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

List of issues in relation to the initial report of Montenegro

Addendum

Replies of Montenegro to the list of issues* **

[Date received: 9 October 2014]

Constitutional and legal framework within which the Covenant is implemented, right to an effective remedy (art. 2)

1. In the period from 1 January 2012 to 15 September 2014, the judges in Montenegro directly referred to the provisions of the International Covenant on Civil and Political Rights in 20 cases. Of this number, 12 judgments are from 2012, five verdicts from 2013, while in 2014, until 15 September, there were three such judgments. All the procedures were conducted before the Basic Court in Podgorica.
2. In the current practice, depending on the nature of constitutional dispute, the Constitutional Court has regularly directly applied the provisions of the International Covenant on Civil and Political Rights. A summary of the Constitutional Court practice is enclosed (annex 1).
3. In the period from 1 January 2012 to 15 September 2014, the Judicial Training Center conducted 32 training activities for judges in the field of human rights. These activities involved 180 representatives of the judiciary (judges and advisors in the courts), as well as 42 participants in the initial training programme. In addition, in cooperation with AIRE Centre from London and the Council of Europe, the Judicial Training Centre distributes a Legal Bulletin — Human Rights in Europe to all courts in Montenegro on a quarterly basis. A brief summary of the activities implemented by the Judicial Training Centre is enclosed (annex 2).

* The present document is being issued without formal editing.

** Annexes can be consulted in the files of the secretariat.



4. At the Police Academy, the subject of human rights and ethics is represented in the Curriculum for the occupation of Police Officer with 54 classes / hours, addressing the prohibition of torture and other cruel and inhuman or degrading punishment or treatment, human rights in the preliminary investigation, the protection of human rights in deprivation of liberty and retention, etc. As part of the Supplemental police training (Department of General Affairs Police and Department of Border Police), the subject of human rights and ethics is represented with 45 classes / hours. Of that, 14 hours are dedicated to the rights guaranteed by the Covenant. In 2013, the Police Academy organized 123 diverse educational contents for 1,984 attendees. A large part of the aforementioned educational activities covers the subject of human rights with a reflection on the rights guaranteed by the Covenant. A detailed overview of relevant trainings at the Police Academy (in relation to the answer to question No. 1) is provided in annex 3.

5. Montenegro has so far not received a single Committee's Views under the Optional Protocol. In case of receiving it, the Ministry of Foreign Affairs and European Integration would promptly submit the Views to the competent authority for dealing with complaints, which would act in order to implement the Committee's Views in accordance with the law and in a timely manner.

6. The adoption of the new Law on Amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro on 18 June 2014 created the conditions for achieving the independence of this institution, in accordance with the Paris Principles. This primarily relates to the provisions regulating the status of the Protector, Deputy Protector and staff in the Office of the Protector more fully. Also, transparency in the procedure of determining the lists of candidates for the Protector has been improved.

7. New by-laws prescribed by the Law have been aligned and adopted, and the new Act on internal organization and jobs description has been adopted. Also, employees have been allocated to positions in accordance with the new Act, the administrative capacities of the Protector have been reinforced, plans for the visits and other acts of the National Preventive Mechanism have been adopted, and annual and special reports on the work of the Protector with the evaluation of the state of play and recommendations have been prepared and made publicly available. In addition, trainings have been implemented in accordance with the training plans.

8. The financial position of the institution of the Protector has been significantly improved. A provision has been included that provides for the positions in the Protector's professional service, which also significantly enhances the position of employees in this institution. The Protector is enabled to independently decide on employment of Chief adviser of the Protector and of the advisers of the Protector, without duty to provide confirmations from the minister in charge of budget affairs on the allocated financial means, which is not the case with the other employees where this confirmation is necessary. The financial independence of the Protector will be additionally strengthened given that, when deciding on the allocation of the variable part of the salary for employees or on the work of its working groups and bodies, he will not seek approval from the Ministry of Finance or the Government of Montenegro.

9. A provision has been included which provides the permanent protection of persons employed in the institution of the Protector (immunity), against any sanctions or adverse consequences that they could potentially suffer on the basis of expressed opinions and recommendations made, i.e. actions taken in accordance with their powers stipulated by this Law.

10. In accordance with the recommendations of the European Commission, activities have been carried out that are aimed at strengthening the capacity of the Protector. The recruitment of new employees (total of 11 by the end of 2016 — for all the areas of human

rights protection) has been envisaged. The Protector has started activities on the process of accreditation with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), that take place in parallel with the development of secondary legislation (the deadline for the adoption is three months from the date of entry into force of the Law). It is expected that the application will be submitted to the Committee by the end of 2014.

11. Regarding the powers of the Protector itself, as the National Preventive Mechanism, amendments allow unrestricted access of the Protector, Deputy Protector, advisers and members of the working body for torture prevention, to all premises, as well as the insight into necessary documentation, without limitation and regardless of the degree of secrecy.

Non-discrimination and equal rights of men and women (arts. 2, para. 1; 3; and 26)

12. In accordance with the Law on Gender Equality of 2007, the Government of Montenegro adopted the Plan of Action for Gender Equality 2013–2017, improving the instruments for achieving gender equality and accomplishing continuity in the initiated activities. One of the areas is the equality in decision-making positions in the political and public sphere, whose strategic goal is the equal participation of women and men at all decision-making levels. In March 2014, the Government of Montenegro adopted a Report on the implementation of the Plan of Action for Gender Equality for 2013, prepared by the Division for Gender Equality.

13. In the period since the adoption of the initial report, on 21 March 2014 the Parliament of Montenegro adopted the Law on Amendments to the Law on Election of Councillors and MPs, ensuring greater participation of women in decision-making positions in the political life of Montenegro, by providing that the electoral list must include at least 30% of candidates of the less-represented gender.

14. In cooperation with the Office of the OSCE and UNDP, the Ministry for Human and Minority Rights has so far signed 14 Memoranda of Understanding with the municipalities in Montenegro, with the aim to strengthen the established mechanisms for achieving gender equality at the local level. In accordance with the signed Memoranda, the municipalities enact and adopt their local action plans for achieving gender equality. An increased interest of the municipalities for the development and implementation of local action plans is noticeable, and so is the awareness of the need for increased participation of women in decision-making at the local community level.

15. The Ministry for Human and Minority Rights — the Gender Equality Division continuously conducts trainings on women's political participation, as well as on the economic empowerment of women, and combating violence against women, in order to educate and sensitize the target groups for these topics. Trainings are held for different target groups: employees in the public and local government, members of political parties, judges and prosecutors, lawyers, civic education teachers, women living in rural areas, representatives of the media and others.

Violence against women (arts. 3 and 7)

16. According to the Law on Protection from Domestic Violence, Social Welfare Centres or other social and child protection institutions, health institutions and other bodies and institutions involved in the protection shall, without delay, provide protection and assistance to victims, in accordance with their responsibilities. The Law prescribes a plan for assisting the victims in a way that the Social Welfare Centre sets up an expert team of representatives of the institution, bodies and agencies of local government, police, non-governmental organizations and experts dealing with family issues, in order to establish a

plan for assisting the victim and the coordination of activities in the process of victim assistance, in accordance with their needs and choices.

17. There are three shelters for women and children victims of violence in Montenegro, managed by women's non-governmental organizations (Podgorica, Nikšić and Pljevlja), as well as one public institution in Bijelo Polje for providing support to families, in which the women and children victims of violence are accommodated. On the occasion of 25 November — International Day for the Elimination of Violence against Women, the Social Welfare Secretariat of the Capital City and the NGO Women's Safe House opened a shelter for victims of domestic violence in 2012, which presented a continuation of the activities envisaged by the Memorandum on Cooperation for the implementation of support services to victims of domestic violence signed on 11 October 2012. In this way, the Capital City of Podgorica has assigned a house to be used on a temporary basis, managed by the NGO Women's Safe House. NGO SOS Hotline for Women and Children Victims of Violence Nikšić has, in order to better protect women and children victims of violence, in partnership with the Municipality of Nikšić, initiated, in 2010, the construction of a shelter for women and children victims of violence. The land plot for the construction of the shelter was provided by the Municipality of Nikšić and the construction is in its final stage. In 2012, a shelter for women and children victims of violence was equipped and opened in Pljevlja. This shelter is managed by NGO Bona Fide. The support for equipping the shelter was provided by the state authorities. In spite of the above, taking into account the regional coverage, it is necessary to work on the opening of a sufficient number of services for women and children victims of violence.

18. With a view to further harmonization with the Council of Europe Convention on preventing and combating violence against women and domestic violence, the 2013 amendments to the Criminal Code have introduced two new security measures: restraining order (Article 77a) and removal from the apartment or other living space (Article 77b). These security measures are directed at eliminating the risk of re-committing certain criminal offences by prohibiting the perpetrator from being close to the victim of the criminal offence, or a particular place, or his removal from the apartment. These articles explicitly stipulate that measures may be imposed on a perpetrator who, among others, committed the criminal offence of domestic violence in the family or family community.

19. In addition, the Title of Criminal Offences against Marriage and Family introduces several new solutions. Namely, with regard to the criminal offence of conclusion of a void marriage (except for terminology harmonization) under Article 214, a more severe form of the offence is envisaged if the other person is forced by threat of coercion to enter into marriage. Also, with regard to the criminal offence of common law marriage with a juvenile (Article 216), a more severe form is supplemented with an aggravating circumstance when the offence was committed by force or threat. With regard to the criminal offence of domestic violence or violence in the family or family community (Article 220), the linguistic interpretation of the basic form of the criminal offence posed problems in practice because it required the violation of physical or mental integrity of "members" of the family, i.e. a plural form was used, which could lead to an unacceptable result that this offence cannot be committed against a single family member, or a single member of the family community.

20. The Ministry of Interior has adopted a Rulebook on detailed content and form of restraining orders or orders of prohibition of returning to the apartment or other living premises.¹ The Ministry of Labour and Social Welfare has adopted the Rulebook on

¹ Official Gazette of Montenegro 42/2012.

detailed procedure for determining and implementing the protective measure of mandatory psychosocial treatment.²

21. The service for support to witnesses / injured parties, i.e., victims of domestic violence or violence in a family or family community operates in all Basic and High Courts in Montenegro, with authorized persons for support to injured parties / witnesses in the above criminal offence. Authorized persons from the support service are available to answer questions, give explanations regarding the work of the court, the criminal proceedings, and the place of sitting in the courtroom and to do everything they can to prevent the victim from feeling uncomfortable during the testimony. In order to inform the public about the work of the support service, the brochure *Informant* has been published and distributed to courts and non-governmental organizations involved in the fight against domestic violence. It is also published at the website www.sudovi.me.

22. The statistical overview of court cases for the criminal offence of domestic violence within the family or the family community under Article 220 of the Criminal Code of Montenegro for 2012, 2013 and the period of 1 January to 15 September 2014 is presented in annex 4.

Violence against children (arts. 7, 9 and 24)

23. According to the CPT report of 2008, and the Report of the NGO Action for Human Rights of 2011, no cases of torture have been recorded in the Public Institution “Ljubović” Centre for accommodation of children with behavioural disorders. Likewise, according to the same reports, no cases of abuse of children residing at the Centre have been recorded.

24. Article 8 of the Law on Social and Child Welfare³ prohibits employees of an institution or other service provider from inflicting all forms of violence against a child, adult or older person, as well as any physical, emotional and sexual abuse, exploitation of beneficiaries, abuse of trust or authority that the person enjoys in relation to the beneficiary, ignoring beneficiaries and other practices that threaten the health, dignity and development of the beneficiaries.

25. For every child who is placed in the Children’s Home Bijela, an individual plan of care is prepared, according to the Law on Social and Child Welfare.

26. Families whose members include persons with disabilities are registered within the process of exercising social and welfare rights and services, through cooperation with educational, health and other institutions, non-governmental organizations and the Commission for the Orientation of Children with Special Needs in the Educational System. In the procedures for the exercise of rights under social and child welfare, the professional staff of the Social Welfare Centres is obliged to visit the family and prepare findings and an opinion on the situation. If, when visiting families, some problems are identified in its functioning, measures are undertaken in accordance with the law.

