



Convention on the Rights of the Child

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Written replies by the Government of Montenegro to the list of issues (CRC/C/OPSC/MNE/Q/1) related to the consideration of the initial report of Montenegro submitted under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/OPSC/MNE/1)*

(17 August 2010)

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

Reply to the issues raised in paragraph 1 of the list of issues (CRC/C/OPSC/MNE/Q/1)

1. Reference is made to the Law on Amendments and Supplements to the Criminal Code (*Official Gazette of Montenegro*, No. 25/10), amended by Article 444 of the Criminal Code, which defines criminal offence of trafficking in human beings as, by the definition mentioned, a criminal act of using the services of person who is known to be a victim of trafficking in human beings and prescribes a special penalty if this offence is committed against a juvenile person (an imprisonment sentence of 3 to 15 years).

2. Article 444 of the Law on Amendments to the Criminal Code prescribes:

(1) Anyone who by force or threat, deceit or keeping in delusion, by abuse of authority, trust, relationship of dependency, difficult position of another person or by keeping back identification papers or by giving or receiving money or other benefit for the purpose of obtaining consent of a person having control over another: recruits, transports, transfers, hands over, sells, buys, mediates in sale, hides or keeps another person for exploitation of work, forced labour, submission to servitude, commission of crimes, prostitution or other forms of sexual exploitation, begging, pornographic use, taking away a body part for transplantation or for use in armed conflicts shall be punished by imprisonment for a term of one to ten years.

(2) If the offence referred to in Paragraph 1 of this Article is committed to a juvenile person, the offender shall be liable to imprisonment prescribed for that offence, even if there was no force, threat or any other of the stated methods present in the commission of the crime.

(3) If the offence referred to in Paragraph 1 of this Article is committed to a juvenile, the offender shall be liable to imprisonment for a minimum term of three years.

(4) If offences referred to in Paragraphs 1 and 3 of this Article have caused serious bodily injuries, the offender shall be liable to imprisonment for a term of one year to twelve years.

(5) If offences referred to in Paragraphs 1 and 3 of this Article have caused death of one person or more, the offender shall be liable to imprisonment for a minimum term of ten years.

(6) Anyone who deals with committing offences referred to in Paragraphs 1 to 3 of this Article or participates in their organised commission together with several other persons shall be liable to imprisonment for a minimum term of ten years.

(7) Anyone who uses the services of a person who is known to be a victim of the offences referred to in paragraph 1 of this Article shall be liable to imprisonment for a term of six months to five years.

(8) If the offence referred to in paragraph 7 of this Article is committed against a juvenile person, the offender shall be liable to imprisonment for a term of three to fifteen years.

3. In particular, Article 445 of the Code criminalizes trafficking in children for adoption:

(1) Anyone who abducts a person who has not yet reached the age of fourteen for adoption in contravention of current regulations or whoever adopts such a person or mediates in such adoption or whoever for that purpose buys, sells or hands over another person who has not yet reached the age of fourteen or transports, provides

accommodation for or hides such a person, shall be punished by imprisonment for a term of one to five years.

(2) Anyone who deals with activities referred to in Paragraph 1 of this Article or participates in their organized commission together with several other persons shall be punished by imprisonment for a minimum term of three years.

4. Within the chapter on criminal acts against sexual freedom, under Article 211, the Law on Amendments and Supplements to the Criminal Code incriminates showing pornographic material to children and the production and possession of child pornography. A person who sells or displays to a child or by public displaying or in some other way makes available text, pictures, audio-visual or other objects of pornographic content or displays to it a pornographic show shall be punished by a fine or an imprisonment sentence not exceeding six months.

5. Whoever uses a juvenile person to produce pictures, audio-visual or other objects of pornographic nature or for a pornographic show shall be punished by a prison sentence of six months to five years. In addition, anyone who purchases, sells, shows, publicly exhibits or in electronic or some other way makes available pictures, audio-visual or other objects of pornographic character shall be punished by an imprisonment sentence not exceeding two years.

