from article 161 of the Criminal Code.

**Table 22, annex – Statistics on the court cases involving the criminal offence of violation of freedom of worship and practice of religious ceremonies (art. 161), 2006-2011:**

**Article 19 – Freedom of opinion and expression**

215. The Constitution of Montenegro guarantees exercise of the rights pertaining to the field of information. Everyone is entitled to freedom of expression by speech, writing, picture or in another manner. The right to freedom of expression may be restricted only by

another person's right to dignity, reputation and honour, and in case of endangering either public morals or security of Montenegro (art. 47).

216. Freedom of press and other forms of public information is guaranteed, as well as the right to establish newspapers and other forms of media without any approval being required, by registering with the competent authority. The Constitution guarantees the right to response and correction of untrue, incomplete or incorrectly conveyed information violating a person's right or interest and the right to compensation of damage caused by publication of incorrect data or information (art. 49).

217. There is no censorship in Montenegro. The Constitution envisages that a competent court may prevent dissemination of information and ideas in the media only if this be necessary to prevent invitation to forcible destruction of the constitutional order, preserve the territorial integrity of Montenegro, prevent war propaganda or incitement to violence or perpetration of a criminal offence, prevent propagation of racial, national and religious hatred or discrimination (art. 50).

218. The Constitution grants everyone the right to access the information held by the State authorities and organizations which perform public authorities, which may be restricted in the interest of: protecting life, public health, morals and privacy; conducting criminal proceedings; security and defence of Montenegro; foreign, monetary and economic policy (art. 51).

219. The constitutionally guaranteed rights to freedom of expression in Montenegro are regulated to more detail in the media regulations, which are aligned with the international standards in the field of the media and include the following: Law on Media (Official Gazette of RMNE 51/02 and 62/02); Law on Public Broadcasting Services of Montenegro (Official Gazette of MNE 79/08); Law on Electronic Media (Official Gazette of MNE 46/10); Law on Ratification of the European Convention on Transfrontier Television (Official Gazette of MNE 01/08);

220. The Law on Media is a systemic media law regulating the establishment of media, mandatory publication of data, rights and obligations in information, right to correction and response and foreign information activity. This Law regulates the obligation of the State to provide and guarantee freedom of information at the level of the standards contained in the international documents on human rights and freedoms (United Nations, OSCE, Council of Europe, EU). The provision from article 1 of this Law stipulates that the Law is to be interpreted and applied in compliance with the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and governed by the case law of the European Court of Human Rights, that the media are free and that censorship is prohibited.

221. The Law on Electronic Media<sup>12</sup> regulates the following: rights, obligations and responsibilities of legal and physical persons performing the activity of production and provision of audiovisual media services (hereinafter: AVM services); provision of electronic publication services via electronic communication networks; competences, status and sources of funding of the Agency for Electronic Media; prevention of unlawful media concentration; encouragement of media pluralism, and other issues of importance for the provision of AVM services, in line with the international conventions and standards (art. 1). The Law is aligned with the relevant European regulations and standards, primarily the 2007 European Audiovisual Media Services Directive and the European Convention on Transfrontier Television.

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<sup>12</sup> Adoption of the Law on Electronic Media resumed with harmonization of media legislation with the European standards and repealed the Law on Broadcasting from 2002.



222. The Agency for Electronic Media is the independent regulator for the field of AVM services which performs public authorities in line with the Law.

223. The Law on Public Broadcasting Services of Montenegro regulates the rights and obligations of national public broadcasting services in the media system of Montenegro. Under this Law, public broadcasting service is designed so as to meet and safeguard in its programmatic contents the interest of the public at the national and local level by means of news, cultural, educational, sports and entertainment programmes, along with application of high standards of professional ethics and quality and absence of discrimination, and paying particular attention to children and youth, members of minority nations and other minority national communities, persons with disabilities, socially vulnerable and other specific groups, thus achieving promotion and observance of human rights and freedoms, promotion of pluralism of social ideas, enhanced culture of public dialogue, and respect for linguistic diversity.

224. By adopting the Law on Ratification of the Convention on Transfrontier Television Montenegro endorsed the legal framework which expands the field of freedom of expression in line with article 10 of the European Convention for the Protection of Human Rights and Freedoms.

225. The Law on Free Access to Information was also adopted (Official Gazette of RMNE 68/05), stipulating free access to information held by the authorities. The right to access information held by the authorities is granted to all local and foreign legal and physical persons; access to information is granted at the level of the principles and standards contained in the international documents on human rights and freedoms.

226. The Parliament of Montenegro adopted the Law on Ratification of the Council of Europe Convention on Access to Official Documents in April 2011.