27. With regard to Article 12, paragraph 2 of the Law on Protection from Domestic Violence, Social Welfare Centres are required to keep records of all their users in accordance with: the Law on Social and Child Welfare, Family Law and the Law on Protection from Domestic Violence. With regard to paragraph 3 of the above-mentioned Article, multidisciplinary teams for the protection against domestic violence have been formed within the Social Welfare Centres, consisting of representatives of the Social Welfare Centres, Police Administration, Regional Misdemeanour Bodies, Basic Public

² Official Gazette of Montenegro 50/2013.

³ Official Gazette of Montenegro 27/13.

Prosecution Office, Basic Court, health care institutions, schools and NGOs. The above-mentioned teams are taking measures and actions in the field of their jurisdiction, in accordance with the above regulations.

28. In addition to the multidisciplinary teams, other professional teams have also been organized within the Centres, which are focused on protecting and providing assistance to individuals and families with adverse personal or family circumstances, including prevention, assistance in meeting their basic needs and support.

29. The Public Institution of “Komanski most” Office records the results in the positive transformation from the institution in which drastic human rights violations used to occur to the institution that cares about its beneficiaries and promotes their rights in the community. Please note that from 1 January 2014, no children are accommodated in “Komanski most”.

30. Corporal punishment of children is prohibited in all settings in Montenegro, especially with the fact that the Constitution of Montenegro guarantees children special protection from psychological, corporal, economic and any other exploitation or abuse.

31. Article 70 of the Family Law clearly prohibits subjecting children to degrading treatment or punishment that violates the human dignity of a child, prescribing the obligation to protect children from such acts by others. Article 87 stipulates that a parent who abuses parental rights or grossly neglects parental responsibilities is deprived of parental rights. The abuse of rights especially exists if a parent physically, sexually or emotionally abuses a child; exploits the child by forcing him to excessive work, or work that endangers the morals, health or education of the child, or work that is prohibited by law; encourages the child to commit criminal offences; develops bad habits and preferences, etc.

32. When it comes to the family setting, the Law on Protection from Domestic Violence is the first specialized law regulating the field of domestic violence. This Law, which entered into force in August 2010, defines domestic violence as “any act or omission of a family member which endangers the physical, psychological, sexual or economic integrity, mental health and peace of another family member, regardless of the place where it is done”. The Law also specifies that family members, among others, are the children of the spouses and common-law spouses, children of each of them, blood relatives, adopted children and all persons living in the same family household, regardless of relationship. A victim of domestic violence has the right to psychosocial and legal assistance, as well as social and medical care. The protection of victims is also provided by imposing protective measures. Special assistance and protection is enjoyed by a victim who is a child, elderly persons, disabled persons and persons who are not able to take care of themselves. The Law on Protection from Domestic Violence prescribes that threats to the physical, psychological, sexual or economic integrity, mental health and peace of a family member shall be deemed to exist especially if a family member uses physical force, regardless of whether the bodily injury of a family member occurred. The Law governs the protection of victims of domestic violence through misdemeanour proceedings and establishes five types of protective measures as types of misdemeanour sanctions: removal from the apartment, restraining order, prohibition of harassment and stalking, mandatory treatment of addiction and mandatory psychosocial treatment.

33. The Criminal Code of Montenegro⁴ defines the criminal offence of Violence in a Family or a Family Community, which criminalizes the exercise of violence that violates the physical or mental integrity of a family or family community member. Also, a more

⁴ Official Gazette of the Republic of Montenegro 70/2003, 13/2004, 47/2006 and Official Gazette of Montenegro 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013.

severe form of the criminal offence is prescribed and exists if it is committed against a juvenile. Such a criminal offence is punishable by imprisonment from one to five years. In addition, whoever violates the measures of protection against domestic violence imposed by the court under law shall be punished by a fine or imprisonment not exceeding six months. The latest amendments to the Criminal Code of 2013 have introduced two new security measures to the system of criminal sanctions: restraining order and removal from an apartment or other living premises. These security measures are directed at eliminating the risk of re-committing certain criminal offences by prohibiting the perpetrator from being close to the victim of the criminal offence, or a particular place, or his removal from the apartment.

34. The National Plan of Action for Children 2013-2017, which is a strategic document of the Government of Montenegro and which defines the general policy of the country towards children for the period from 2013 to 2017, envisages the implementation of at least three national campaigns to raise public awareness about the negative impact of corporal punishment of children in all settings. Also, there are plans for legislative amendments in order to explicitly define the prohibition of all forms of corporal punishment of children within the family, alternative forms of protection, schools, and institutions of children's and social welfare.

35. The General Law on Education⁵ stipulates that corporal, psychological and social violence is not allowed in an institution, nor is child and pupil abuse and neglect, corporal punishment and abuse of personality, or sexual abuse of children and pupils or employees, or any other form of discrimination. Pupils are entitled to, among other things, protection from all forms of violence in school, discrimination, abuse and neglect. This Law stipulates that the employment of a teacher, in addition to the cases provided for by the Labour Law, shall be terminated if, inter alia, he / she instigates to sexual intercourse or unnatural fornication a pupil or employee of the institution; or if he / she humiliates, offends or physically punishes a pupil; or if he / she causes ethnic and religious intolerance.

36. Through the cooperation of the Ministry of Education and Sports and UNICEF Office in Montenegro, the project "School without Violence — Safe School Environment" commenced in 2005/2006. The project was initially started in two elementary schools, continued in six schools, and, following a comparative study of the effects of the implementation, encompassed eight new schools as of 2011/2012.

Right to life, prohibition of torture and cruel, inhuman or degrading treatment or punishment (arts. 6 and 7)

37. The State Prosecution Office, Special Department for suppression of organized crime, corruption, terrorism and war crimes, prosecuted the perpetrators of criminal offences, including members of military and the police. Four proceedings were conducted for the criminal offence of war crime against civilians, known to the public as cases "Bukovica", "Kaluderski laz", "Deportacija" and "Morinj". Three cases are closed with final verdict, while in one case procedure upon appeal is in progress.

38. "Morinj" case — 6 persons were accused, all of them members of Yugoslav People's Army (JNA), 1 of them in active position — Head of Security Service, and the rest of them in reserve positions: investigator, reserve officer for intendant affairs, military police officer, chef and guard, for the criminal offence of war crimes against war prisoners from art. 144 CC FRY. By the first instance verdict of the High court in Podgorica, four

⁵ Official Gazette of the Republic of Montenegro 64/02, 31/05 and Official Gazette of Montenegro 49/07, 45/10, 45/11, 39/13 and 44/13.

persons were found guilty and sentenced to imprisonment sentences for the duration of four years (one person), two years (one person) and three years (two persons). All four convicted persons are members of the military.

39. **“Deportation of the Muslims”** case — 9 persons were accused, all of them were members of the Ministry of Interior, two deputy ministers — of Public and State Security, two Heads of Centres of Security (CB) Herceg Novi and Ulcinj, and five servants of state and public security. By the final verdict, all nine persons were acquitted. In the process of appeal, by the decision of the Court of Appeal of Montenegro Kžs.br.18/2013 dated 17.05.2013, acquittal verdict of the High Court in Podgorica Ks.br.6/122 dated 22.11.2012 was confirmed.

40. **“Bukovica”** case — 7 persons were accused, members of the Yugoslav People’s Army (JNA) and Ministry of Interior, out of which, 5 were belonging to reserve composition of the Yugoslavia military, and 3 were police officers, for the criminal offence of crimes against humanity from art. 427 CC MNE in connection with art. 7 para. 2 of the European Convention. All persons were acquitted, by the final verdict. High court in Bijelo Polje brought a verdict Ks.br.6/11-10 dated 3.10.2011, acquitting all accused persons of the perpetration of the criminal offence of crimes against humanity, based on art. 373 para. 2 of the Criminal Procedure Code, finding that it was not proven that they committed criminal offence for which they were accused. Upon appeal of the Supreme State Prosecution Office — Department for the suppression of organized crime, corruption, terrorism and war crimes, and of the defendant of the injured parties, and acting on official duty, the Court of Appeal of Montenegro, by the verdict Ksž.br.1/12 dated 22.03.2012, revised the verdict of the high court in Bijelo Polje Ks.br.6/11-10 dated 3.10.2011, by acquitting the defendants of the accusation for committing the criminal offence of crimes against humanity, but based on the art. 373 para. 1 of the Criminal Procedure Code of Montenegro, because the offence of which they were accused was not a criminal offence by the law.

41. **“Kaluderski laz”** case — 8 members of the Yugoslav People’s Army (JNA) were accused. Four of them with active positions — 1 commander of battalion, 1 commander of squad, 1 commander of 1st squad and 1 deputy commander of squad. Four of them were in reserve composition of JNA, and were accused of the criminal offence of war crimes against a civilian population from art. 142 para. 1 of the Criminal Code of FRY. Judgment acquitting all the defendants was brought, because the first instance court found that there were no evidence that they committed criminal offences they were accused of by the indictment. Procedure upon appeal is in process.

42. In accordance with legislation, when it comes to reparation, victims have the right to compensation of the damage, which they exercise in civil proceedings before the competent courts. Additionally, Montenegro is a party to the European Convention on the Compensation of Victims of Violent Crimes.

43. Processing of the criminal offences of war crimes before the national authorities is included as a subchapter of the Action Plan for Chapter 23 (Judiciary and Fundamental Rights) for negotiations with the European Union. The action plan envisages numerous measures aiming to strengthen the efficiency of the national system in the processing of these offences. Namely, with goal to prevent impunity for criminal offences of war crimes, the Supreme State Prosecution Office was obliged to prepare a report on proceedings in cases of war crimes upon criminal charges and / or based on direct knowledge of the State prosecution office, until December 2013. This activity has been implemented. With the aim of correct and full implementation of international humanitarian law, as well as of national criminal legislation in the proceedings for war crimes before the national authorities, continuous trainings for judges, state prosecutors and associates of state prosecutors are being conducted. Protection of witness in cases of war crimes is being regularly implemented, in accordance with the Criminal Procedure Code, in and outside the

proceedings in accordance with Law on Protection of Witnesses, and Services for support to the witnesses / injured parties of criminal offences of war crimes, exist in both high courts. Also, the protection of the victims of criminal offences of war crimes is being continuously implemented, in accordance with the rules of the Services for protection of injured parties / witnesses. In 2014, in criminal proceedings before the national courts there were no protected witnesses. Additionally, aiming to raise awareness of witnesses about the existence of the witness protection system, the courts produced and published a brochure on the protection of injured parties / witnesses in cases of war crimes, which are available in high courts as well as on the portal of the courts (sudovi.me). Also, the Supreme Court of Montenegro prepared a report on proceedings in cases for financial compensation of damage to civilian victims of war crimes. According to the report, 324 requests for compensation of damage was submitted, out of which, the request was adopted and compensation of damage was decided for 212 persons, in 101 cases proceedings are in progress, and for 11 persons the request was rejected by final decision. Total amount of reimbursed compensation in cases closed by final decisions is 4,573,000 € and 4,200,000 dinars. The basis of the compensation is material and non-material damage due to the death of close person (member of the family).

44. A detailed overview of compensation is given in annex 5.

45. Special attention in the work of the Police Administration is devoted to the legality and transparency of work, respect for human rights and freedoms, respect for the code of ethics and strengthening the integrity of officers. In the process of reforms that is implemented, the strategic objective of the Police Administration is to establish professional, depoliticized and efficient organization, subject to democratic control in accordance with European standards, with the primary objective of respecting human rights and freedoms.

46. The Law on Internal Affairs provides for the Parliamentary, Civil and Internal control of work of the police (exercised by a separate organizational unit of the Ministry of Interior with the task of controlling the legality of performing police affairs, especially with regard to the respect and protection of human rights while performing police duties and in the application of police powers — Article 115 of the Law on Internal Affairs).

