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Universal Periodic Review

Report of the Working Group on the Universal Periodic Review*

Montenegro

Addendum

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

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

1. In this document, Montenegro presents its views on recommendations from the second UPR cycle.
2. Montenegro received a total of 124 recommendations during interactive discussion on 28 January 2013. In the framework of the adopted draft report of the working group, Montenegro accepted 96 recommendations, 13 recommendations were accepted as having already been implemented, while 15 recommendations were left for further considerations.
3. The document is the result of a joint activity of the government institutions, representatives of judiciary and prosecution service, the Ombudsman and NGOs. Consideration was given to all the recommendations in an open consultation process, in relation to which Montenegro gives the following brief comments and/or presents views, in accordance with the topics grouped by fields.

I. All the recommendations enjoy support of Montenegro, except recommendations number: 119.2, 119.4 partly, 119.8, 119.12. Reasons for such position are as follows:

119.2 – Certain provisions of ICRMW are not in accordance with the positive legal regulation governing residence of foreigners in Montenegro. Ratification of this convention would result in the need to amend the existing regulations in a way which does not guarantee harmonization of national regulations with the EU law. In regulating legal migration and employment of foreigners, the Law on Employment and Work of Foreigners relies on ILO standards and ILO Constitution in particular. This law defines migration policy which protects interests of migrant workers and their family members legally residing in Montenegro. Therefore, ratification of ICRMW is unnecessary since interests of migrants are already protected.

119.4 – The Labour Law of Montenegro lays down standards for the protection of those performing work in the household. Despite the existence of legal basis, labour agreement for the performance of work in the household is rarely concluded in Montenegro. Protection of those performing work in the household is prescribed at the level matching the protection granted to the employees working for other employers. Given that it will take some more time to accept in practice the work performed in the household as a productive work which incorporates all the elements of the employment status of an employee and that national regulations prescribe full protection of employees performing work in the household in accordance with ILO standards, we believe that it is unnecessary to ratify ILO Convention 189 at this point. If the practice shows that the existing legal framework does not provide full protection, Montenegro will give consideration to ratification of ILO Convention 189.

119.8 – On 11 October 2005, Montenegro extended standing invitation to the special procedures to visit the country. Montenegro maintains regular contact and cooperation with all the OHCHR mechanisms. So far, it has cooperated with special rapporteurs/working groups for freedom of opinion and expression, human rights defenders and enforced disappearances. Bearing in mind that organising rapporteurs' visit does not depend only on the expressed willingness of the state extending the invitation, but also on the organization, priorities and financial capacity of the OHCHR, Montenegro cannot accept this kind of formulation of the recommendation. Invitation to the special procedures remains open and Montenegro is ready, at any point, to give positive response to the announcement of visit of the OHCHR rapporteurs listed in the recommendation.

119.12 – In pursuance of international standards, Montenegro carries out intensive reform of criminal legislation. The new concept of prosecutor-led investigation was

introduced with the aim of conducting more efficient investigation which resulted in considerably shorter duration of criminal proceedings. Strengthening independence and efficiency of judiciary will be continued in the framework of further reforms and in that regard Montenegro accepts recommendation 119.12. As for specific formulation of the recommendation and the time frame of 15 months, it was determined during the clarification procedure with the UPR Secretariat, Sub-committee and the state that had given the recommendation, that there existed no recommendation by the Sub-committee and that there was an error made by the state in stating it during interactive discussion.

II. The remaining recommendations enjoy the support of Montenegro, with the following comments

A. International legal documents on human rights and institutional framework for the protection of human rights

4. Montenegro will continue to build capacity of the Ombudsman in order to secure full implementation of regulatory framework in the field of protection against discrimination and prevention of torture. The Law on the Protector of Human Rights and Freedoms and the Law on Prevention of Discrimination are currently being amended which will guarantee legislative improvements and compliance with international standards. The parliamentary body responsible for determining necessary amount of funds and proposing budget for the Ombudsman will take care, together with the Ministry of Finance, of the need to strengthen financial and human resources in the course of preparation of the Law on Budget for each next year.

5. Measures and activities will be continued to ensure full implementation of ratified international instruments and national legislation, particularly with regard to protection of vulnerable groups and persons discriminated on any ground. For that purpose, efficient implementation of accompanying strategic documents will be priority.

6. Montenegro acceded to the Palermo Protocol.

7. Montenegro will ratify the Convention on the Reduction on Statelessness 1961.

8. The procedure of ratification of the Optional Protocol to the Communications Procedure to the CRC and Optional Protocol to the ICESCR is in progress.

9. Montenegro will ratify Kampala amendments to the ICC Statute by the end of 2016.

B. Anti-discrimination

10. Legislative improvements in this field will result from amendments to the Law on the Protector of Human Rights and Freedoms and Law on Prohibition of Discrimination that are currently being drafted. Montenegro continuously invests efforts in efficient implementation of anti-discrimination legislation. Efforts will be invested in achieving more efficient monitoring and evaluation of the implementation of strategies and action plans in this field. Surveys of discrimination and public campaigns on legal protection set out by anti-discrimination legislation will continue, along with the establishment of records and database for all the reported discrimination cases.