### **Criminal-law protection**

227. In Montenegro, violation of freedom of speech and public appearance constitutes a criminal offence, punishable by a fine or up to one year of imprisonment. If committed by a public official while acting in his/her official capacity, this criminal offence is punishable by up to three years of imprisonment (art. 178). The Criminal Code stipulates the criminal offence of prevention of printing and distribution of printed materials and broadcasting (art. 179): anyone who prevents or obstructs, without authorization, the printing, recording, sale or distribution of books, magazines, newspapers, audio and video cassettes or other similar printed or recorded materials is subject to a fine or up to one year of imprisonment. Anyone who prevents or obstructs, without authorization, the broadcasting of radio and television programmes is also subject to the same punishment. If the offence is committed by a public official while acting in his/her official capacity, the prescribed punishment is up to three years of imprisonment. Prevention of publication of response and correction notices also constitutes a criminal offence (art. 180): anyone who, in breach of a final decision of a court of law, rejects or prevents the publication of a response or correction notice of publicized untrue data or information which violates another person's rights or interests is punishable by a fine or up to one year of imprisonment.

228. There were no criminal proceedings between 2006 and 2011 for the criminal offences violation of freedom of speech and public appearance (art. 178) or prevention of printing and distribution of printed material and broadcasting (art. 179). There was one case which was initiated before the court where the court issued a decision declaring lack of jurisdiction.

229. In the aim of further enhancement of media freedoms, amendments to the Criminal Code from June 2011 deleted the criminal offences of defamation and insult.

**Article 20 – Prohibition of the propaganda for war or racial, national or religious hatred**

230. The Constitution of Montenegro stipulates absence of censorship. A competent court may prevent dissemination of information and ideas in the media if this be necessary to: prevent invitation to forcibly destroy the constitutional order; preserve the territorial integrity of Montenegro; prevent propaganda for war or incitement to violence or perpetration of criminal offence; prevent propaganda for racial, national and religious hatred or discrimination (art. 50).

231. The Criminal Code of Montenegro identifies a number of criminal offences related to prohibition of propaganda for war or racial, national or religious hatred, which fall into the group of offences against the constitutional order and security of Montenegro or the group of offences against humanity and rights guaranteed under international law. These are the following criminal offences: racial and other discrimination (art. 443); calling for violent change of constitutional order (art. 362); causing national, racial and religious hatred (art. 370).

232. Between 2006 and 2011, the Police Directorate registered 6 criminal reports for the criminal offence of causing national, racial and religious hatred from article 370 of the Criminal Code.

**Table 23, annex – Statistics on the court cases involving the criminal offence of causing national, racial and religious hatred (art. 370 of the Criminal Code):**

233. In the Montenegrin legal system, public call for the commission of terrorist acts constitutes a criminal offence (art. 447<sup>a</sup>). Anyone who publicly calls for or otherwise instigates the commission of the criminal offence of terrorism is punishable by one to ten years of imprisonment.

234. Between 2006-2011, there were no criminal proceedings for the criminal offences of racial and other discrimination (art. 443), calling for violent change of constitutional order (art. 362), terrorism (art. 447) or public call for the commission of terrorist acts (art. 447a).

235. Montenegrin media legislation is also aligned with articles 19 and 20 of the International Covenant on Civil and Political Rights; specifically, provisions of the media laws prohibit any propaganda for war or any call for national, racial or religious hatred which constitutes instigation to discrimination, hostility or violence.

**Article 21 – Freedom of assembly**

236. Article 52 of the Constitution of Montenegro guarantees the freedom of peaceful assembly, without any approval being required, with prior registration with the competent authority. Freedom of assembly may be temporarily restricted by a decision of the competent authority in order to prevent disorder or commission of criminal offences, threat to health or morals, or to ensure safety of people and property, in line with the law.

237. The Law on Public Assembly (Official Gazette of the Republic of Montenegro 31/05) defines the freedom of peaceful assembly in the manner laid down in this Law. Peaceful gatherings are held at appropriate locations; the organizers are required to register the gathering in advance with the authority responsible for police affairs which is competent for the territory in question.

238. The Law on Public Assembly explicitly defines that the civil freedom of assembly and other gathering may be temporarily restricted in order to protect the rights of others, public order and security, public morals, environment and population health.

239. Prevention of public gatherings constitutes a criminal offence laid down in article 181 of the Criminal Code: anyone who by use of force, threat, deception or otherwise prevents or obstructs a public gathering organized in compliance with the law is punishable

by a fine or up to one year of imprisonment. If committed by a public official acting in official capacity, this offence is punishable by up to three years of imprisonment.

240. Between 2006 and 2011, the Police Directorate registered 1 criminal report for the criminal offence of prevention of public gatherings from article 181 of the Criminal Code.

**Table 24, annex – Statistics on the court cases involving the criminal offence of prevention of public gatherings (art. 181), 2006-2011:**

**Article 22 – Freedom of association**

241. The Constitution of Montenegro guarantees the freedom of political, trade union and other association and activity, without any approval being required, upon registration with the competent authority. No one may be forced to become a member of an association. The State supports political and other associations when there is a public interest to do so (art. 53). The Constitution of Montenegro also safeguards the employee's right to strike. The right to strike may be restricted to those employed in the military, police, State authorities and public service in order to protect public interest, in line with the law (art. 66).

