



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention of the Rights of Child on the sale of children, child prostitution and child pornography

Initial reports of States parties due in 2008

**Montenegro\***, \*\*

[25 May 2010]

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

\*\* Annexes can be consulted in the files of the Secretariat.

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## I. Introduction

1. Montenegro has regained its independence on basis of the referendum held on May 21, 2006. After that the Parliament of Montenegro has adopted the Declaration of Independence on June 3, 2006, proclaiming Montenegro an independent and sovereign State which has assumed its international obligations. In accordance with the Declaration and the Decision proclaiming independence, Montenegro has initiated a comprehensive process of succession of international treaties she was a signatory to in previous state arrangements (Yugoslavia, state union of Serbia and Montenegro).

2. Since the Constitutional Charter, the highest legal authority of the ex-state union of Serbia and Montenegro prescribed that a member which renders a decision on leaving the state union renounces all rights to political and legal continuity of the federation, after regaining its independence and becoming a member of all relevant international organizations, on October 23, 2006, Montenegro has submitted the statement of succession for a set of UN Conventions which have been deposited with the UN Secretary-General, which were signed by Serbia and Montenegro. In addition to that, a succession statement was deposited for Council of Europe, International Labour Organization and other organizations' conventions.

3. Montenegro has accepted the Convention on the Rights of the Child and both of its protocols. By accepting the Convention it has undertaken the obligation, in accord with article 44 of the Convention, to submit to the Committee on the Rights of the Child periodic reports on the manner of its implementation and on the respect for the guaranteed rights of the child. To this end, we have drafted the Initial Report on the Implementation of the Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography for the period 2006–2008.

4. Article 9 of the Constitution of Montenegro envisages that ratified and published international treaties and generally accepted rules of international law are an integral part of the internal law and order, that they have supremacy over the national legislation and that they are directly implemented when they regulate relations differently than the internal legislation.

5. The statement of succession in relation to the Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was deposited on October 23, 2006. Reservations to the Protocol were not entered on that occasion.

6. This Report contains an analysis of the legal system of Montenegro in the field of protection of children from sale, child prostitution and use of children for pornographic purposes. The Report contains information on basis of which the Committee on the Rights of the Child will be able to inspect the implementation of the Optional Protocol in the said period, as well as difficulties and factors influencing the level of meeting obligations under the Protocol.

## II. General guidelines

7. The Ministry of Health, Labour and Social Welfare, as the ministry in charge, competent for monitoring the implementation of the Convention on the Rights of the Child and the Optional Protocol on the sale of children, child prostitution and child pornography, coordinated the preparation and drew up the present Initial Report. The competent public authorities (Ministry of Health, Labour and Social Welfare, Ministry of Justice, Ministry of Interior and Public Administration, Ministry of Science and Education, Ministry of Culture,

Sports and Media, Ministry of Foreign Affairs, Office for Combating Trafficking in Human Beings) participated in its preparation. Also, data and information of domestic NGOs were used. The preparation of the Initial Report was initiated at the beginning of this year.

8. During the normative regulation and during their practical activities, public authorities and other authorities are implementing the Convention and its principles. In cooperation with the Ombudsman's Office and the civil sector, UNICEF has prepared and distributed a Guidebook on the Rights of the Child which explains to children the contents of the Convention in a popular and comprehensible manner. Some NGOs, especially the Center for the Rights of the Child, have started numerous campaigns, initiatives also for purpose of promotion of the Convention on the Rights of the Child. Let us mention some of the campaigns: "Now I Understand My Rights" (2006–2008); "Let's Not Exclude Any Child" (2004); "It Matters to Us" (2005–2008); "Stop to Bodily Punishment of Children" (2008); "Do Not Turn Your Head Away" (2007–2010). The following projects are also of significance: Promotion of the Convention on the Rights of the Child for Parents of Children with Disabilities (2001–2002) and Training and Introduction to the Convention for Debate Clubs and Youth Parliaments (2003/04).

### **Montenegro will make this report available for the public at large**

*Implementation of the Optional Protocol in accordance with the general principles of the Convention on the Rights of the Child, especially with articles 1, 11, 21, 32, 33, 34, 35 and 36 of the Convention.*

#### **A. Definition of the child (Convention on the Rights of the Child, art. 1)**

9. The law does not define the notion of the child. The most commonly used term for a person that is not 18 years old is the term "minor". In our criminal legislation a child is a person of up to 14 years of age, whereas a minor is a person of 14–18 years of age.

10. According to article 45 of the Constitution, a national of Montenegro who has reached the age of 18 enjoys active and passive voting right.

11. According to the Family Law, a person is of age when s/he reaches the age of 18. Full capacity to practice is acquired by becoming of age or by contracting marriage before being of age, with the court's permission (art. 11).