Reply to the issues raised in paragraph 2 of the list of issues

6. Article 455 of Criminal Code provides that anyone who abducts a person who has not yet reached the age of fourteen for adoption in contravention of current regulations or whoever adopts such a person or mediates in such adoption or whoever for that purpose buys, sells or hands over another person who has not yet reached the age of fourteen or transports, provides accommodation for or hides such a person who has not reached the age of fourteen shall be punished by imprisonment for a term of one to five years. Anyone who deals with these activities or participates in their organized commission together with several other persons shall be punished by imprisonment for a minimum term of three years.

7. Montenegro has not ratified the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, but the Ministry of Justice and the Ministry of Labour and Social Welfare are in the process of formation of an inter-working group that would decide on the need for its signing and ratification.

Reply to the issues raised in paragraph 3 of the list of issues

8. Bearing in mind the challenges and difficulties almost all countries deal with in keeping statistics on trafficking in human beings (which includes keeping statistics on trafficking in children), the Government Office for Combating Human Trafficking gave the initiative for forming a Tripartite Commission composed of representatives of the Supreme State Prosecutor, the Supreme Court, the Police Directorate and the Office for Combating Human Trafficking, so that each of these institutions has a specific contact person who is obliged to collect statistical data on trafficking in human beings and children in their own institutions and submit them on a monthly basis to the Office for Combating Human Trafficking which is the coordinating body that integrates the data and creates a unique statistics on human trafficking in Montenegro. The above statistics include information on both the perpetrators and the victims of this crime, as well as the overall description of the criminal process. The above detailed statistics are made publicly available on the website of the Office 24 hours a day.

9. During the period of 2007–2009 no case of sale of children, child prostitution, child pornography or child sex tourism was registered in Montenegro.

Reply to the issues raised in paragraph 4 of the list of issues

10. Article 136 of the Criminal Code of Montenegro (*Official Gazette of the Republic of Montenegro*, No. 70/03, 13/04, 47/06 and *Official Gazette of Montenegro*, No. 40/08 and 25/10) prescribes that the criminal legislation of Montenegro shall be applicable to a national of Montenegro if s/he commits abroad a criminal offence, should s/he be caught in the territory of Montenegro or extradited to it, and in cases where the perpetrator became a citizen of Montenegro after the completion of a criminal offence, while Article 137 prescribes that the criminal legislation of Montenegro shall be applicable to a foreigner who, outside the territory of Montenegro, commits a criminal offence against its national should s/he be caught in the territory of Montenegro or extradited to it. For criminal offences, in cases mentioned, prosecution shall take place solely when the criminal offence in question is also punishable by the law of the country in which it was committed but if the criminal offence in question is not punishable under the law of the country in which it was committed, criminal prosecution may be undertaken solely if approved so by the Supreme State Prosecutor.

11. If there is a request for extradition of a national of Montenegro, for a criminal offence committed within the territory of another country, Montenegro as a signatory to the European Convention on Extradition of 13 December 1957 can refuse extradition of its national, but it should, at the request of the requesting country, inform the authorities if the prosecution should be started.

12. The Criminal Code of Montenegro stipulates that the validity of criminal legislation of Montenegro is defined in relation to the offender so that above mentioned also applies in the case when child who is a national of Montenegro is the victim of unlawful actions anticipated by the Optional Protocol.

Reply to the issues raised in paragraph 5 of the list of issues

13. There are no particular procedures for dealing with these problems, but these categories of children are recognized as vulnerable categories and therefore subject of special concern of state institutions as well as NGOs. A great number of programs is being implemented with the goal of include them completely into all fields of social life.

Reply to the issues raised in paragraph 6 of the list of issues

14. The Government Office for Combating Human Trafficking fully finances functioning of the Shelter for victims of human and children trafficking, which gives all necessary 24-hour help to the victims of trafficking – ranging from basic existential needs such as food and clothing up to an expert legal, psychosocial and medical assistance provided by the Office in cooperation with the Ministry of Health, Ministry of Labor and Social Welfare, and which is regulated by the Agreement on Cooperation in Fight against Human Trafficking, signed in 2007 between state and non-governmental organizations closely involved in issues of human trafficking in Montenegro.