242. The Labour Law (Official Gazette of Montenegro 49/2008, 26/2009 and 59/2011) lays down that an employee is entitled, directly through representatives, to association, participation in negotiations for the signing of the collective bargaining agreement, peaceful resolution of collective and individual industrial disputes, consultations, information and expression of own positions concerning relevant work-related issues, in line with the law. An employee i.e. employee representative from paragraph 1 of this article may not be held to account or placed in a disadvantaged position concerning work conditions if they act in line with the law, collective agreement and employment contract. Employees and employers are entitled to freely establish their organizations, without any prior approval required, and to become members under the conditions set in the statutes and rules of such organizations (art. 154). Employees are guaranteed the freedom of trade union organization and activity, without any prior approval required. Trade union organizations are entered in the registry of trade union organizations which is kept by the Ministry. The procedure for being entered in the registry, change of entry and deletion from the registry from paragraph 2 of this article is prescribed by the Ministry (art. 155).

243. Employers provide to trade unions the conditions for efficient performance of trade union activities which serve to protect the interests and rights of employees (art. 60 of the General Bargaining Agreement, Official Gazette of RMNE 1/04, 59/05 and Official Gazette of MNE 65/10).

**Non-governmental organizations**

244. The Law on Non-Governmental Organizations (Official Gazette of MNE 39/11) regulates the establishment, entry and deletion from the registry, status, bodies, financing and other matters of importance for the work and operation of non-governmental organization. In the sense of this law, non-governmental organizations are non-governmental associations and non-governmental foundations. A non-governmental association is a voluntary non-profit organization with membership, set up by local and/or international physical and/or legal persons, for the purpose of achievement of common or general goals and interests. A non-governmental foundation is a voluntary non-profit organization without membership, set up by local and/or international physical and/or legal persons, with or without initial assets, for the sake of achievement of general goals and interests.

245. An international non-governmental organization may operate in the territory of Montenegro for the purpose of achievement of the goals and interests that are not prohibited by the Constitution and the law. An international organization, in the sense of this Law, is a non-governmental organization with the capacities of a legal person, which has a seat in another State and is established under the regulations of that State for the

purpose of achievement of common or general goals and interests. Non-governmental organizations may join to make alliances or other forms of non-governmental organization association in Montenegro and abroad. Establishment of an alliance or another form of association of non-governmental organizations in Montenegro is subject to the provisions of this Law regulating establishment of associations.

246. Written and electronic registry of associations, registry of foundations and registry of international organizations are kept by the public administration authority competent for administrative affairs (Ministry of Interior), which stipulates the content and method of keeping the registries and the application form for being entered in the registry.

247. An international organization may operate in the territory of Montenegro if it has registered its representative office with the Ministry, in line with the law. A representative office of an international organization does not have the capacity of a legal person.

248. The registry of associations kept by the Ministry of Interior includes 198 foundations, 5,948 associations and 122 international NGOs.

### **Criminal-law protection**

249. In Montenegro, in line with the provisions from article 182 of the Criminal Code, prevention of political, trade union or other organization and activity constitutes a criminal offence: anyone who knowingly violates law or acts in another unlawful manner to prevent or obstruct political, trade union or other organization or activity of citizens or activity of their political, trade union or other organizations is punishable by a fine or up to one year of imprisonment.

250. Between 2006 and 2011 there were no criminal proceedings involving the criminal offence of prevention of political, trade union or other organization and activity. The decision on dismissal was issued in one case.

### **Article 23 –Protection of family**

#### **Family**

251. Family enjoys special protection under the Constitution of Montenegro. Parents are obliged to take care of their children, to raise and educate them. Children are obliged to take care of their parents in need of assistance. Children born out of wedlock have the same rights and obligations as those born in marriage. In addition, the Constitution stipulates that mother and child enjoy special protection and that the State should create the conditions to encourage childbearing. The Constitution guarantees protection of the rights of the child – a child enjoys the rights and freedoms suited to his/her age and maturity. A child is guaranteed special protection from psychological, physical, economic and any other exploitation or abuse (arts. 72-74).

252. Family Law stipulates that a family is a community of living of parents, children and other relatives who in the sense of this Law have mutual rights and obligations, as well as another basic community of living in which children are raised and cared for (art. 2). The national State policy concerning family planning is regulated by the constitutional principle - the State creates the conditions to encourage childbearing. The right to free parenthood is regulated by the Family Law. Everyone has the right to freely decide on having children, and, in the capacity of parents, to create opportunities and provide conditions for children's healthy mental and physical development in the family and in the society. The State provides the conditions for free and responsible parenthood through social, health and legal protection measures, education and information system, employment policy, housing and taxation policy, as well as by means of developing all other activities to the benefit of family and its members.