47. The external control of the legality of police work is performed by the Parliament of Montenegro, through the competent body. This form of external control is regulated in a manner appropriate to the European standards. The Security and Defence Committee performs parliamentary control of work of the police and the National Security Agency. In addition to the external and internal control, a form of civil control has also been constituted, over the Council for Civil Control of Police Work, which consists of five members appointed by the Bar Association of Montenegro, Chamber of Physicians of Montenegro, the Association of Lawyers of Montenegro, University of Montenegro and NGOs dealing with human rights. At the request of the Council, Police Administration provides the necessary information and notifications.

48. Finally, the most important control of work of the Police Administration is the daily control conducted by citizens, through direct insight into the actions and results achieved by the police. Pursuant to Article 15, paragraph 2 of the Law on Internal Affairs, the Ministry of Interior has adopted a Code of Police Ethics. Monitoring and implementation of the Code is exercised by the Ethics Committee of seven members, one of whom is a trade union representative.

49. In each specific case, the responsibility for breaking the law and acting contrary to powers is determined by implementing a disciplinary proceeding before the police authorities. Disciplinary liability of police officers is defined in Art. 104-109 of the Law on Internal Affairs (formerly Art. 79-85 of the Law on Police). Police officers who have

committed criminal offences are held liable before the competent courts, just as any other citizen.

50. A person who believes that a police activity violated his / her rights and freedoms or inflicted damage to him / her, has the right to file a complaint against the police work. He / she is also entitled to judicial protection and compensation of damages.

Police Administration statistics

51. Analyzing the structure of the complaints submitted to the Internal Control Division of the Ministry of Interior in the period from 2012 to September 2014, with special reference to complaints that related to any form of abuse by police officers, the following has been determined.

52. In the period from 1 January 2012 to 1 September 2014, the Internal Control Division of the Ministry of Interior conducted a total of 318 procedures for verifying the legality of actions by police officers. Of this number, in 19 cases the complaints were related to a form of abuse.

53. In 10 cases, there were elements of the merits of the allegations, while in 9 cases the facts and circumstances that would indicate the existence of elements of disciplinary or other liability could not be established. Based on the findings and opinions of internal control, measures have been undertaken in order to establish criminal, misdemeanour and disciplinary liability of police officers. Consequently, the Disciplinary Commission of Police Administration has:

- Adopted decisions on the acquittal of disciplinary liability of police officers;
- Imposed reprimands and warnings, with regard to the obligation to act in the manner prescribed by law;
- Imposed a measure of termination of employment, on the basis of final convictions for criminal offences that are prosecuted ex officio.

54. In five cases, the internal control determined that the police officers had committed serious disciplinary offences, so the Internal Control Division submitted proposals for the initiation of disciplinary proceedings against these police officers. In two of these cases, the records made in the internal control proceedings, in addition to the proposed disciplinary proceedings, were submitted to the competent public prosecutors for evaluation and decision on the existence of elements of criminal liability in the actions of police officers;

55. In one case, the immediate superior of the organizational unit in which the police officers are working had already taken measures to establish the criminal, misdemeanour and disciplinary liability of police officers;

56. In one case, the Division proposed that the immediate supervisor alert and warn the police officers to the duty to act professionally towards the citizens and to act in the manner prescribed by law;

57. In one case, on the basis of the findings and opinion of the Division, the employment of a police officer was terminated by law.

58. In two cases, the procedure of internal control has established that there is a reasonable suspicion that the police officers used coercive measures contrary to the principles of the Code of Police Ethics. Based on the established facts in the internal control procedures, the Minister of Interior proposed the submission of case files composed in the internal control procedure to the Police Administration Ethics Committee.

59. In the above period, there were no cases of reported torture and ill-treatment by the police against members of the Roma population (to the Internal Control Division).

Public Prosecution Office statistics

60. In the reporting period, the Prosecution Office received reports for the criminal offence of abuse under Art. 166 of the Criminal Code against 51 police officers. The criminal charges against 20 persons were dismissed, while the criminal charges against two persons were dismissed after the suspects fulfilled the obligation imposed. A bill of indictment was filed against 21 persons. The proceedings against one person were terminated due to his death, and the case against eight police officers is the stage of preliminary investigation.

61. With regard to the criminal offence of torture under Article 167 of the Criminal Code, criminal charges were filed against one person. The preliminary investigation is under way.

Statistics of court cases 2012-2014 and of acting upon claims for compensation of damage caused by torture

Year 2012

<i>Ill-treatment</i>		<i>Torture</i>	
Total number of cases	10	Total number of cases	7
Number of condemning verdicts	4	Number of condemning verdicts	/
Type and amount of criminal sanction	<ul style="list-style-type: none"> • 60 days on 1 year • 6 months on 2 years • 7 months on 2 years • 3 months on 2 years 	Type and amount of criminal sanction	/

Year 2013

<i>Ill-treatment</i>		<i>Torture</i>	
Total number of cases	8	Total number of cases	3
Number of condemning verdicts	3	Number of condemning verdicts	1
Type and amount of criminal sanction	<ul style="list-style-type: none"> • 7 months on 2 years and 3 months on 1 year • Judicial admonition • 3 months of prison 	Type and amount of criminal sanction	<ul style="list-style-type: none"> • 1 year on 2 years

Year 2014

<i>Ill-treatment</i>		<i>Torture</i>	
Total number of cases	6	Total number of cases	1
Number of condemning verdicts	3	Number of condemning verdicts	/
Type and amount of criminal sanction	<ul style="list-style-type: none"> • 3 months of prison • 5 months on 2 years • 3 months on 2 years 		
Type and amount of criminal sanction	/		

Claims for compensation of damage caused by torture

	<i>Number of claims</i>	<i>Number of adopted claim requests</i>	<i>Adjudicated amounts</i>	<i>Number of final and executive verdicts</i>
2012	4	4	1800, 1000, 5000, 1500	4
2013	2	2	1050, 5500	2
2014	4	/	/	/

62. Title XXX of the Criminal Procedure Code⁶ stipulates the proceedings for rehabilitation, termination of legal consequences of conviction and security measures while Title XXXI stipulates the proceedings for compensation of damages, rehabilitation and exercise of other rights of unjustifiably convicted persons, persons illegally or groundlessly deprived of liberty. Hence, Arts. 498-506 stipulate that persons who have been unlawfully or groundlessly placed under arrest of unjustifiably sentenced shall be entitled to rehabilitation, the right to damages from the state, as well as other rights laid down by law. The right to damages for groundless conviction is one of the basic rules laid down by the Criminal Procedure Code. In addition to this right, another stipulated right is the one to damages for persons groundlessly placed under arrest. As regards the above right, persons groundlessly placed under arrest are obliged to submit to the Ministry of Justice a request for damage agreement including the type and amount of compensation. If an agreement is not reached with the Ministry of Justice, persons may bring an action before the court of appropriate jurisdiction. The right to damages becomes barred by limitation within three years. There are also provisions on the inheritance of the right to compensation of damages, provided that the injured party died before the period of limitation expired and that the injured party did not waive this claim.

63. Montenegro is Party to the European Convention on the Compensation of Victims of Violent Crimes⁷ (Council of Europe).

⁶ Off. Gazette of MNE 57/09 and 49/10.

⁷ "Sl. List CG- Međunarodni ugovori", br.6/2009.

Right to liberty and security of person, treatment of persons deprived of their liberty and access to justice (arts. 9, 10, 12 and 14)

(a) *Steps taken to address overcrowding and poor material conditions in prisons, in particular Podgorica Prison*

64. Through the adaptation of the investigation prison in 2013, the accommodation facilities were expanded for 60-70 places, and poor accommodation conditions have largely been solved. We emphasize that in this period, the adaptation was carried out of 44 bedrooms and 7 bathrooms for detainees on the ground, first, second and third floor. Also, adaptation of the ambulance and dressing-station on the second floor was carried out by equipping with new interior. In addition, the adaptation took place of the room for juveniles, room for disabled persons with bathroom and toilet in line with European standards, and of the premises for the head of the prison escort services office and facilities for official persons on the ground, first and second floor.

(b) *Measures taken to prevent excessive use of force and abuse by prison staff*

65. Actions of the officers of the Office for Execution of Criminal Sanctions are regulated by the Law on Execution of Criminal Sanctions and the Rulebook on the performance of the security services, weapons and equipment of the officers. Any doubt concerning excessive use, or abuse of authority in the use of force against a prisoner or detainee is sanctioned through disciplinary proceedings, as well as the appropriate legal action if the conditions are met. Management of the Office has issued a written order prohibiting any form of harassment and intimidation of prisoners and detainees. The order points out that any form of torture would be strictly penalized. Management of the Office allowed persons deprived of liberty correspondence with external bodies, in accordance with the law.

(c) *The establishment of an independent system for supervising penitentiary establishments*

66. Prison institutions, i.e. the Administration for Execution of Criminal Sanctions are supervised by the Ministry of Justice, through the Directorate for Execution of Criminal Sanctions and authorized officers of this organizational unit of the Ministry of Justice. Authorized officials perform the control of imprisonment execution, which includes control of the provision of legal aid to prisoners, accommodation, food, clothing and footwear, health care provision, correspondence, visits, reception of shipments, rewards, disciplinary liability, use of coercive measures, interviews with convicted persons, a review of individual legal acts, records and other documents relating to the convicted persons, dealing with complaints, preparing analytical information and other technical materials.

(d) *The number of persons in pre-trial detention*

67. On 16 September 2014, there were 284 persons detained in custody in investigation prison in Podgorica.

(e) *Measures taken to encourage the implementation of alternatives to detention*

68. The Criminal Procedure Code prescribes measures that may be taken against the defendant for the provision of his presence and the smooth conduct of the criminal proceedings (summons, apprehension, control measures, bail and detention). Detention may only be imposed if the same purpose cannot be achieved by other measures, and is necessary for the smooth conduct of the proceedings.

69. The Criminal Code of Montenegro prescribes a prison sentence that is executed in the housing premises, while the new Law on Enforcement of Sentences of Imprisonment,

Fines and Security Measures prescribes that the court shall submit its final decision determining that a sentence of imprisonment is enforced in the premises where the convicted person resides to the parole unit within 8 days from the date of finality of the decision. The law lists the circumstances in which the Ministry of Justice may allow the convict, at his request, to leave the premises in which he resides.

(f) *The right to legal assistance*

70. The Administration for Execution of Criminal Sanctions is required to enable the provision of legal assistance to prisoners in order to protect their rights guaranteed by the Constitution and the law. In accordance with the Law on Execution of Criminal Sanctions and the Rulebook on the enforcement of sentences of imprisonment at the Office for Execution of Criminal Sanctions, convicted persons are afforded the right to legal assistance — in order to exercise this right, prisoners are enabled to communicate with an officer of the legal profession. For purpose of the protection of rights and interests during imprisonment, the prisoners have the right to submit complaints to the head of the Office. Head of the Office is required to investigate the complaint and issue a decision within 15 days of receipt of the complaint. The decision is delivered to the prisoner without delay. Illiterate prisoners shall be enabled the submission of the complaint by the Office. Against the decision referred to in paragraph 2 of this Article, the prisoner has the right to appeal to the Ministry within 8 days of receipt of the decision. The Ministry shall decide on this appeal within 15 days of its receipt. The prisoner is entitled to judicial protection in administrative proceedings in the case of appealing against this decision, as well as in the case a decision has not been made.

71. In all premises for police custody there is a fact sheet, printed in several languages, providing the data on the rights of detained persons. In addition to written records, records in electronic form have been established for detained persons.