11. The Law on Prohibition of Discrimination particularly prescribes protection against discrimination on grounds of gender identity and sexual orientation. For that purpose, necessary measures will be taken to eliminate discrimination against LGBT. The Strategy for Improving the Quality of Life of LGBT persons will be adopted soon.

C. Gender equality

12. Montenegro will continue to take all the required steps aimed towards increasing the share of women in decision-making positions, economic empowerment and protection of women and girls against all forms of violence. The measures to achieve such goal are set out in the Action Plan for Achieving Gender Equality 2013-2017. The Plan includes objectives set in regard to fighting discrimination against women in all the spheres of life, including education and employment. The Family Law sets out division of property of spouses in equal shares. When determining the share of each spouse the court takes into account not only the incomes and earnings of each spouse, but also the support that one spouse provides for another, the work, household and family, care for upbringing of children and every other form of cooperation in management, maintenance and increase of joint property. Intensive efforts will be invested in implementation of CEDAW recommendations for the Initial Report of Montenegro.

D. Persons with disabilities

13. Improvement of the position of persons with disabilities and their full social inclusion is one of priorities that Montenegro will continue to pursue by means of efficient implementation and evaluation of adopted measures and activities set out in the Action Plan for implementation of the Strategy for Integration of Persons with Disabilities and Strategy of Inclusive Education. The focus will be placed on activities aimed towards further development of and support to inclusive education, occupational rehabilitation and employment, establishment and development of social support services in local communities and ensuring accessibility to public buildings. These activities will be supported by continuing the campaigns aimed towards awareness raising among both, the public and persons with disabilities, in regard to their rights.

14. Particular attention is devoted to regular (inclusive) education which is considered as the first option in all the cases. Schools that have special classes receive additional support to perform joint teaching of children with learning disabilities and their peers in regular classes. Resource centres (former special institutions) provide support to the children in regular education system. Inclusion in vocational education is receiving an increased attention.

E. Minorities and Roma

15. Montenegro will continue to implement activities aimed towards improvement of the position of minority nations and other minority national communities, particularly Roma and Egyptians. Already good legislative framework will be improved even further, while strengthening the existing institutions will ensure consistent implementation of strategic documents in this field. Measures for preserving the identity of minority nations that have been taken in certain fields of social life have resulted in full compliance with international standards and achievements of modern multi-national democracies.

16. A continuous upward trend in the number of Roma and Egyptian children in elementary schools has been recorded. Activities to prevent school drop-out have been undertaken by means of detection mechanisms and case management.

F. Refugees and birth registration

17. Recommendations have been implemented intensively over a longer period of time. Significant progress has been made concerning regulation of the legal status, in particular of IDPs from Kosovo. The competent authorities have continuously implemented activities to identify the most vulnerable persons in need of assistance with acquisition of documents and payment of administrative fees. The proposed law is in the Parliamentary pipeline; it extends the deadline for application for the status of foreigner with permanent residence until 31 December 2013¹.

18. The 2013 Action Plan has been adopted for implementation of the Strategy for Durable Solution to the Issues of DPs and IDPs, with particular emphasis on Konik area. The Plan includes a set of concrete activities and measures for 2013 pertaining not only to the status, but all other issues concerning full integration (employment, education, health and social insurance, housing, information campaigns etc). The Regional Housing Program envisages funds for resolving the housing problem of the most vulnerable categories (persons placed in informal collective centres and vulnerable persons living in private accommodation, with particular emphasis on the Konik Camp).

19. The currently applied procedure for subsequent birth registration in Montenegro is a universally accepted standard in the given field. This procedure safeguards the identity of each person for whom subsequent registration is required and prevents potential abuse, in particular with regard to potential child trafficking. Montenegro will endeavour, by means of appropriate amendments to the Law on Non-Contentious Proceedings, to simplify the procedure for subsequent registration of children born in Montenegro outside health institutions.

G. Children

20. The Law on Treatment of Juveniles in Criminal Proceedings was adopted, in accordance with the CRC recommendations. The proposed Law on Social Welfare and Child Care was adopted. Activities have been launched towards a comprehensive child care database and a new National Action Plan for Children. Activities for more efficient implementation of laws concerning protection of child rights have been stepped up. Budget allocations for social welfare and child care, health care and education have increased. The respective roles of the Council for the Rights of the Child, Deputy Ombudsman for child rights and social services working with children and families (focus on prevention – transformation of child care and social welfare institutions and development of support services for families and family substitutes in the local community). Campaigns on the right of the child have continuously taken place, supported by the UN agencies. The Law on Treatment of Juveniles in Criminal Proceedings provides the legal framework for a comprehensive juvenile justice system based on the rights of the child and on the international standards. Equal access to education and health care is provided for all children, regardless of their immigration status.