12. The Criminal Code in article 80 lays down that criminal sanctions can not be applied to a juvenile who at the time of the commission of a criminal offence was under the age of 14 fourteen years (a child). A juvenile who at the time of commission of the criminal offence had reached the age of 14 but not the age of 16 (a junior juvenile) can be punished by corrective measures only. A juvenile who at the time of commission of the criminal offence had reached the age of 16 but not the age of 18 (a senior juvenile) can be punished by corrective measures, but exceptionally, s/he can be sentenced to a juvenile custody. A juvenile can also be punished by security measures, under the terms as prescribed by the law. A judicial admonition or a suspended sentence can not be imposed on a juvenile (art. 81).

#### **B. Lack of discrimination (Convention on the Rights of the Child, art. 2)**

13. The Constitution of Montenegro prohibits all direct or indirect discrimination, on any grounds. But it also envisaged that regulations and introduction of special measures aimed at creating the conditions for the exercise of national, gender and overall equality and

protection of persons who are in an unequal position on any grounds shall not be considered discrimination. Special measures may only be applied until the achievement of the aims for which they were undertaken (art. 8). All are equal before the law, regardless of any specific characteristic or personal quality.

14. Article 39, paragraph 2, of the Law on Minority Rights and Freedoms prohibits every direct or indirect discrimination on any basis, including race, colour, gender, national affiliation, social origin, birth or similar status, religion, political or other option, income, culture, language, age or mental or physical disability.

15. The Criminal Code prohibits violation of fundamental human rights and freedoms on grounds of a difference in race, colour of skin, nationality, ethnic origin, or some other individual characteristic. The persecution of organizations or individuals for their efforts to ensure equality of people, as well as the spreading of ideas about the superiority of one race over another, or promotion of racial hatred, or instigation to racial discrimination, are also punishable (art. 443). This Code criminalizes violation of equality consisting of denying or restricting the rights of man and the citizen prescribed by the Constitution, laws or other regulations or general enactments or recognized by international treaties or granting privileges or exemptions on basis of difference in national affiliation or affiliation to an ethnic group, race or confession, or due to absence of such an affiliation or due to differences in political or other beliefs, sex, language, education, social status, social origin, property or other personal status (art. 159).

16. The Labour Law lays down the prohibition of direct and indirect discrimination of persons seeking employment, as well as employed persons, based on sex, birth, language, race, religion, skin color, age, pregnancy, health state, that is, disability, nationality, marital status, family duties, sexual orientation, political or other affiliation, social background, material status, membership in political and trade union organizations or some other personal characteristic (art. 5). That Law has defined more precisely these types of discrimination. Direct discrimination is considered to be any action caused by any of the grounds by which the person seeking employment, as well as the employed person, is put in a less favorable position as compared to other persons in the same or similar situation. Indirect discrimination, within the meaning of that law, exists when a certain provision, criterion or practice puts or would put into a less favorable position a person seeking employment or an employed person, as compared to other persons, due to a specific characteristic, status, orientation or conviction (art. 6).

### **C. The best interests of the child (Convention on the Rights of the Child, art. 3)**

17. The Family Law lays down that everyone shall act in the best interest of a child in all child-related activities (art. 5). In disputes for the protection of the rights of the child and in disputes for the exercise, restriction or deprivation of the parental right, the court is always obliged to act in the best interest of a child (arts. 78–87).

18. The custodial body is obliged to provide the parents with appropriate forms of assistance and support and to undertake appropriate measures for purpose of protection of the right and the best interest of the child, on basis of direct findings or notifications. Adoption and foster care proceedings envisage that adoption may be entered into or that a child may be placed in another family only if it is done to the best interest of the child (arts. 123 and 158).

19. In addition to that, the Family Law prescribes that the procedure for protection of a child's rights is urgent (art. 360). In disputes for establishing or contesting paternity or maternity, the custodial body may appoint a special guardian for the child, if there are

opposing interests between the child and the parent in that dispute. If the court esteems that, in the dispute related to protection of a child's rights or in the dispute related to exercising parental rights, the child as a party is not represented in an appropriate manner, the court shall be obliged to appoint a temporary representative for the child (art. 357, para. 2).