(g) *Access to a doctor, including access to the medical file without restriction*

72. Convicted and detained persons are granted access to a physician every day according to the schedule determined by the Chief of Health Services. In case of emergency, persons deprived of liberty are enabled access to a physician immediately. The prisoners have a right to health care, in accordance with the law. The prisoners have a right of access to their medical records. Prisoners' rights in connection with the exercise of health care are subject to the law regulating the rights of patients. When a prisoner is ill, and has signed consent for disclosing the information about his / her health to persons designated upon admission to the prison, the prison doctor shall inform these people. Health care of prisoners is carried out in the Office, which is obliged to provide the conditions in respect of the premises, personnel and equipment in accordance with the regulations governing health care. The prisoners may be transferred from one prison to another, which has better conditions for their treatment. Prisoners who cannot exercise their health care at the Office exercise it in other health care institutions, in accordance with the law. Health care is provided to the prisoners through regular and periodic medical examinations. The prison doctor is required to exercise daily visits and, if necessary, examine all ill prisoners, prisoners who reported illness or having an injury, prisoners in solitary confinement and prisoners whose condition requires special care. The prison doctor is required to immediately report an illness of a prisoner that requires special testing and specialist health care. When a prisoner is behaving in a way that leads to the suspicion that he could harm himself or commit suicide, officers of the Office must take all necessary measures to prevent self-injury or suicide. Prisoners suspected or found to be suffering from an infectious or contagious disease must be immediately isolated and subjected to treatment.

73. In terms of retention in the premises of the police, through the cooperation of the Police Administration with the closest health care facilities, it is defined that the medical assistance is provided immediately at the request of the person.

(h) *The possibility of informing a family member of the detention*

74. According to Article 180 of the Criminal Procedure Code, immediately after a person has been deprived of liberty and within a term of 24 hours at the latest, the police authority, the Public Prosecutor or the court shall inform the family of the detained persons.

75. The Law on the Protection and Exercise of the Rights of Mentally Ill Persons of 2005 and the Amendments to this Law of 2013 define two ways of hospitalization in psychiatric institutions in Montenegro: voluntary and involuntary hospitalization. Voluntary hospitalization is implemented with the voluntary, written consent of the patient, i.e. his / her handwritten signature on a special form intended for this purpose. Involuntary hospitalization, which means involuntary placement of mentally ill persons in an institution, is implemented exclusively in the Special Psychiatric Hospital in Kotor. This type of hospitalization does not imply mandatory patient's consent to placement and treatment.

76. The procedure for involuntary placement in a psychiatric institution is regulated by the Law on Non-Contentious Procedure. In order to improve the legislative solutions, in September 2014 the Government adopted the Proposal for a Law on Amendments to the Law on Non-Contentious Procedure, providing that persons whose hospitalization is decided upon must be assisted by a lawyer, and where they cannot themselves provide this assistance of a lawyer they shall be provided with free legal assistance. Also, the obligation of the court to hold a hearing in the mental institution where the person is detained is prescribed, as well as to hear the person if he / she is able to grasp the meaning and legal consequences of participation in the proceedings, and in particular, to obtain finding and opinion of an expert psychiatrist who is not employed in the psychiatric institution where the person is held, for the purpose of objective findings and care of that person.

77. The right to appeal is guaranteed by Article 53 of the Law on Non-Contentious Procedure, which stipulates that appeals against the decision on placement in a psychiatric hospital and release from this facility may be submitted by a psychiatric institution which houses the mentally ill person, the placed person, guardian or temporary representative and guardianship authority, within three days of receiving the decision. Proposal for a Law on Amendments to the Law on Non-Contentious Procedure envisages the expansion of the circle of persons who may appeal to include a lawyer.

78. During 2014, two patients had appealed against the decision of the Basic Court in Kotor to the higher-instance High Court in Podgorica. The first patient appealed against the initial decision on involuntary placement, and the second decision on involuntary placement — obtained under a repeated procedure, and the decision to extend the involuntary placement. The High Court quashed and remanded all the Basic Court decisions, returning them to retrial, which is still in progress in the case of the appeals against the latter two decisions. The second patient appealed against the initial decision on involuntary placement. The High Court upheld this appeal, remanding the case for retrial. The patient did not appeal against the new decision of the Basic Court (in the retrial).

79. **Restraint** — Amendments to the Law on the Protection and Exercise of the Rights of Mentally Ill Persons (Article 43 of the Law) of 28 May 2013 precisely defined the period of restraint “to last from a few minutes up to a maximum of a few hours”. Any restriction of the freedom of movement, as well as the use of parenteral therapy (chemical fixation) is recorded on a special form — which later becomes part of the medical documentation — history of illness of the patient, in a special protocol for restraining the freedom of

movement that exists in the division, as well as in the central book whose records and update are the responsibility of the chief nurse of the hospital.

80. According to the Law on the Protection and Exercise of the Rights of Mentally Ill Persons, within the hospital setting there are the Protector of Patient Rights and the Council for the Protection of the Rights of Mentally Ill Persons — a multidisciplinary body, to which patients can refer regarding any objections or complaints while being treated at the institution. Complaints and objections may be filed in direct contact with the Protector or the Council or in writing, by filing a complaint in complaint letter-boxes — installed in all wards of the hospital — which are examined and considered only by the members of these two bodies.

81. In accordance with Article 18 of the above Law, the patients are also entitled to the opportunity to complain and object to the competent judicial and other state authorities, consultations with a lawyer of their choice and at their expense, and to send and receive, at their own expense, with full privacy, without supervision and restrictions, mail, parcels, newspapers, as well as to make phone calls, etc., which gives them the opportunity and freedom to present and process all possible complaints and appeals outside of the institution in which they are located.

82. Reform activities carried out in accordance with the Judicial Reform Strategy 2007-2012 were aimed at strengthening the independence, autonomy and efficiency of the judiciary, strengthening the availability of judicial authorities — access to justice, international and regional judicial cooperation, the fight against organized crime, corruption, terrorism, prison system reform and the establishment of the judicial information system.

83. Strengthening the independence and autonomy of the judiciary — the Judicial Council has been established as an independent and autonomous body which conducts the procedures of the appointment, dismissal and disciplinary liability of judges, under objective and transparent criteria. Also, the Prosecutorial Council has been established, which conducts the procedures of appointment of deputy public prosecutors and proposes the appointment of public prosecutors to the Parliament. Analyses of the constitutional framework of 2007, which regulates the judiciary, have pointed to the need to, at the level of constitutional provisions, strengthen the independence of judiciary. Thus, as a result of the strategic measures in the field of judiciary, amendments to the Constitution were adopted in 2013, amending the organizational regulations in the field of judiciary. According to the novelties, the Judicial Council, the Prosecutorial Council and the President of the Supreme Court have been appointed.

84. In order to enhance the efficiency of the judiciary, the substantive and procedural criminal and civil legislation has been revised, alternative dispute resolution methods were promoted, courts have been relieved of the cases that by their nature are not judicial, and the process of rationalizing the judicial network has commenced. Also, the Framework programme for solving the backlog of cases in all courts has been implemented. The new Criminal Procedure Code introduced the concept of prosecutorial investigation since 1 September 2011, enhancing provisions on deferred prosecution and introducing the plea agreement. We should also point out novelties brought by the Law on Civil Procedure, which are relating to the abolition of investigative principle, the introduction of mediation, improving ways of delivery. It is particularly important to emphasize the development of mediation as an alternative dispute resolution. Equally significant is the introduction of notaries who began to work in July 2011. With regard to the problems in dealing with enforcement cases, the Law on Enforcement and Security was adopted, as well as the Law on Bailiffs. The bailiffs started to work in April 2014. The Law on Protection from Domestic Violence was adopted, and so were the Strategy for Protection against Violence and the Law on the Treatment of Juveniles in Criminal Proceedings. The Government of

Montenegro adopted the analyses for needs of the rationalization of court network in 2009 and 2013, as well as a two-year plan to rationalize the court network.

85. The results of the above activities should be noted, as they are reflected in the reduction of backlog, so that on 31 December 2013 in all Montenegrin courts there were only 4,251 cases older than three years, including all types of cases, which date from 2010 and previous years. These figures originate from the Annual Report on the Work of the Courts for 2013.

86. **Access to judiciary** — The adoption of the Law on Free Legal Aid has established a free legal aid system, which began to be applied as of 1 January 2012. Information about the trial schedule is available on the monitors in the courts and on the website www.sudstvo.me. When it comes to strengthening public trust in judiciary — the practice of regular press conferences has been established, at which the work of the courts is presented. Persons responsible for public relations in the judicial authorities have been designated. Court decisions are available on the website www.sudstvo.me. The judicial information system is operational in all courts.

87. At its session held on 3 April 2014, the Government of Montenegro adopted the Judicial Reform Strategy for the period of 2014–2018. The Action Plan for the implementation of the Strategy was adopted on 31 July 2014. The Strategy is based on the strategic objectives that have been created in accordance with the assessment of fulfilment of the objectives of the previous Strategy, and the implementation of planned reforms in judiciary will be aligned with the national strategic documents, primarily the Action Plans for Chapter 23 and 24 within the negotiations between Montenegro and the EU.

88. Implementation of the Strategy and the Action Plan, as well as possible updates and amendments shall be entrusted to the Council for the Implementation of the Judicial Reform Strategy. The Council shall be composed of the representatives of all judicial institutions and representatives of non-governmental organizations involved in the process of monitoring the reform of the judicial system. The Council will take care of the dynamics of the judiciary reform process as well as taking appropriate measures regarding the effective implementation of the Strategy and the Action Plan.

89. The Law on Free Legal Aid entered into force on 15 April 2011, and began to be implemented on 1 January 2012. Services for providing free legal aid have been established with Basic Courts, and 15 of them started to work on 1 January 2012. The services are equipped with adequate technical equipment and their officers act on requests for free legal aid. Also, within the Judicial Information System (PRIS), a module was developed for cases of free legal aid. Funds for providing free legal aid are provided each year in the Budget of Montenegro. In the Budget of the judiciary in 2014, within the item of consulting services, which includes the costs of providing free legal aid, EUR 380,000 was allocated.

90. When it comes to promoting and raising awareness of citizens about the right to free legal aid and the manner of exercising that right, in 2013 and 2014, workshops were held with representatives of NGOs and trainings were conducted that were attended by representatives of the judiciary and presidents of courts. A round table was organized on the topic of the application of the Law on Free Legal Aid; a national conference was held for presidents of courts and representatives of the services for free legal aid, as part of the “Free Legal Aid to Marginalized Groups” project. In order to inform citizens about the free legal aid system, a TV show was organized that was dedicated to free legal aid and free legal aid study, which was prepared on the invitation of the Ministry of Justice by the Civic Alliance and Centre for Democracy and Human Rights (CEDEM), with the support of UNDP. Also, brochures have been prepared about the right to free legal aid, which were distributed to the services for free legal aid, social welfare centres and post offices, NGOs, the Bar Association, courts, public prosecution offices. The Association of Judges and the Centre

for Women's Rights published a brochure entitled "Equality, Protection, Justice", and the Centre for Monitoring and the EU Delegation to Montenegro published a brochure entitled "NGO Network for Free Legal Aid to Marginalized Groups".

91. In order to improve the legislative framework and to overcome the shortcomings pointed out by the application of the Law, in September 2014, the Government of Montenegro adopted a Proposal for a Law on Amendments to the Law on Free Legal Aid, with a view to facilitate the exercise of free legal aid in proceedings before bailiffs, as well as that victims of domestic violence under the Law on Protection from Domestic Violence are recognized as privileged beneficiaries of free legal aid, in the same way as the victims of the criminal offence of violence in a family or a family community and trafficking in human beings. The Law also clearly stipulates the criteria by which a lawyer may deny legal aid and changes the assets criteria stipulated as a basis for exercising the right to free legal aid.

92. The Law on Free Legal Aid provides equal access to justice for everyone, including those from vulnerable groups, Roma and other persons to, without harm to the necessary support for themselves and their families, be provided free legal aid in order to exercise the right to a fair trial and equal access to the court, in accordance with international standards.