21. Montenegro will embark on legal amendments to explicitly prohibit corporal punishment of children in all settings; a media campaign will be launched on the consequences of corporal punishment of children.

¹ The NGO coalition monitoring the UPR process in Montenegro and taking part in consultations recommends - as the third option in resolving the status of refugees, in addition to integration and voluntary return to the country of origin - voluntary departure to other countries.

H. Human trafficking and sexual exploitation

22. The activities outlined in the recommendations have been continuously implemented by the competent authorities. The Strategy for the Fight against Human Trafficking 2012-18 and the accompanying Action Plan identified the aims, principles and directions of fighting human trafficking and some measures for greater efficiency of the system for fighting human trafficking in the following areas: prevention and education; victim identification; victim assistance, protection and reintegration; efficient criminal prosecution; international cooperation; coordination and partnership. Current regulations and the Agreement on Cooperation between state institutions and NGOs regulate protection of adult/child trafficking victims to detail.

23. Criminal legislation has been harmonized with the Convention on Cyber Crime. Amendments to the Criminal Code are under way in order to include the criminal offence of display of pornographic material to children and production and possession of child pornography. Montenegro will continue to follow all international standards in this field and fiercely combat cyber crime, in particular in the sense of protecting children on the Internet.

I. Domestic violence, violence against women and children

24. Montenegro has set up a sound legislative framework for protection of victims of domestic violence, in particular women and children. In the coming period, efforts will be made towards efficient implementation of the laws and strategies from this field. Further efforts will be made to strengthen interdepartmental cooperation so as to provide all victims of violence with adequate and coordinated protection and assistance; continuous training will be organized for the staff working in institutions, along with awareness raising campaigns, and a database on victims of domestic violence will be set up. Montenegro is already working on setting up a mechanism for monitoring the number of domestic violence cases. The Criminal Code includes provisions aligned with Articles 2 and 3 of the CRC Optional Protocol.

J. Judiciary reform

25. Montenegro is intensively implementing the judiciary reform, in the aim of stronger independence and impartiality. Legal amendments have generated more objective criteria for the election and promotion of judges and state prosecutors via the appraisal system and the improved election procedure. The intended constitutional amendments will enable further amendment of laws on the judiciary towards a more comprehensive and more detailed reform of election and appointment of judges and prosecutors and their deputies and of other issues of relevance for establishment of independent and autonomous judiciary. Montenegro has embarked on drafting the Law on Amendments to the Criminal Code, stipulating a new criminal offence of obstruction of justice. Stipulation of this criminal offence serves to protect regular operation of the judiciary, while judicial office holders are envisaged as its passive subjects.

26. Ratification of the European Convention on Compensation of Victims of Violent Crimes generated the legal basis for adoption of a new law to regulate the right to pecuniary compensation of victims of violent crimes. The Law on Compensation of Victims of Violent Crimes is currently being drafted.

K. Combating corruption

27. The fight against corruption will remain one of the Government's key priority, in line with the Strategy and Action Plan for Fight against Corruption and Organized Crime 2010–2014.

28. The legislative framework for fighting corruption has been completed; further efforts focus on implementation, through adoption of accompanying secondary legislation and its upgrade based on the implementation impact assessment. The Training Program for judicial office holders on fighting corruption is being successfully implemented, as an important preventative activity in the fight against corruption in the judiciary. Particular attention has been paid to training central and local civil servants. The Strategy includes a specific section on local self-government, aiming to prevent varied interpretations of national regulations in this field. One of the measures envisaged under the Action Plan refers to harmonization of local action plans with the national one. The texts of some anti-corruption laws are to be improved in order to be put in compliance with the international standards and to enable better implementation (Law on Political Party Financing, Law on Prevention of Conflict of Interest, Criminal Code etc.). Further judiciary reform will include further strong efforts to suppress corruption in order to be able to claim full independence and readiness of the judiciary to respond to any form of corruption. Draft Action Plan 2013-2014 has been prepared; it is expected to be adopted in April 2013.

L. Freedom of expression and freedom of the media

29. Freedom of expression is guaranteed by the Constitution. The standards are further elaborated and implemented by means of media laws. Three independent media self-regulation bodies have been set up, namely: Media Self-Regulation Council, Press Council and Self-Regulation Council for Local Press and Periodicals. In the context of resolving the pending cases of violence against reporters, the competent state authorities will continue to work on identification of perpetrators and efficient, effective and impartial investigations to ensure full freedom of expression.

M. Freedom of religious communities

30. The Constitution stipulates separation between religious communities and the state. The Constitution guarantees equality and freedom of practice and religious affairs. A new proposed law on the legal status of religious communities is being drafted to regulate the issues of relevance for the religious communities in line with the new social and political circumstances. At the same time, the legal framework will serve to resolve the cases of restoration of some property powers to religious communities.

31. All recommendations that enjoy support will be implemented and their implementation will be monitored in order to improve the efficiency and protection of human rights and freedoms in Montenegro.