15. In relation to the Action plan for the implementation of the National strategy for fight against trafficking in human beings for 2010/2011, and guided by the international standards from the area of fight against trafficking in human beings, for the reintegration activities (such as sorting personal documents, health treatment, education, employment, etc.), the Office of the National Coordinator for Fight against Trafficking in Human beings, the Ministry of Work and Social Care, the Ministry of Health, the Ministry of Education and Sciences and the NGO sector are in charge. Furthermore, the International Organization for Migration (IOM) Mission in Montenegro is also involved in the process of reintegration and resocialization of victims of trafficking in human beings, with which help the victims are provided with attending certain educational and professional courses.

16. The period of reflection can last for 30 days, 3 months, 1 year or longer depending on the psychophysical state of the victim. During this phase, any help provided to the

victim is free. The victims do not have the obligation to cooperate with the police, nor is that the condition for the period of reflection and recovery. Only after this period, the victim of human trafficking decides whether he/she will cooperate with the police. The cooperation with the law forces in every phase of the process must be voluntary and never mandatory in order not to hurt the rights of the victim of human trafficking.

Reply to the issues raised in paragraph 7 of the list of issues

17. The government's Office of the National Coordinator for Fight against Trafficking in Human beings sets aside 60% (approximately 86,260 Euros or 109,200 US dollars) from its budget for taking care of and helping the victims of adults and children trafficking through the government's Shelter for the victims of human trafficking, including the premises renting, as well as the salaries for the activists in the Shelter.

18. In addition to this, the government's Office of the National Coordinator for Fight against Trafficking in Human beings finances the functioning of the SOS phone line for the victims of human trafficking for which approximately 3,000 Euros are given on a yearly basis.

19. The total number of the employees in the state institutions that are in charge for the fight against trafficking in human beings in Montenegro is 228, including: 6 clerks of the Office of the National Coordinator for Fight against Trafficking in Human beings, 96 judges (to which a case of human trafficking can be assigned) 7 prosecutors, 52 members of police forces, 38 workers in the Ministry of Health, 21 workers in the Ministry of Work and Social Care, 4 workers in the Ministry of Education and Sciences, 2 workers from the Ministry of Justice, 1 representative of the Protector of human and minority rights and 1 representative of the Department for Sexual Equality.

20. In January 2010, the government of Montenegro adopted the action plan for the implementation of the national strategy for the fight against trafficking in human beings for 2010/2011. This document is divided in 3 parts: prevention, protection and prosecution and by it the goals, measures, executors and deadlines for finishing the obligations, indicators for success measurement, as well as possible risk factors are defined. By improving the standards which have already been achieved in the system of trafficking in human beings in Montenegro, the goal is to create the effective response to this phenomenon, as one of the most severe ways of hurting human rights. While thinking about the measures and activities, special attention was paid to the area of identification, help and protection of the victims, effective prosecution and cooperation between the institutions. In relation to this, during the creation of this document, special attention was paid to the experience of our country as well as other countries in this field. Taking into consideration the concrete knowledge acquired during the work with the victims, the aim was to create protection and help to the victims, adapted to the needs of every victim, bearing in mind the specificities of every single case of trafficking in human beings, especially child trafficking. In the area of prevention, special measures are specified for the fight against children trafficking, such as: organizing educational meetings for the young, distribution of the material during the parents' meetings to the students of last grades of primary and secondary schools just before their leave to the school excursions, organization of the education of touristic signatories of the Codex for the protection of minors from the sexual exploitation during travelling and in tourism, with the special segment which is connected to the protection of the juvenile victims, seminars for teachers/professors of primary and secondary schools, faculties and educators in boarding schools, institutions of children and social care, institutions for the education of children with the special needs, daily centers, student dorms, the Educational Institute, centers for professional education, parent's associations, preparation and organization of an educational program for trainers who work with children, creation of the plan for the integration of these activities into mandatory and optional

subjects, free activities and sections, engagement of domestic and foreign experts, organization of training for educators (basic and training for the trainers), construction of the educational material for school children and young which will be used during the lectures about trafficking in human beings, and its printing and distribution to all educational, children and social protection institutions.