93. Procedural laws stipulate that parties, witnesses and other persons involved in the proceedings are entitled to the use of their language or a language they understand in the proceedings. If the proceedings are not conducted in the language of some of these persons, translation of evidence, documents or other written evidence is provided through an interpreter. The costs of translating into the language of national minorities, which are incurred in enforcing the provisions of the Constitution and this Law on the right of national minorities to use their language, shall be borne by the court.

94. The Law on the Treatment of Juveniles in Criminal Proceedings⁸ entered into force on 6 January 2012, and its implementation began on 1 September 2012. In March 2012, the Government of Montenegro adopted a plan of implementation of the Law, as well as five by-laws. With the support of the EU Instrument for Pre-accession Assistance (IPA) project "Justice for Children", which was implemented by the Ministry of Justice in cooperation with the UNICEF Office in Montenegro, the most significant results in this area are: the improvement of data collection systems for juvenile judiciary; conducted training on data collection and analysis in accordance with an innovative methodology; enabled hearings adapted to children; conducted specialized training of all relevant stakeholders in working with children, witnesses and victims of criminal offences; provided support for the development and operationalization of professional services in the courts and prosecutor's offices, etc. Capacities of professionals for work and dealing with children in conflict with law and children, victims and witnesses of criminal offences have been strengthened through the development of specialized training programmes for the four categories of professionals (judges, prosecutors, police officers, lawyers), in accordance with the relevant international instruments and standards and best practices in the field of juvenile judiciary.

95. In the Administration for Execution of Criminal Sanctions, conditions have been provided for the separation of juveniles in detention and those serving a sentence of imprisonment from adults and they are located in the special Division for Juveniles.

96. Juveniles are tried by specialized judges for juveniles who have completed specialized training. Trial in absentia in the proceedings with juveniles is prohibited; a counsel is required for the commencement of proceedings; public is excluded; there is a ban on the publication of the case file — protection of privacy of juveniles; proceedings are

⁸ Official Gazette of Montenegro 64/11 of 29 December 2011.

urgent; there is an obligation to testify about the circumstances that concern juveniles; there is a prohibition of the publication of the course of proceedings; there is judicial review of criminal sanctions imposed on juveniles.

Elimination of slavery and servitude (arts. 8 and 24)

97. The national policy of combating trafficking in human beings is contained in the Strategy adopted by the Government for the period of 2012–2018. In defining the objectives of the Strategy and the accompanying Action Plan, in addition to alignment with international and national policy documents and recommendations, special emphasis has been given to the protection of the rights of children, including children of the Roma and Egyptian population (RE population) as a particularly vulnerable group of the society. The Strategy focuses on the six key areas: prevention and education; identification of victims of trafficking in human beings; assistance, protection and reintegration of victims; effective criminal prosecution; international cooperation and coordination and partnership. The Government of Montenegro monitors activities in the fight against trafficking in human beings through the monitoring performed by the Office for Combating Trafficking in Human Beings, as well as through the work of the Working Group for Implementation of the Strategy for Combating Trafficking in Human Beings and individual Action Plans.

98. Good cooperation between state authorities, international organizations and civil society is also enhanced by the Agreement on Cooperation signed between the state authorities and six non-governmental organizations, which legally defined responsibilities of institutions and organizations specified through standard operating procedures that the parties will apply to resolve the specific cases of trafficking in human beings, with special emphasis on treatment in relation to women and children victims of trafficking.⁹

99. In the area of prevention, activities are conducted to raise the awareness of employees in the institutions, and the general public, with special emphasis on the RE population, about the circumstances that are particularly risky in terms of trafficking in human beings. There are continuous activities to strengthen the resilience of Roma children in relation to the phenomenon of trafficking in human beings, through the implementation of trainings and workshops and organizing peer-educational activities. Numerous workshops and educational seminars are held.

100. Amendments to the Criminal Code of 2013 have included amendments to the legal description of the criminal offence of trafficking in human beings under Article 444. The basic form of the criminal offence referred to in paragraph 1 was extended, and so was the more severe form referred to in paragraph 3, while a provision was introduced that eliminates any possible dilemma in the sense that the consent of a victim of trafficking in human beings does not exclude this criminal offence (paragraph 10).

101. In order to raise public awareness, especially among the RE population, of circumstances that are particularly risky in terms of trafficking in human beings, the Division of the Ministry for Human and Minority Rights for gender equality prepared and made a documentary film on the subject of arranged and forced marriages — testimonies of victims from Montenegro. A two-day seminar was organized on “Legal mechanisms in the fight against forced and arranged child marriages”.

102. In cooperation with the American NGO “FAIR Girls” and NGO “Montenegrin Women’s Lobby”, the Office for Combating Trafficking in Human Beings organized two trainings in the past period, intended for social and health workers, representatives of the Police Administration and local self-governments from the southern and central regions of

⁹ <http://www.antitrafficking.gov.me/rubrike/sporazum-o-saradnji>.

the topic of “Strengthening the capacity of law enforcement bodies to identify victims of trafficking in human beings / RE population children”. At the same time, several seminars were held with representatives of non-governmental organizations dealing with issues of women from the Roma and Egyptian populations, with the aim of strengthening the network of Roma women NGOs in the fight against arranged marriages in the RE population.

103. The Government funds an SOS hotline for victims of trafficking in human beings through which the suspected commission of this criminal offence may be reported for free and anonymously, 24/7. It is also possible to get all the necessary advice and information of educational type on the trafficking in human beings phenomenon.

104. The Government’s Office for Combating Trafficking in Human Beings compiles statistics on registered cases of trafficking in human beings in Montenegro since 2004, based on the data received from the Police Administration, the Supreme Public Prosecutor’s Office and the Supreme Court. In the period from 2010 to 1 April 2014, the Police Administration filed four criminal charges for the criminal offence of trafficking in human beings under Article 444 of the Criminal Code, against 18 persons, while the public prosecutors filed four indictments against 18 persons for the criminal offence of trafficking in human beings under Article 444 of the Criminal Code. The competent courts brought 13 final verdicts which included 51 persons.¹⁰ In the same period, the Government’s shelters for trafficking victims accommodated a total of 13 beneficiaries — victims of trafficking in human beings.

105. Funds necessary for the smooth functioning of shelters for victims of trafficking (expenses to meet the basic living needs of victims of trafficking, as well as medical, legal, psychological and other forms of assistance) are allocated from the budget of the Government’s Office for Combating Trafficking in Human Beings. Direct assistance to victims and potential victims of trafficking in human beings in shelters is provided by five activists of an NGO, who receive a monthly fee from the budget of the Office for Combating Trafficking in Human Beings. In addition to these funds, the costs of rent and other utilities for a facility that houses a shelter for victims of trafficking in human beings are covered from the budget of the Office for Combating Trafficking in Human Beings.

106. Taking into account that the economic independence of persons who have come out of the chain of trafficking in human beings is a key factor of their full reintegration into normal social trends, the Government’s Office for Combating Trafficking in Human Beings signed a protocol on cooperation with the Union of Employers of Montenegro, which, among other things, provides that these persons are provided an opportunity to attend trainings to perform appropriate jobs and priority in employment, in accordance with the needs of employers. The Protocol also provides for joint activities on timely information on the phenomenon of trafficking in human beings of both, employers and employees, or persons with whom a contract of employment is concluded, with special emphasis on the prevention of cases of labour exploitation.

107. In accordance with the Convention on the Rights of the Child, Article 445 — “Trafficking in Children for Adoption” was amended in a way that this criminal offence was extended to juveniles (persons 14 to 18 years of age), so it now offers a wider criminal protection against trafficking in juveniles. When working on amendments to the Criminal Code, compliance of the criminal offences with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse was taken into

¹⁰ In 10 cases resolved by a final decision, 29 persons were found guilty and sentenced to imprisonment, while in three such cases the defendants were acquitted.

account. Thus, a new criminal offence was introduced — Enticement of a Child for the Purpose of Committing a Criminal Offence against Sexual Freedom (Article 211b), while the criminal offence of Showing Pornographic Material to Children and the Production and Possession of Child Pornography (Article 211) was amended.

Refugees and internally displaced persons (arts. 2, 7 and 16)

108. The Ministry of Interior of Montenegro exercises close cooperation and communication in terms of acceleration of procedures for resolving the legal status of internally displaced persons (IDPs) with UNHCR Montenegro, Administration for the Care of Refugees, Ministry of Labour and Social Welfare and the NGO “Legal Centre”, through various activities that are analyzed and planned in the operational team. The main goal is to help as many internally displaced persons as possible to apply for the status of foreigner in Montenegro, in accordance with the Law on Amendments to the Law on Foreigners, which extended the deadline for application (for the third time) to 31 December 2014. As a result of previous cooperation with the Ministry of Interior, Administration for the Care of Refugees, UNHCR and NGO “Legal Centre” conducted fieldwork in Camp Konik I of a biometric mobile team in April 2014. The total result of the work of this team with internally displaced persons can be assessed as encouraging. For five days of activities, officers of the Directorate for Foreigners, Migration and Readmission interviewed and received 146 requests for permanent residence and 8 requests for a temporary stay. All requests received have automatically entered the procedures of solving, in accordance with the Law on Amendments to the Law on Foreigners;

109. In terms of support to IDPs, the Ministry of Interior of Montenegro and its partners exercise cooperation with the Ministry of Interior of Kosovo as well. The first arrival and fieldwork with the IDP mobile biometric team of the Ministry of Interior of Kosovo was organized in May 2014. Members of the team from Kosovo conducted verification and registration of the list of 513 IDPs, interviewing 412 of them in order to provide the missing basic documents so that they could, subsequently, upon receiving the documents, submit requests to regulate the status in Montenegro.

110. Based on the conclusion of operational team, UNHCR conducted a thorough verification of IDPs through fieldwork in Montenegro in June and July 2014. Based on the work in refugee camps and accommodations and comparing data and registers held by the Ministry of Interior of Montenegro and the Administration for the Care of Refugees, a conclusion was made that assistance is needed in the provision of documents for 1,494 IDPs, so that they could apply to resolve their status.

Right to privacy (art. 17)

111. As laid down in the initial report, the Criminal Procedure Code stipulates the types of secret surveillance measures, the conditions for their use and lists the criminal offences for which surveillance measures may be ordered. Article 159 of the Code prescribes the procedure for the determination and implementation of the secret surveillance measures. According to this Article, three secret surveillance measures¹¹ are determined in writing only by the investigative judge, at the reasoned proposal of the public prosecutor. The

¹¹ Secret surveillance and technical recording of telephone conversations i.e. other communication carried out through means for distance technical communication as well as private conversations held in private or public premises or at open; secret photographing and video recording in private premises; secret supervision and technical recording of persons and objects.

remaining four measures¹² are determined by written order of the public prosecutor, at the reasoned proposal of the police. The reasoned proposal shall be submitted in a sealed envelope, marked with MTN (secret surveillance measures). The proposal and order to determine the measures become an integral part of the criminal case file, and should include available information about the person against whom they are determined, the criminal offence for which they are determined, the facts from which the need for their undertaking stems, expiration date, which must be appropriate to the implementation of the objective of the measures, and methods, extent and location of the implementation of the measures. The Code provides that in exceptional circumstances, if a written order may not be issued in a timely manner, and there is a risk of delay, measures may be taken on the basis of a verbal order of the investigating judge or public prosecutor — in this case the Code provides that a written order must be obtained within 12 hours of issuing the verbal order.

112. The Criminal Procedure Code prescribes the procedure for keeping records of the police (which performs the secret surveillance measures) and communication with the public prosecutor or the investigating judge (interim reports, final reports, etc.).

113. If, during the implementation of the secret surveillance measures actions were taken contrary to the provisions of the Code, or contrary to the order of the investigating judge or prosecutor, the evidence obtained will be considered legally invalid evidence, on which a court may not base a decision.