## **Marriage**

253. Family Law defines marriage as a legally regulated community of living between a man and a woman. The Law stipulates that a longstanding community of living between a man and a woman (common-law marriage) is equal with marriage with regard to the right to mutual support and other property relations. The Constitution renders equal the rights and obligations of children born out of wedlock and those born in marriage.

254. Free consent to marriage is one of the principal individual and civil constitutional freedoms, provided special protection under the Constitution of Montenegro and the key international documents on human rights. The Constitution stipulates that marriage may be entered into only with free consent of the woman and the man. Family Law also stipulates that marriage is based on the free decision of the man and the woman to enter into marriage, on their equality, mutual respect and mutual support.

255. Entering into valid marriage requires the following: consent of the future spouses, difference in sex, entering into marriage in order to form a community of living, and absence of any marriage impediments. Marriage impediments are the facts or circumstances envisaged by law which impede valid marriage. By means of stipulating marriage impediments, the society protects important social interests, as well as interests of each individual. The facts that impede conclusion of a valid marriage in Montenegrin marital law are: married status, mental illness and incapacity to make judgments, being underage, kinship and lack of will.

256. Between 2006 and 2011 there were no criminal proceedings for the criminal offence of bigamy from article 213 of the Criminal Code.

257. Entering into marriage results in certain rights and responsibilities of the spouses in respect of which both spouses are equal. The principle of equality of spouses consists of application of the constitutional principle of equality of spouses and is manifested in full equality between husband and wife with regard to acquisition, exercise and protection of their rights and responsibilities in marriage.

## **Criminal-law protection**

258. The Criminal Code includes the group of criminal offences against marriage and family, namely: bigamy; concluding a void marriage; allowing conclusion of unlawful marriage; customary marriage with juvenile; abduction of minor; change of family status; neglect and abuse of minor; domestic violence; omission to provide maintenance; breach of family obligations, and incest (arts. 213-223).

259. Protection from domestic violence is implemented in line with the Law on Protection from Family Violence (Official Gazette of MNE 46/2010). The Law stipulates the right to assistance and protection for those suffering violence in the family, the institutions involved in protection, the forms and methods of providing assistance and protection, the measures of protection issued to prevent and suppress violence, remove the consequences of perpetrated violence, apply efficient measures for reform of perpetrators and remove the circumstances that are conducive to or foster perpetration of additional violence. In the procedures related to protection, the authorities and institutions involved in protection are required to act urgently, taking into account that the victim's interest and well-being constitute a priority in the procedures, especially if the victim is a child, an elderly person, a person with disabilities or a child incapable of taking care of him/herself.

**Table 25, annex – Statistics on the criminal reports to the Police Directorate for the criminal offence of domestic violence, 2006-2011**

**Table 26, annex – Court cases involving the criminal offence of domestic violence (art. 220), 2006 -2011:**

## **Matrimonial disputes**

260. The procedure in the divorce dispute is laid down in the Family Law. The procedure in a matrimonial dispute is initiated by an action. The procedure for divorce by mutual consent is initiated by a joint proposal of the spouses (proposal for divorce by mutual consent). If one of the spouses files the action for divorce and the other one, at the latest by the conclusion of the main hearing, explicitly states that he/she does not contest the grounds for the action, it is considered that the spouses filed the proposal for divorce by mutual consent.

261. Family Law prescribes mediation procedure in divorce disputes upon one of the spouses files the action, in line with the Law on Mediation and Family Law. According to the data of the Mediation Centre of Montenegro the number of procedures for mediation in family matters between 2008 and 2010 was 1,420.

262. In 2008, there were 1,742 divorce proceedings before Montenegrin courts (530 earlier cases and 1,212 cases from 2008). In 2010, there were 1,356 divorce proceedings before Montenegrin courts (249 earlier cases and 1,107 cases from 2010).

**Table 27, annex – Marriages and divorces, 2005-2009<sup>13</sup>**

**Article 24 –Protection of children**

263. The Constitution of Montenegro stipulates special protection for the family. Parents are obliged to take care of their children, raise and educate them. Children born out of wedlock have identical rights and obligations as those born in marriage. Article 74 of the Constitution guarantees to the child enjoyment of the rights and freedoms suited to his/her age and maturity, and guarantees to the child special protection from psychological, physical, economic and any other exploitation or abuse. In line with article 69, paragraph 2, of the Constitution, a child, pregnant woman, elderly person or person with disability is entitled to health care from public revenues, unless they exercise such right on other grounds.

264. Article 5 of the Family Law stipulates that everyone is required to be guided by the best interests of the child in all activities related to the child, and that the State is required to respect and enhance the rights of the child and take all necessary measures to protect the child from neglect, abuse and exploitation.