21. At the beginning of 2010, the government's Office of the National Coordinator for the Fight against Trafficking in Human beings initiated the integration of principles of prevention in the fight against trafficking in human beings into the educational system of Montenegro. The program is accredited by the Educational Institute in the educational area of social sciences and general culture of citizens, and its purpose is the improvement of the professional knowledge, skills and abilities of teachers, which are required for accomplishing the goals of education of pupils on the topic of human trafficking.

22. The purpose of the activities of the government's Office of the National Coordinator for the Fight against Trafficking in Human beings, among other things, is to strengthen the level of consciousness of the public about the specificities of the phenomenon of human trafficking, especially the vulnerable groups, such as children without parents and gypsy children.

23. With this goal in mind, as well as denoting of October as the month of fight against trafficking in human beings in Montenegro, in cooperation with non-governmental and international organizations, the representatives of the Office of the National Coordinator for Fight against Trafficking in Human beings held a number of lectures about the specificities of the phenomenon of human trafficking in secondary schools in the northern, central and southern part of Montenegro, in October 2010. However, former experience has shown that the society cannot rely only on sporadic education about trafficking in human beings in media or through different kinds of "narrow" educational methods (workshops, round tables, discussions, etc.) but that the prevention and education must start precisely in the frame of educational system, taking into consideration that timely and systematic education and prevention of the problem of trafficking in human beings (children especially) of secondary school pupils, made by the teachers and professional associates, is one of the efficient solutions for its repression.

24. The Office of the National Coordinator for Fight against Trafficking in Human beings has included a significant number of children in the conducted activities. Specifically, the Office has held an open competition for the selection of the best painting on the topic of human trafficking for the pupils of primary schools and with the cooperation of IOM, the best works have been awarded.

25. The Office of the National Coordinator for Fight against Trafficking in Human beings in cooperation with Save the Children has engaged a group of gypsy children as well as children without parents from the Home in Bijela, who were the part of the central ceremony in the celebration of the European day for fight against trafficking in human beings, on 18 October 2010.

26. In order to achieve the most efficient results in prevention of human trafficking and trafficking of children and act preventively onto the Montenegrin public, the Office of the National Coordinator for Fight against Trafficking in Human beings has prepared and realized a TV broadcast of the video about trafficking in human beings, which shows the whole chain of human trafficking to the public.

27. At the same time, the Office has – after the forming of SOS phone line for the victims of human trafficking, as well as for all the citizens who need the information about this phenomenon (SOS number 116-666) – made a campaign in order to promote the mentioned phone line, during which billboards have been set in the most frequent locations throughout Montenegro.

28. In the period 26–28 February 2010, the Office of the National Coordinator for Fight against Trafficking in Human beings, with the financial support of the Organization for Security and Co-operation in Europe mission in Montenegro organized a regional meeting of National Coordinators for Fight against Trafficking in Human beings in Budva. At this meeting it was jointly been determined that it is necessary to conduct regional researches on the topic of begging of gypsy children in the streets as a vulnerable group for trafficking in human beings. With this in mind, the Office of the National Coordinator for Fight against Trafficking in Human beings has already begun the research into the situation of Gypsies in Montenegro. The research team, hired by the Office of the National Coordinator for Fight against Trafficking in Human beings, is currently working on the collection of data, through which analysis we will have a clear overview of the situation of Gypsies in Montenegro, with the special attention paid to the children beggars. The research has the purpose of the identification of the area in an intervention of all the interested actors is necessary in order to remove the reasons of the difficult situation of the groups such as children beggars. In relation to this, Montenegro will, together with the financial help of Save the Children, be a host of the regional meeting in which the question of the Gypsy children will be considered, as a group with risk of trafficking in human beings, and which will be held by the end of 2010.