Freedom of thought, conscience and religion (art. 18)

114. On the territory of Montenegro there are the Serbian Orthodox Church (Metropolitanate of Montenegro and the Littoral and the Eparchy of Budimlja and Nikšić) and the Montenegrin Orthodox Church. The specificity of the Orthodox community is conditioned by the fact that a part of Orthodox believers in Montenegro is under the direct spiritual competence of ecclesiastical institutions headquartered outside of Montenegro, like the Eparchy of Zahumlje and Herzegovina and the Littoral and the Eparchy of Mileseva. In terms of dogma and ritual practice, there are no differences between the Serbian Orthodox Church and the Montenegrin Orthodox Church. However, the hierarchy of Orthodox Churches implies identification of local Orthodox churches with national or state affiliation. The Montenegrin Orthodox Church was recognized by the Orthodox universe as autonomous, but was abolished in 1920, with the change of the state-legal status of Montenegro, when it became a member of the Serbian Orthodox Church. It was restored in 1993, but did not receive canonical recognition of the mother church — that is, the Serbian Orthodox Church and other canonical Orthodox churches.

115. Representatives of the Montenegrin Orthodox Church pointed to the relevant Ministry that they are not able to perform religious service in most Orthodox churches.

Non-discrimination and freedom of opinion and expression (arts. 19 and 26)

116. The Ministry for Human and Minority Rights received no complaints relating to hate speech by church officials. In its Communication on the need to adopt the Proposal for a Law on Freedom of Confession, which was adopted by the Government of Montenegro at its session held on 26 June 2014, the Ministry clearly indicated the tendency of some religious communities to actively participate in some social events as bearers of political initiatives, breaching the prescribed constitutional and statutory powers in this manner. In

¹² (Simulated purchase of objects or persons and simulated giving and taking of bribe; supervision over the transportation and delivery of objects of criminal offence; recording conversations upon previous informing and obtaining the consent of one of interlocutors; of undercover investigators and cooperative witnesses).

accordance with current legislation, the judicial authorities are primarily responsible for the imposition of criminal or misdemeanour measures in order to combat hate speech.

117. The recently adopted Law on Amendments to the Law on the Prohibition of Discrimination (of 26 March 2014), explicitly introduces “hate speech” into the Law, as a particular form of discrimination. Hate speech is universally recognized as a negative social phenomenon that needs to be combated by all necessary means, including the prediction of specific provisions in this Law, in order to comprehensively define this phenomenon. Thus, a comprehensive definition of hate speech has been included in the legal order of Montenegro and clearly marked as a special form of discrimination under the Law on Amendments to the Law on the Prohibition of Discrimination in the following way: “Hate speech is any form of expression of ideas, statements, information and opinions to spread, incite, promote or justify discrimination, hatred or violence against a person or groups of persons because of their personal characteristics, xenophobia, racial hatred, anti-Semitism or other forms of hatred based on intolerance, including the intolerance expressed in the form of nationalism, discrimination and hostility against minorities”. Also, the above Law stipulates that “hate speech is punished with a fine in the amount of EUR 500.00 to 20,000.00 EUR”, which is considered a very high fine taking into account the economic capacity of individuals, companies and other entities in Montenegrin society.

118. After each attack, the Ministry for Human and Minority Rights reacts with public condemnation in the press release that condemns acts of intolerance and “hate speech”, calling on the competent authorities to react and prevent further attacks and find a way to act preventively in order for attacks of any kind to occur less frequently. Also, the statements made urge the public to increase the degree of tolerance towards the LGBT community and other vulnerable groups in order to respect fundamental human rights and freedoms and the principles of equality. The last such example is the attack that occurred at the Community Centre SOGI, on 10 May 2014¹³, which was followed by an urgent reaction of the Ministry, with the damage repaired and facility adequately secured.

119. In addition, continuous activities are implemented on the implementation of anti-discrimination legislation through the implementation of the Education Plan in providing protection against discrimination and the Promotion Plan (campaign) on the prohibition of discrimination. Special attention is paid to the implementation of measures envisaged by the “Strategy for improving the quality of life for LGBT people”, as well as activities aimed at the protection of human rights of persons with disabilities.

120. From the criminal and legal perspective, in the period from the preparation of the initial report on the Implementation of the International Covenant on Civil and Political Rights, a major breakthrough has been made with the adoption of the Law on Amendments to the Criminal Code (Official Gazette of Montenegro 40/2013), which prescribes specific circumstances when it comes to sentencing for a criminal offence committed out of hatred, so that if the criminal offence was committed out of hatred because of race, religion, national or ethnic origin, gender, sexual orientation or gender identity of another person, this circumstance will be seen by the court as aggravating, unless it is defined as a characteristic of the basic or more severe form of the criminal offence (Article 42a). In addition, amendments to the Criminal Code of 2013 have amended the criminalization of infringement of equality (Article 159), in a way that sexual orientation and gender identity have been added to the reasons for the denial or restriction of another’s human rights and freedoms provided for by the Constitution, laws or other regulations or general acts or

¹³ <http://www.mmp.gov.me/vijesti/138515/Reagovanje-na-napad-LGBTIQ-Socijalnog-Centra-SOGI.html>.

ratified international treaties — due to which a person commits a criminal offence of infringement of equality.

121. Judicial authorities and the Police Administration, in cases of attacks and threats of violence against journalists, in accordance with their statutory powers, take measures and actions to prevent and solve these criminal offences, identify the perpetrators and the principals, and to prosecute them.

122. The Action Plan for Chapter 23 provides a series of measures with the aim of ensuring the protection of journalists from threats and violence, including, inter alia: in August 2013, through amendments to the Criminal Code, the existence of criminal responsibility for criminal offences under Arts. 172 to 176 of the Criminal Code has been excluded (in case of infringement of privacy of mail or other parcels, unauthorized wiretapping and recording, unauthorized photographing, unauthorized publication and presentation of somebody else's documents, portraits and recordings, unauthorized collection of personal data) if the act of committing any of these offences prevented or uncovered a criminal offence punishable by imprisonment of five years or more.

123. In line with the Action Plan for Negotiation Chapter 23, and the universal periodic review recommendations, in December 2013, the Government of Montenegro adopted a decision to establish the Commission for monitoring the actions of the competent authorities in the investigation of cases of intimidation and violence against journalists, the murders of journalists and attacks on media property,¹⁴ which began its operations on 6 February 2014 and to which the competent authorities submit regular reports. The Commission consists of 11 members from the ranks of journalists, police, prosecutors and the National Security Agency. In the period from 6 February to 6 May 2014, the Commission held seven sessions. In these sessions, the Rules of Procedure of the Commission were adopted, a list of priority investigations with which the Commission will deal was prepared, working groups were formed for the three cases that are considered particularly complex, the Commission conducted an interview with a journalist, and one session of the Commission was held in the presence of a Co-Rapporteur of the Parliamentary Assembly of the Council of Europe. In its report, the Commission has submitted proposals and recommendations to the Government of Montenegro.

124. Based on the Decision on determining the persons and facilities secured by the Police Administration¹⁵ the Police Administration undertakes a Preventive Measures System to protect journalists, as follows:

(a) Ongoing operational checks are carried out in the field in relation to persons who might endanger the safety of journalists and analysis is performed of the situation in the print and electronic media, i.e. whether their current activity can result in endangering the safety of the employees in these media;

(b) At the request / notification by journalists or media institutions in which they work that there is a threat to security of journalists and their families, the police undertakes the following activities:

(i) Requires the National Security Agency to make a safety assessment, in accordance with the regulations governing this matter;

(ii) Depending on the content of the safety assessment, takes concrete measures of physical protection of persons (and family if necessary) and adopts the security plan that defines procedures;

¹⁴ Official Gazette of Montenegro 5/14.

¹⁵ Official Gazette of Montenegro 37/13.

(iii) The degree and intensity of security measures depend on the level of risk and, in this regard, the protection measures are taken at the place of work, residence, spending time, position and motion, while travelling, etc.;

(iv) A certain number of employees is deployed who, in a particular formation setting, take measures to protect the physical safety, while a certain number of officers take measures to protect the building of work and residence of the person who is protected;

(v) A continuous cooperation is established with the security subjects related to operational prevention work and monitoring the safety of the person being protected.

125. **Current and adjudicated cases of violence against journalists — in 2014** until 15 September, five criminal cases in which journalists were the injured party (so-called cases of violence against journalists) were resolved before the Montenegrin courts. Three cases were from Basic Court in Podgorica, while one case was from Basic Court in Kolašin and Nikšić, respectively. In three cases, first instance decisions were rendered — two decisions imposing suspended sentence and a decision on the refusal to indict. One verdict is final. **In 2013**, four criminal cases in which journalists were the injured party (so-called cases of violence against journalists) were resolved before the Montenegrin courts. Three criminal proceedings were conducted before the Basic Court in Podgorica, one of which is completed (defendant sentenced to imprisonment of four months), while one criminal proceeding is underway before the Basic Court in Kolašin.

126. **Current and adjudicated cases of non-pecuniary damages where the respondent parties are journalists / media, regardless of the year of filing the complaint — in 2014**, until 15 September, there were 32 cases of non-pecuniary damages where the respondent parties are journalists / media resolved before the Montenegrin courts. The procedure is underway in 24 cases, while in 8 cases first instance decisions were rendered (5 decisions dismissing the claim, one judgment approving the claim — the claim amounted to EUR 120,000 while the compensation awarded was EUR 6,000, and 2 decisions on withdrawal of the claim). **In 2013**, the Montenegrin courts decided upon 23 cases in which the respondent parties were media / journalists and all procedures were conducted before the Basic Court in Podgorica and Bijelo Polje. Eleven cases were resolved, of which in seven cases the court issued a ruling dismissing the claim. In two cases, a decision on the withdrawal of the claim that became final was adopted. In one case (the Basic Court in Podgorica), a decision was rendered awarding non-pecuniary damages in the amount of EUR 5,000. The claim made amounted to EUR 100,000. The appeal procedure is ongoing. In one case (the Basic Court in Bijelo Polje), the claim was partially adopted and obliges the respondent parties to jointly pay non-pecuniary damages for injury to reputation and honour in the amount of EUR 2,000. The claim made amounted to EUR 15,000. The appeal procedure is ongoing. **In 2012**, the courts decided upon 14 cases in which the respondent parties were media / journalists. Two civil judgments were rendered, and in both cases the claim for non-pecuniary damage was rejected. In other cases, the proceedings were in progress.

127. After the decriminalization of defamation and insult, all criminal proceedings for defamation and insult that were pending before the Montenegrin courts, in which the respondent parties were media, were concluded by final decisions.

128. The legal right of every citizen of Montenegro is to require that his / her human rights are protected when he / she finds them threatened or violated, through a lawsuit before the court. Also, the right of the claimant is to seek pecuniary / non-pecuniary damages, determining the amount of the claim, and the court's obligation is to decide on this claim decide no matter who the respondent party is — the media, journalists, natural or legal persons.

129. **Police Administration data** — In the period of 2008–2014, the Police Administration registered 34 cases where the object of the attack were members of the media or their property, of which 26 cases have been completed — 20 were prosecuted while in 6 cases of reported assault the prosecutor assessed that “there are no elements of criminal offence”. In the specified period, in cooperation with prosecutors, 13 criminal charges and 10 misdemeanour reports were filed, which included 36 people. The preparation of the document “Risk Analysis” of threats to employees in the media — journalists, is under way. A working group has been formed consisting of eight officers of the Ministry of Interior of Montenegro, working on the development of this document. Also, the activity to record all movable and immovable property with the precise location of all media (commercial buildings, newsrooms, correspondents and motor vehicles) is under way, in order to prepare this document. Based on the safety assessment of the National Security Agency, permanent police escort was awarded to one journalist. The activities have been continued in terms of providing security to another journalist, a newsroom and their official vehicles, with a constant escort and protection by the police officers.

130. In agreement with the competent prosecutors, in late 2013, the working teams were formed in Podgorica, Nikšić and Berane, in order to shed light on events at the expense of ND “Vijesti”, a journalist of the daily “Dan” from Nikšić, L.N. and a journalist from Berane, T.S. On this occasion, daily communication is exercised with prosecutors, and coordinated and planned actions were undertaken in consultation with them, in order to collect material evidence for a possible prosecution of the perpetrators.