265. The Law on Civil Registries (Official Gazette of Montenegro 47/08 and 41/10) defines registration of a child's birth i.e. place of a child's registration in the registry of births in Montenegro (art. 18), the method of applying for entry of a child in the birth registry (art. 19), deadline for applying for entry of a child in the birth registry (art. 20), deadline for deciding on the child's name (art. 21). Protection of the child is implemented in line with the Law on Personal Name (Official Gazette of Montenegro 47/08), whose article 6 stipulates as follows: a child's personal name is determined by mutual agreement of the parents; in the event that one of the parents is unknown, deceased or unable to exercise parenthood rights, the personal name is determined by the other parent; a child may obtain the surname of one or both parents; if the parents are deceased or unable to exercise parenthood rights, the personal name of the child is determined by the guardian, following the approval of the competent custodial authority; personal name of the child whose parents are unknown is determined by the competent custodial authority; if the child whose parents are unknown is adopted prior to determination of personal name, his/her personal name is determined by the adoptive parent.

266. Article 12 of the Constitution of Montenegro stipulates the existence of Montenegrin citizenship in Montenegro and that Montenegro protects the rights and interests of Montenegrin citizens.

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<sup>13</sup> Source: MONSTAT, Department for demography statistics and population census.

267. Article 5 of the Law on Montenegrin Citizenship (Official Gazette of Montenegro 13/08, 40/10, 28/11 and 46/11) defines the requirements for a child's acquisition of Montenegrin citizenship by origin.

#### **Waiving of criminal sanctions against children**

268. The Criminal Code prescribes that criminal sanctions may not be applied against a person who, at the time of commission of the illegal act which is specified in the law as a criminal offence, was younger than fourteen years of age (a child).

#### **Juvenile persons in criminal proceedings**

269. The Law on Treatment of Juvenile Persons in Criminal Proceedings (Official Gazette of MNE 64/2011) prescribes the treatment of juvenile persons as perpetrators of criminal offences and of children and juvenile persons as parties to proceedings, based on respect for human rights and fundamental freedoms, taking into account the best interests of juvenile persons, taking into account their maturity, degree of development, capabilities and personal attributes, as well as the severity of the criminal offence, in the aim of their rehabilitation and social reintegration.

#### **Table 29, annex – Juvenile beneficiaries of social welfare**

#### **Article 25 – Electoral system**

270. Article 2 of the Constitution of Montenegro stipulates that sovereignty is borne by the citizen with Montenegrin citizenship and that a citizen exercises power directly and through freely elected representatives. Power that does not result from free expression of citizens' will in democratic elections in line with the law may not be established or recognized. The right to vote in parliamentary, presidential and local elections i.e. the voting right is regulated by the Constitution of Montenegro as one of the fundamental political rights and freedoms (art. 45). Under the Constitution, the right to elect and stand for election is granted to citizen of Montenegro who have turned 18 years of age and have resided in Montenegro for no less than two years. Electoral right is universal and equal and is exercised in the elections which are free and direct, by secret ballot. Electoral right enjoys legal protection in line with the law. No one is allowed, on any grounds, to hold a voter to account for their voting or ask the voter to reveal their vote or why they abstained from voting.

271. In order to protect the identity of members of minority nations and other minority national communities, the Constitution (art. 79) guarantees the rights and freedoms that may be exercised individually or collectively, including the right to authentic representation in the Parliament of Montenegro and local government councils where they constitute an important share of population, in line with the principle of affirmative action, and the right to proportional representation in public services, State authorities and local governments.

272. In addition to the Constitution, electoral right is regulated also by the Law on the Election of Councillors and Members of Parliament, Law on the Election of the President of Montenegro and the Law on the Election of Mayors.

273. The Law on the Election of Councillors and Members of Parliament (Official Gazette of RMNE 4/98, 5/98, 17/98, 14/00, 18/00, 9/01, 41/02, 46/02 and Official Gazette of MNE 48/06 and 46/11) regulates the following: method of and procedure for election of councillors for municipal, town district, Capital City and Historical Capital councils and the members of the Parliament of Montenegro; organization, membership and powers of the authority administering the elections; establishing of voting results and distribution of seats; protection of suffrage, and other issues of importance for organization and carrying out of elections.

#### **Voting in parliamentary elections**

274. Since the Parliament is constituted by the free will of the citizens, exercised in general, direct and free elections and stemming from the constitutional principle of citizen sovereignty, it is granted the legitimacy that makes it the central entity of the political-legal system of Montenegro. Article 83 of the Constitution of Montenegro stipulates that the Parliament consists of members who are elected directly, based on universal and equal electoral right and by secret ballot. The Parliament has 81 seats.

275. The Law on the Election of Councillors and Members of Parliament grants the right to elect and be elected to Parliament to all voters who have turned 18 years of age, have business capacity and residing in Montenegro for no less than two years prior to the polling date. The right to elect and be elected councillor is granted to all voters who have turned 18 years of age, have business capacity and residing in Montenegro for no less than two years and residing in the municipality i.e. town district as the electoral district for no less than six months prior to the polling date.