131. As a result of this work, the cases classified as a priority have been resolved, including the cases of activating the explosive device in the building of editorial ND “Vijesti” in Podgorica and the assault on a journalist of the daily “Dan” from Nikšić, L.N.

132. On 8 March 2014, the criminal offence of causing general danger under Article 327 of the Criminal Code of Montenegro in conjunction with the criminal offence of unlawful keeping of weapons and explosive substances under Article 403 of the Criminal Code of Montenegro, which was committed on 26 December 2013, at the expense of editorial of ND “Vijesti” in Podgorica was resolved, with two persons processed to the Basic Prosecution Office in Podgorica.

133. On 28 March 2014, the assault on the journalist of the daily “Dan” L.N. was resolved, by prosecuting six people to the Basic Prosecution Office in Nikšić, for the criminal offence of violent behaviour (the trial is underway).

134. Also, the case of journalist M.T.M., who reported that she was sent a serious threat by a text message from an anonymous person was resolved. On this occasion, the person who sent the threatening messages to the journalist was identified, and the case was submitted to the competent prosecutor for further decision making.

Freedom of assembly and association (arts. 21 and 22)

135. The work of trade union representatives is governed by the General Collective Agreement,¹⁶ which was signed on 20 March 2014 and published in the Official Gazette 14/14. In accordance with Article 155 of the Labour Law, employees are guaranteed the freedom of trade union organization without prior approval. Trade union organizations independently decide about their representation with the employer — they can appoint or elect a trade union representative to represent them. Trade union representatives are obliged to carry out trade union activities in a manner that will not affect the efficiency of the employer. Trade union organizations are obliged to inform the employer of the appointment

¹⁶ Official Gazette of Montenegro 14/14.

of trade union representatives. The employers are required to enable the employees the free exercise of trade union rights.

136. According to Article 52 of the General Collective Agreement, the employer shall provide the trade union with conditions for the effective performance of trade union activities, including: premises for work within business premises of the employer, technical and administrative support for the work of the trade union and other means and conditions for trade union work. The employer provides the respect of the right of trade unions to participate in trade union activities at the local, national and international level, the inviolability of trade union assets, funds, trade union mail and conversations, as well as the right of access of the media to trade union premises. Before making a decision of great importance for the professional and economic interests of the employees, the employer is obliged to consider the opinions and suggestions of trade unions. The employer shall allow the representative of the trade union who does not carry out trade union activity in full-time working hours (professionally), based on the written notice, at least three days prior to his / her absence, leave from work with fringe benefits, on the occasion of attending trade union meetings, seminars, courses, congresses and conferences in the country and abroad. While conducting trade union activities and six months after the cessation of these activities, a trade union representative at the appropriate level, or a representative of employees if the union is not organized with the employer, may not be held liable in connection with the performance of trade union activities, declared an employee whose work is no longer needed, reassigned to another position with the same or another employer in connection with the performance of trade union activities, or otherwise placed in a less favourable position, if he / she acts in accordance with the law and the collective agreement.

137. A trade union representative at an appropriate level who carries out trade union activity full-time (professionally) shall be entitled to return, upon termination of the trade union function, to a position he / she held before coming to this position, and if that position no longer exists, then the position corresponding to his / her qualifications. Article 58 of the General Collective Agreement stipulates that the employer may, at the request of the trade union, provide for professional performance of trade union representative's function, in such a manner that salaries, fringe benefits and other remuneration are borne by the employer.

138. For violation of the provisions of the Law on Strike, the Law envisages fines.

139. Please note that the new Law on Strike has been harmonized and prepared through a social dialogue, and is in the parliamentary procedure. Its adoption is expected soon.

140. Exercising the right to strike is regulated by the Law on Strike and by-laws specifying the minimum work process in the specific activities for the duration of the strike. Article 228 of the Criminal Code of Montenegro prescribes the criminal offence of abuse of the right to strike, which is committed by anyone who organizes or leads a strike in a manner in breach of law or other regulations and thereby endangers human life and health or property the value of which exceeds the amount of twenty thousand euros, or that leaves other grave consequences, unless elements of some other criminal offence have been satisfied thereby. The prescribed sanction for this criminal offence is an imprisonment not exceeding three years. The act of commission of this criminal offence is organizing or conducting a strike contrary to the law or other regulations — this primarily refers to the Law on Strike and other regulations governing strike. In order for this criminal offence to exist, it is necessary that a certain consequence occurred — a particular danger to human life and health or property the value of which exceeds the amount of twenty thousand euros. Alternatively, the consequences of the criminal offence may be manifested in the “other grave consequences” — which by its seriousness corresponds to the previously mentioned effects, and on the other hand, these effects may not lead this criminal offence to grow into

another, as a rule, a more severe criminal offence. The perpetrator of this criminal offence may be any person who participates in a strike — who organizes or leads such a strike.

Marriage, family and measures for the protection of minors (arts. 23 and 24)

141. The initial report presented the legislative framework in the process of registration after birth, primarily through the presentation of the provisions of the Law on Registry Books and the Law on Personal Name, as well as the Law on Montenegrin Citizenship. In Montenegro, especially among Roma, Ashkali and Egyptian (RAE) children, there is a certain number of children who were born outside health facilities, so the process of their subsequent registration is tied to proving the fact of birth. The subsequent registration of the fact of birth for children born outside of health care facilities is done through an administrative procedure, as a continuing activity of the Ministry of Interior. During the provision of legal aid and the delivery of information and the number of children whose birth facts have still not been registered, in cooperation with the NGO Legal Centre, UNHCR is in constant contact with officials of the Ministry of Interior. Thus, they receive notification about all the necessary evidence required for registration and all steps to be taken in order to register birth in birth registry books in Montenegro, for children born outside of health facilities.

142. In cooperation with the association Parents, recognized in the Montenegrin public for its concern about the rights of parents and children, the Ministry of Interior has implemented an initiative to prepare a brochure on registering a newborn in 4 steps. The initiative was supported by the UNHCR, which has provided funding for the translation of the brochure into Albanian and Roma, as well as for the printing. Information in this publication is general in nature, and refers parents to the procedures and steps to be taken to register their child immediately after birth. This guide for parents was realized in line with the efforts of the Ministry of Interior to be a good and efficient service for citizens, to simplify procedures and make all relevant information easily accessible. As part of their regular activities, officers of the Ministry of Interior are in daily contact with citizens and direct them, when filing requests, how to resolve their status in the simplest possible way.

143. It is important to note that among the general provisions of the Law on Non-Contentious Procedure, Article 5 provides that, in non-contentious proceedings, the court ex officio takes into account and takes measures for the protection of rights and legal interests of minors without parental care, as well as of other persons who are not able to take care of protecting their rights and legal interests. On 25 September, the Government of Montenegro adopted the Proposal for a Law on Amendments to the Law on Non-Contentious Procedure, pursuant to the recommendations of the Human Rights Council of the United Nations and the Action Plan for Implementation of UPR Recommendations. Amendments to the Law introduced provisions relating to determining the time and place of birth of persons who are not registered in the birth registry books and children born out of health care institutions. Namely, because of the already recognized problem encountered in practice in the implementation of the procedure to determine the time and place of birth of these persons, the draft law defines the procedure for determining the time and place of birth of persons who are not registered in birth registry books and cannot prove the time and place of their birth in the manner prescribed by regulations governing the keeping of registry books, in order to protect and fulfil the rights of those persons. The amendments to this Law have established a procedure for determining the time and place of birth, and set out the rules for the implementation of this procedure in order to facilitate the exercise of this right. The debate on the Draft Law on Amendments to the Law on Non-Contentious Procedure was held on 18 June 2014.

144. In order to eliminate all forms of discrimination against women and girls of Roma and Egyptian populations, in 2013, the Ministry for Human and Minority Rights organized

a series of activities in relation to the issue of suppression of early and forced marriages among this population. Within the campaign “16 Days of Activism Against Gender Violence”, a documentary entitled “Avoid My Destiny” was made, which talks about juvenile arranged marriages among the Roma. The film was promoted in three municipalities, with the participation of representatives of the Police Administration, prosecution offices, courts, social welfare centres, NGOs. In cooperation with the Centre for Roma Initiatives, in December 2013, a seminar was organized for representatives of the Police Administration, prosecution offices, courts, social welfare centres, and NGOs dealing with the position of Roma and Egyptian women in the Montenegrin society on “The legal mechanisms in the fight against forced and arranged child marriages”, with special emphasis on the RE population.

145. In cooperation with the Centre for Roma Initiatives, Police Administration — Security Centres of Nikšić, Podgorica, Ulcinj and Berane, social welfare centres from the four municipalities, and the Office for Combating Trafficking in Human Beings, the Ministry for Human and Minority Rights collected the following data related to the number of reported child forced and arranged marriages and enforced measures upon applications for the 2012-2014 period for these four municipalities, as specified in Annex 5.

146. The initial report explained that, for a marriage to be valid, in addition to the requisites of the free will of spouses, difference in sex and having community life as the goal of marriage, a condition for its validity is also the absence of obstacles to marriage. Being underage is one such obstacle. In the marriage law, this notion refers to a certain age which is legally not considered sufficient for marriage. Under the provisions of the Family Law, these are persons who have not attained 18 years of age. Exceptionally, the court may permit marriage to a juvenile older than 16, in accordance with a special law — the procedure for making the decision which permits the marriage is regulated by the Law on Non-Contentious Procedure.¹⁷

147. In order to protect marriage and family, the Criminal Code of Montenegro prescribes a set of criminal offences against marriage and the family, including the criminal offence of enabling an unlawful marriage, customary marriage with a juvenile and deprivation of a juvenile (Arts. 215–217). The Law on Amendments to the Criminal Code of 2013¹⁸ introduced several new solutions in the Title of criminal offences against marriage and the family. In the criminal offence of concluding a void marriage (Article 214 of the Criminal Code), a more severe form of the offence has been prescribed, which exists if the other person was forced to enter into marriage by force or threat. In this case, this criminal offence is punishable by imprisonment of six months to five years. This means that Montenegro criminalized the conclusion of forced marriages through the latest amendments to the Criminal Code.

148. Since 2012, the Office for Combating Trafficking in Human Beings rents much more adequate accommodation for victims of trafficking in human beings, which can accommodate children and adults — victims of trafficking in human beings — separately. In the Government’s shelter, all the victims are treated equally, regardless of whether they are Montenegrin or foreign nationals. According to the new concept of operations of the shelter, subject to appropriate assessment by representatives of the competent institutions (Police Administration, Social Welfare Centre — in the case of minor beneficiary), the beneficiaries have the opportunity to go out during their stay at the shelter.

¹⁷ Official Gazette of the Republic of Montenegro 27/2006.

¹⁸ Official Gazette of Montenegro 40/2013.

149. In accordance with the Cooperation Agreement,¹⁹ which at the same time presents standard referral mechanisms, in the provision of social, child and family care in case of trafficking in human beings, for both, Montenegrin and foreign nationals, the Ministry of Labour and Social Welfare grants appropriate social, child and family care through the Social Welfare Centres, with priority over other cases. Public Institution Social Welfare Centres provide prompt and efficient assistance to the above persons in the territory of the country. Social and child care for foreign nationals includes the right to one-time financial assistance and the right to be appointed a guardian. Montenegrin nationals are provided social and child care in accordance with the Law on Social and Child Welfare of Montenegro. Social and child welfare and protection in the area of family relations is provided to victims during their stay in the territory of the country regardless of where they are accommodated. For these persons, Social Welfare Centres initiate the procedure on the basis of documents provided by the Ministry of Interior, Ministry of Foreign Affairs and European Integration, Ministry of Education and other relevant institutions.