#### **Voting in presidential elections**

276. Under article 96 of the Constitution, the President of Montenegro is elected on the basis of universal and equal electoral right, by means of direct and secret ballot. Any Montenegrin citizen residing in Montenegro for no less than 10 years over the past 15 years may stand for election for the President of Montenegro. The election for the President of Montenegro is called by the President of the Parliament.

#### **Voting in local elections**

277. Local elections imply municipal elections of councillors for municipal councils and mayors, and are regulated by the Law on the Election of Councillors and Members of Parliament as election of councillors for municipal, town district, Capital City and Historical Capital councils. Under this Law, the right to elect and be elected is granted to voters who have turned 18 years of age, have business capacity and residence in Montenegro for no less than two years and residence in the municipality i.e. town district as the electoral district for no less than six months prior to the polling date.

#### **Organization and management of electoral rolls**

278. The matter of organization of electoral rolls is regulated by the Law on Electoral Rolls (Official Gazette of MNE 40/08). The Law defines that the electoral roll is a public document that records the citizens of Montenegro who possess voting right and serves only for the purpose of elections. Entry in the electoral roll is a requirement for exercising the right to vote. The Law also regulates the procedure to change the electoral roll (entry, deletion, change, amendment, or correction). A change in the electoral roll may occur ex officio or upon voter's request. The change is implemented based on the data from civil registries, other official records and official documents i.e. data or corrections or documents delivered by the voter as the applicant.

#### **Publication of electoral roll**

279. The Law envisages the obligation of publishing the electoral roll in the media, to be performed by the authority competent for keeping the electoral roll, within three days from the date of the elections being called, with a notification that insight in the electoral roll may be obtained and change requested.

#### **Closing the electoral roll**

280. The electoral roll is closed at the latest 25 days prior to the polling date. The electoral roll is closed by means of a decision. Following the closing of the electoral roll, changes may be effectuated only based on the decision of the chief administrator i.e. the court handling the administrative dispute, at the latest 10 days prior to the polling date.

#### **Inspection**



281. The Law on Electoral Rolls regulates the matter of inspection of implementation of regulations pertinent to management of electoral rolls. Inspection is performed by the ministry competent for administrative affairs, which is required, following an application by a voter, parliamentary party or presenter of an approved electoral list, to carry out inspection within the deadline set by the Law. Any breach of the regulations pertinent to management of electoral rolls is punishable, under this Law, by up to one year of imprisonment and by misdemeanour fines in the cases identified in the Law.

#### **Article 26 – Equality before the law**

282. The Constitution of Montenegro, as the supreme legal instrument of national legislation, prohibits any direct and indirect discrimination on any grounds (art. 8). The same article also enables adoption of regulations and introduction of special measures aimed at creating the conditions for the achievement of national, gender and overall equality and protection of persons placed in a disadvantaged position on any grounds; such regulations and measures are not to be considered discrimination (positive discrimination, affirmative action). Such special measures have a limited temporal effect i.e. they may be applied only until the achievement of the aims of their application. Article 17 of the Constitution guarantees equality of all persons before the law, regardless of any distinction or personal attribute; this represents one of the paramount qualities of the constitutional order of Montenegro. The Constitution guarantees to all persons the right to equal protection of their rights and freedoms (art. 19). The Constitution explicitly prohibits causing or instigating hatred or intolerance on any grounds (art. 7). Restriction to the exercise of certain human rights and freedoms during proclaimed state of war or emergency must not be implemented on the grounds of sex, nationality, race, religion, language, ethnic or social origin, political or other belief, property or any other personal attribute (art. 25). Article 50 of the Constitution defines that the court of jurisdiction may prevent dissemination of information and ideas in the media solely if this be required to, inter alia, prevent propaganda for racial, national and religious hatred or discrimination. In addition, the Constitution bans activity of political and other organizations whose activity is aimed at causing national, racial, religious and other hatred and intolerance.

283. The Criminal Code includes the group of criminal offences against individual and civil rights and freedoms, the most relevant ones in the given context being: violation of the right to use of language and alphabet; violation of equality; violation of the freedom of expression of national or ethnic affiliation; violation of the freedom of worship and practice of religious ceremonies. The group of criminal offences against humanity and other rights protected by international law in the Criminal Code includes the criminal offence of racial and other discrimination.

284. The Law on Prohibition of Discrimination (Official Gazette of MNE 46/2010) is the general anti-discrimination law adopted in July 2010, which specified the concept of discrimination and the concepts of direct and indirect discrimination. Instigation to discrimination is characterized as discrimination; protection of the persons who report discrimination is also defined. The Law defines special forms of discrimination and highlights more severe forms of discrimination. The Law defines the Ombudsman (Protector of Human Rights and Freedoms) as the institutional mechanism for prevention and protection against discrimination.

285. The Law on Minority Rights and Freedoms Official Gazette of RMNE 31/06, Official Gazette of MNE 38/07, 2/11 i 8/11) guarantees to members of minorities equality with other citizens and enjoyment of equal legal protection. In addition, this Law prohibits any indirect and direct discrimination on any grounds, including race, colour, sex, national affiliation, social origin, birth or similar status, religion, political or other belief, property, culture, language, age and mental or physical disability.

286. The Law on Employment (Official Gazette of RMNE 5/02 and Official Gazette of MNE 21/08) envisages equality of unemployed persons in the exercise of the right to employment, regardless of national affiliation, race, sex, language, religion, political or other belief, education, social origin, property or any other personal attribute.

287. The Labour Law prohibits direct and indirect discrimination against persons seeking employment, as well as those employed, with regard to sex, birth, language, race, religion, skin colour, age, pregnancy, health condition i.e. disability, nationality, marital status, family obligations, sexual orientation, political or other belief, social origin, property, membership in political and trade union organizations or another personal attribute (art. 5). Pursuant to Article 10 of the Labour Law, in case of discrimination, a person seeking employment or an employed person may initiate the procedure before the competent court, in line with the law.

288. The Law on Social Welfare and Child Care (Official Gazette of RMNE 78/2005) envisages equality of all citizens in the exercise of the rights pertinent to social welfare and child care, regardless of national affiliation, race, sex, religion, social origin or any other personal attribute.

289. The Law on Health Care (Official Gazette of RMNE 39/2004 and Official Gazette of MNE 14/2010) stipulates that citizens are equal in the exercise of the right to health care, regardless of national affiliation, race, sex, age, language, religion, education, social origin, property or any other personal attribute.

290. The Law on Gender Equality (Official Gazette of RMNE 46/2007) defines and regulates the method to safeguard and exercise the rights pertinent to gender equality and creation of equal opportunities for the participation of women and men in all areas of social life.

291. Laws from the field of education, as well as the set of laws from the field of the media, also include non-discriminatory approach in the exercise of rights from these areas.

292. For strategic documents of relevance for the anti-discrimination policy; for educational-promotional measures to suppress discrimination, and for institutional set-up in the area of protection against discrimination, see annex.

#### **Article 27 – Rights of minorities to culture, religion and language**

##### **Legislative framework for the protection of minority rights**

293. In addition to fundamental human rights and freedoms, in the aim of protecting overall national identity, the Constitution and laws of Montenegro grant special rights to minorities. Articles 79 and 80 of the Constitution guarantee to members of minority nations and other minority national communities the rights and freedoms that may be exercised individually or collectively, and prohibit assimilation of members of minority nations and other minority national communities; also, the State is required to protect members of minority nations and other minority national communities from all forms of forced assimilation.

294. The Constitution guarantees special – minority rights, as described in the General Information section of this report.

295. Constitutional guarantees are elaborated in a series of special laws, especially the Law on Minority Rights and Freedoms, which regulates to detail the set of minority rights and the mechanisms for their protection. The Law is concerned with preservation of national identity of minorities i.e. protection of minorities from assimilation, as well as with enabling effective participation of minorities in public life.

296. According to the results of the Census of Population, Households and Dwellings in 2011, the population of Montenegro is 620,029. When asked about their national i.e. ethnic

affiliation, 4.87 per cent citizens responded that they were not willing to declare<sup>64</sup>. The breakdown of population in Montenegro by national i.e. ethnic affiliation is as follows: Montenegrin 44.98 per cent; Serb 28.73 per cent; Bosniac 8.65 per cent; Albanian 4.91 per cent; Muslim 3.31 per cent; Croatian 0.97 per cent; Bosnian 0.07 per cent; Bosniac-Muslim 0.03 per cent; Montenegrin-Serb 0.30 per cent; Egyptian 0.33 per cent; Gorani 0.03 per cent etc.

297. Within the group of the criminal offences against human and civil rights and freedoms, the Criminal Code (art. 158-182) envisages criminal sanctions for the criminal offences that deprive or restrict the rights of minorities, primarily the following: violation of the right to use of language and alphabet; violation of equality; violation of freedom of expression of national or ethnic affiliation; violation of freedom of worship and practice of religious ceremonies.

298. Between 2006 and 2011 there were no criminal proceedings for the criminal offence of violation of equality from article 159 of the Criminal Code; there were four court proceedings concerning the criminal offence of violation of freedom of worship and practice of religious ceremonies from article 161 of the Criminal Code.