150. In all cases of suspicion that the person is a victim of trafficking in human beings, Public Institution Social Welfare Centres apply standards of identification, in order to respect:

- (a) The right to privacy of potential victims, especially for issues of a personal nature and issues of traumatic nature, if not for the purpose of collecting the necessary data;
- (b) The right of potential victims to all the information in the field of social, child and family welfare, as well as in other possible actions taken in order to protect the victim.

151. The Labour Law prescribes the general and special conditions for concluding contracts of employment. A contract of employment may be concluded by a person who meets the general conditions stipulated in this Law and the special conditions provided for by law, regulations and systematization act. The general conditions are: that the person must be at least 15 years of age and that he / she has general health capacity. A contract of employment may be concluded with a person under 18 years of age, with the written consent of a parent, adoptive parent or guardian, provided that such work does not endanger the health, morals or education of the person, i.e. that such work is not prohibited by law. A person under 18 years of age may enter into a contract of employment only on the basis of a finding by a competent health care authority determining his / her ability to perform the tasks for which the contract is concluded and if such work is not harmful to his / her health.

152. This standard of Montenegro that the minimum age for employment is 15 years of age is in accordance with the provisions of the revised European Social Charter, which sets out, in Article 7, the obligation of Parties to ensure the effective exercise of the right of children and young persons to protection by undertaking to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education. This standard is also set by ILO Convention 138 concerning Minimum Age for Admission to Employment. Given the above, Montenegrin legislation has harmonized its provisions on this issue with the standards of the Council of Europe and the International Labour Organisation.

153. In the criminal law, being a child has a double significance. Persons who have not reached a certain age could not be the subject of a criminal offence because for them there can be no guilt as a subjective element of the criminal offence. In relation to children, no criminal sanctions may be applied so they are beyond the reach of criminal prosecution. The child, of course, may be a passive subject in certain criminal offences. Therefore,

¹⁹ <http://www.antitrafficking.gov.me/rubrike/sporazum-o-saradnji>.

Article 142 of the Criminal Code of Montenegro stipulates that children are persons under the age of 14. The Criminal Code also prescribes the notion of a juvenile, as a person who has attained the age of 14 and is under 18. However, unlike a child, a juvenile may be the subject of a criminal offence and certain criminal sanctions may be applied against the juvenile (exceptionally, in certain circumstances, even a sentence). The Criminal Code also designates the notion of an underage person (a person under the age of 18), which was necessary only for the purpose of determining the persons who may be considered passive subjects in certain criminal offences. The concept of an underage person is, as you can see, broader than the concept of juvenile and includes children as well.

Rights of persons belonging to minorities (arts. 26 and 27)

154. **Education** — The number of RAE children who are getting involved in the education system in Montenegro is increasing year after year. Thus, in 2013/2014, pre-school and primary education encompassed 1,853 pupils, 68 high school pupils and 10 students among this population. In order to increase the number of internally displaced children from the RAE population attending school, information campaigns on the necessity of pre-school education and activities related to the provision of school materials, transportation of children to city schools, etc. are implemented. Also, the implementation of the project “Supporting full social inclusion process” is under way, whose overall objective is that the social care services and the education system allow the inclusion of vulnerable, socially excluded groups. Amendments to the General Law on Education that are in force since 15 August 2013 enable the persons with the status of a foreigner with permanent residence to work as teachers in educational institutions in Montenegro.

155. After implementation of the project “Inclusive Education Services” (supported through IPA 2010), the activities of preparatory kindergartens for elementary school have been independently implemented in the previous period — with the target group of children of Roma and Egyptian communities who are eligible to enrol in elementary school in 2014/15, and who have so far not been covered by any systemic form or programme of education. The programme is being implemented for the third year and increased the number of participating preschools. Thus, in 2011/12, it was two institutions; in 2012/13 it was 5 institutions implementing such activities. In 2013/14, eight preschool institutions throughout Montenegro were included. These activities were preceded by preparatory work (preparatory kindergartens, communication with families, the Roma community, local self-government, the municipal Red Cross organizations, schools in which children would enrol, acquiring hygiene kits, engagement of RE mediators, etc.). Since 2008/09, the Ministry of Education implements activities of involving these children in urban elementary schools.

156. Since 2013/14, the so-called RE de-segregated education of RE children from camps Konik 1 and 2 takes place in six elementary schools in Podgorica. Free textbooks and scholarships are provided to enrolled high school students from RE population. The Ministry recommends that schools allow interested Roma and Egyptians the free access to taking supplemental grade exams, under the principle of affirmative action of mediating for enrolment in vocational schools. Working with higher education institutions, using the same measures, the RE population is supported in the desire to gain higher education. The project of mentoring high school pupils is commencing (Roma Education Fund (REF), Education Office, and Vocational Education Centre), through which they will be further supported by the responsible teachers.

157. **Employment** — In accordance with the Law on Employment and the Exercise of Rights under Unemployment Insurance, the exercise of rights under unemployment is based on the following principles: freedom of choice of occupation and workplace, anti-discrimination, gender equality, affirmative action aimed at less-employable persons, impartiality of employment affairs holders, free conducting of employment. The National

Strategy for Employment and Human Resources Development for the period of 2012–2015 defined the priorities in the field of employment and human resources for the specified period. One of the three priorities of the Strategy is to promote social inclusion and poverty reduction by improving the system of social benefits and social services, with a view to better focus and cover the vulnerable groups, integration in employment of persons with disabilities and integration in employment of RAE population, refugees and displaced persons. The objective relating to the RAE population, refugees and displaced persons is focused on providing support to this population in increasing employability and employment, in order to thereby reduce their poverty and social exclusion and for them to become active and full members of the Montenegrin society. There will be continuous work to improve and empower this population as a precondition for the creation and implementation of specific programmes, with a view to their greater involvement in the labour market.

158. As of 31 December 2013, the records of the Employment Office included 1,118 persons who declared as members of the Roma and Egyptian populations, of whom 471 were women (42.12%) — which is 3.21% of the total registered unemployment. Over 90% of the registered unemployed persons of Roma and Egyptian populations are individuals with no occupation and professional qualifications. They, as a rule, wait for employment longer and the job market for them is extremely limited.

159. In order to increase the employment of all the unemployed, including less employable persons, while respecting the provisions of the National Strategy for Employment and Human Resources Development 2012–2015 and the national Action Plans for employment, special attention is paid to Roma and Egyptians, in terms of recording, information about the rights and obligations that they have while registered as unemployed, motivation for registering and participation in active employment policy programmes, inclusion in specific programmes and mediation in employment, according to the principles of affirmative action. When it comes to the programme of adult education and training, the Roma and Egyptian population is mainly involved in training programmes for the acquisition of certain specific vocational qualifications, training for occupations requiring lower levels of expertise.

160. In 2011, the number of involved persons of Roma and Egyptian populations in education and training programmes was 64 (20 women); in 2012, eight persons (five women); in 2013, three persons (two women and one man included in the programme of vocational training of persons with higher education). As of 3 June 2014, the number of persons is ten (five women).

161. Seasonal employment contributes to mitigating the effects of open unemployment and seasonal work is the opportunity for a large number of Roma and Egyptians to, even for a short time, start employment. The number of Roma and Egyptians included in seasonal employment in 2011 was 150 persons; in 2012 it was 53 persons; in 2013 it was 17 persons. As of 3 June 2014, this number amounts to 11 persons. The number of persons of Roma and Egyptian populations employed through public works programmes in 2010/2011 was 50 persons; in 2012 it was 27 persons (one woman); in 2013 it was 19 persons. As of 3 June 2014, the number is 13 people.

162. When it comes to employment of persons of Roma and Egyptian nationality, the Employment Office pays special attention to cooperation with employers. One way to encourage employers to employ members of the Roma and Egyptian communities to a greater extent is the adoption of the Decree on employment of certain categories of unemployed persons, which provides for tax incentives for employers who hire certain categories of unemployed persons, including Roma and Egyptians. With regard to the access to the labour market, the Rulebook on Fees in the Engineers Chamber of Montenegro has been amended, reducing a fee for membership in the Chamber for

foreigners with permanent residence from EUR 2,500 to EUR 150 (as for nationals). The amended Rulebook entered into force on 11 March 2013.

163. **Social security / Legal status** — The new Law on Social and Child Welfare entered into force on 19 June 2013. According to Article 11 of the Law, rights of social and child welfare are: (1) basic material support, and (2) social and child welfare services. The Law provides that the rights prescribed by Law belong to Montenegrin citizens, with permanent residence in Montenegro, as well as to foreigners with permanent residence or temporary residence in Montenegro. By adopting the Rulebook on detailed conditions for the exercise of basic material benefits of social and child welfare, the Ministry of Labour and Social Welfare (adopted on 2 August 2013) recognized the persons with the status of internally displaced persons and displaced persons, asylum seekers, people with refugee status and persons with approved additional protection, as persons who are entitled to basic material support in the field of social and child welfare in Montenegro (material support, personal disability allowance, allowance for care and assistance, health care, funeral expenses, and one-time financial assistance). Pursuant to the Decree on the manner of exercising the rights of internally displaced persons from former Yugoslav republics and internally displaced persons from Kosovo residing in Montenegro, the right to family material support was used by 95 families in 2013, as well as by 130 families funded by UNHCR through the Ministry of Labour and Social Welfare. There are 10 persons currently staying at the Home for the Elderly “Grabovac” in Risan, and one person in the Public Institution “Komanski most” Office. In order to obtain the documents for resolving the status in Montenegro, 20 trips were organized to Kosovo and one to the Serbian municipalities. In 2011, four trips were organized for 141 persons; in 2012, 10 trips were organized for 406 persons; in 2013 six trips were organized for 259 persons and one trip was organized to the Serbian municipalities for 41 persons. The total of this is 21 trips for 847 persons, with about 3,000 different documents provided. Our goal is to increase the number of displaced and internally displaced persons of RE population who will, by the end of 2014, resolve their legal status, with a view to further integration into Montenegrin society. With no personal documents, these persons cannot exercise their rights they are due.

164. **Health care** — The legislative framework for the exercise of the right to health care is defined, inter alia, by the Law on Health Care and the Law on Health Insurance. The health care system does not keep records based on ethical, ethnic or other affiliation of health care beneficiaries. However, indirectly, by examining the category of “contributors” and “status of a beneficiary”, it is possible to come to the extent to which the Roma and Egyptian populations receive services in the health care system of Montenegro. Examining the “daily logs” of the work of selected physicians, centres and support units, it is evident that members of Roma and Egyptian populations (which have the status of internally displaced persons or refugees or asylum seekers and special protection seekers) receive the same services received by other users of health care.

165. The reform of the health system introduced the concept of selected physician, through whom the insured persons exercise primary health care, which enables them a continuing care at secondary and tertiary levels. In the period since the establishment of Camp I and Camp II in Podgorica, a clinic was developed for adults and children, in which physicians for adults and children are working for two hours a day. Outside that period, members of Roma and Egyptian populations can get health care in the Health Centre Podgorica in all locations. Roma and Egyptian women may, in terms of reproductive and sexual health, refer to selected gynaecologists at health centres, and may deliver babies in every maternity hospital in Montenegro. Vaccination of children belonging to the Roma and Egyptian populations, who do not have a selected paediatrician and who do not attend school, is conducted in settlements where collective accommodation is provided for the members of this population. In this regard, the Public Health Institute organizes periodic campaigns for vaccination of Roma and Egyptian children in Konik, resulting in a high

percentage of coverage (for certain diseases up to 98%). In cooperation with the Center for Radiological Diagnostics of the Clinical Centre of Montenegro, in October and November, free mammogram examinations were organized for 45 women, members of the Roma population from Camp Konik. The Ministry of Health and the Red Cross of Montenegro implemented the activities dedicated to the advancement of knowledge about the preservation of health, family planning and reproductive health. Also, the Ministry of Health has renewed a letter to all health care facilities to familiarize their employees with the rights of internally displaced and displaced persons to health care, which they, in accordance with the Decree, exercise in the same manner as the citizens of Montenegro.