#### **Areas of minority rights protection**

299. For areas of minority rights protection, (see: annex).

#### **List of key international instruments in the filed of human rights that Montenegro is party to**

300 Montenegro is party to major international instruments in the area of human rights, including the following:

- International Covenant on Civil and Political Rights (including the Optional Protocol);
- Optional Protocol to the International Covenant on Civil and Political Rights aimed at elimination of capital punishment;
- International Covenant on Economic, Social and Cultural Rights;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (including the Optional Protocol);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (including the Optional Protocol);
- Convention on the Rights of the Child;
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts;
- Second Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
- Convention on the Rights of Persons with Disabilities (including the Optional Protocol);
- Convention on the Prevention and Punishment of the Crime of Genocide;
- Slavery Convention, with amendments;
- Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others;

- Convention Relating to the Status of Refugees (including its Protocol)
- Convention Relating to the Status of Stateless Persons;
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;
- International Convention on the Suppression and Punishment of the Crime of Apartheid;
- International Convention against Apartheid in Sport;
- Convention against Transnational Organized Crime (including the Protocols);
- Rome Statute of the International Criminal Court.

301. By deposit of the instruments of succession, Montenegro became signatory to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In addition, Montenegro was one of the first countries to sign the International Convention on the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

302. Montenegro is a party to 69 Conventions of the International Labour Organization, including the eight key Conventions.

303. Montenegro is actively cooperating with the Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE) in the area of protection of human and minority rights and fundamental freedoms, as well as in the promotion of the rule of law and further democratization of the society. Montenegro ratified a number of Council of Europe conventions concerning human and minority rights, including the key ones, namely: the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

304. By being a party to most important human rights treaties, Montenegro is demonstrating evident support to the achievement of their aims, while actively participating in the development and implementation of new standards in the promotion and protection of human rights.

#### **IV. Summary**

305. As State party to the International Covenant on Civil and Political Rights (Official Gazette of SFRY – International Treaties 7/71), Montenegro is obliged, under article 40 of the Covenant, to prepare and deliver to the Human Rights Committee the initial report on the Implementation of the International Covenant on Civil and Political Rights. The report represents the first opportunity for this State party to present to the Committee the degree to which its laws and practices are aligned with the ratified Covenant.

306. The initial report on Implementation of the International Covenant on Civil and Political Rights, in line with the United Nations Guidelines, contains the constitutional and legislative framework for the implementation of the rights from the Covenant, provides a detailed overview of the adopted legislative and practical measures to bring into force the rights from the Covenant, and outlines the system for the enjoyment of rights guaranteed by the International Covenant on Civil and Political Rights. The report includes information on judicial, administrative and other authorities competent to safeguard the rights from the Covenant. Good practice and positive examples of concrete activities implemented by the competent institutions in the field of promotion and exercise of civil and political rights are also presented.

307. In line with the Government of Montenegro Work Programme for 2012, the Ministry of Justice is required to prepare the initial report on the implementation of the International Covenant on Civil and Political Rights, in cooperation with other public administration authorities. The following ministries contributed to the Report: Ministry of Justice and Human Rights, Ministry of Minority Rights, Ministry of Interior, Ministry of Labour and Social Welfare, Ministry of Health, Ministry of Culture and Ministry of Foreign Affairs and European Integration. The Report incorporated significant inputs from the Supreme Court of Montenegro, Police Directorate and Ombudsman. A number of non-governmental organizations dealing with human rights protection and judiciary also contributed to this Report. In addition to the statistics available from the competent authorities, the Report includes data provided by the National Statistical Office - Monstat.

308. All civil and political rights enshrined in the International Covenant on Civil and Political Rights are enshrined in the Constitution of Montenegro (Official Gazette of MNE 1/07) and numerous regulations that are in force in Montenegro. Montenegro ratified a large number of multilateral instruments governing the areas of protection of economic, social, cultural, minority and human rights in all segments, under article 9 of the Constitution of Montenegro, and generally accepted rules of international law represent an integral part of the internal legal order, have supremacy over national legislation and are directly applicable when regulating some relations differently from the national legislation.

309. Given Montenegro's strategic commitment to continuous enhancement of the rule of law, legal order and system for protection of the rights and freedoms of its citizens in the aim of compliance with the requirements for full membership to the European Union, fulfilment of numerous obligations in the legislative and institutional sense resulted in significant progress in the exercise of civil and political rights in Montenegro.

310. A high degree of protection of the rights and freedoms of all persons is available, together with protection of family as the fundamental unit of the society, protection of children, gender equality, right to life, freedom and security of persons, prohibition of torture, degrading and inhuman treatment, protection of parties to proceedings, protection of vulnerable categories, protection of minority rights, protection of privacy, freedom of thought, conscience and religion, freedom of opinion and expression, openness and freedom of the media, freedom of labour, freedom of assembly, freedom of association, democratic electoral system, quality of work of the institutions competent for the protection of rights and freedoms of citizens etc.

## **V. Conclusions**

311. The Government of Montenegro, at the session of June 2012, considered and adopted the initial report on implementation of the International Covenant on Civil and Political Rights submitted by the Ministry of Justice and Human Rights.

312. The Ministry of Foreign Affairs and European Integration is hereby entrusted with translating the initial report from Montenegrin to English.

313. The Ministry of Foreign Affairs and European Integration is hereby entrusted with delivering the translation of the initial report to the relevant United Nations Committee, following the completion of the common core document.