20. There is a series of measures for the protection of interests of the child that are envisaged in the field of juvenile judiciary. Therefore, the Criminal Procedure Code, which contains special provisions on proceedings against minors, envisages that, in undertaking actions in the presence of a minor and particularly during his/her interrogation, the participants in the proceedings shall be bound to be circumspect, taking into account the minor's mental development, his/her sensibility, personal characteristics and his/her privacy, so as the conduct of the criminal proceedings would not have an adverse effect on the minor's development (art. 468, para. 2). The course of the criminal procedure towards the minor may not be made public without the court's consent, nor the decision rendered during that procedure. Only the part of the proceedings or the part of the decision regarding which there is the Court's permission may be made public, but in that case the name and other data revealing the identity of the minor must not be indicated (art. 475). Authorities participating in the proceeding against a minor and other agencies and institutions from which information, reports or opinions are sought shall be bound to proceed with the greatest urgency so that the proceeding is completed as soon as possible (art. 476).

#### **D. Right to life, survival and development (Convention on the Rights of the Child, art. 6)**

21. Proceeding from the protection of the undoubtedly most important human right — the right to life — the Constitution of Montenegro prohibits the death penalty (art. 26) and guarantees the dignity and security of a man and inviolability of the physical and mental integrity of a man (art. 28).

22. The protection of the right to life is ensured through criminal legislation, by prescribing criminal acts of murder and other criminal acts having deadly consequences and by laying down criminal sanctions for their perpetrators (Criminal Code — Chapter XIV — Criminal Offences against Life and Body). Also, the Criminal Code envisages several criminal offences against human health (arts. 287–302), against the environment (arts. 303–326), as well as criminal offences against the general safety of people and property (arts. 327–338). In order to protect children, the Criminal Code especially lays down: infanticide (art. 146), as well as felonies of incitement to suicide and aid in the commission of suicide, if committed against a child younger than 14, or against a child in between 14 and 18 years of age (art. 149).

23. As regards the survival and development of a child, Family Law prescribes the obligation of the state to ensure the conditions for free and accountable parental care by means of social, health and legal protection, through the system of training, education and information, by means of employment policy, housing and tax policy, as well as by developing all other activities in favor of family and its members. The prescribed model for family planning is the right of every person to freely decide on the birth of his/her children, whereas when it comes to parents, it is the right to create possibilities and ensure conditions for their healthy psychophysical development in the family and in society.

### **E. Illicit transfer and non-return of children abroad (Convention on the Rights of the Child, art. 11)**

24. In case of illicit transfer and non-return of children abroad, which may be classified as violation of the right to care for children, that is, violation of the right to see a child (personal relations), provisions of the Convention on the Civil Aspects of International Child Abduction are applied. The Ministry of Justice has been designated as the central executive authority for the implementation of the Convention. That Ministry receives from abroad and sends to central authorities of other member states requests for the return of children who were illicitly separated from their parents or persons having parental responsibility.

25. The return procedure for an illicitly brought child is conducted in accordance with the provisions of the Law on the Resolution of Law Conflicts, along with Regulations of Other States in certain circumstances. That Law regulates the conditions and the procedure for acknowledging foreign judicial decisions, including the decisions on entrusting children if they became final according to the law of the state in which they were rendered. Through the recognition of a foreign decision on entrusting a child by a domestic court, this decision is made equal to a domestic court's decision and it may have to be carried out.

26. Montenegro has also accepted the European Convention on Recognition and Enforcement of Decisions on Custody of Children and on Restoration of Custody of Children and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Also, Montenegro has accepted a series of bilateral agreements on legal assistance among judicial and other competent authorities or among states, in enforcing decisions related to care for children, aimed at contributing to more efficient protection of children who are separated from their parents.

27. The Criminal Code envisaged the criminal offence depriving of a minor (art. 217). A person who unlawfully keeps a minor from his/her parents, adoptive parent, guardian, other person or an institution, she/he has been entrusted with, or deprives them of him/her, or prevents execution of the decision according to which a minor has been entrusted with a particular person, shall be punished by a fine or an imprisonment sentence not exceeding two years. The prevention of execution of a decision of a competent body stipulating the way in which personal relationships between a minor and his/her parent or another relative are to be maintained is also punishable.

### **F. Right to express own views freely (Convention on the Rights of the Child, art. 12)**

28. The Constitution of Montenegro guarantees everyone the right to freedom of expression by speech, writing, picture or in some other manner (arts. 46 and 47).

29. The Family Law guarantees the child the right to freely express his/her opinion in various situations. The general principle is that a child who is able to form its own opinion has the right to freely express that opinion (art. 67). A child has the right to obtain in a timely manner all the information needed for forming its opinion. Due attention has to be devoted to the opinion of a child in all issues regarding it and in all the procedures in which his rights are decided on, all in compliance with the age and the maturity of the child. A child who has reached 10 years of age may freely and directly express its opinion in every procedure in which its rights are being decided on. A child who has reached 10 years of life may by its own, or through the mediation of some other person or institution, address the court or an administrative body and require assistance for the realization of its right to free expression of opinion.

30. The court's obligation to enable the child to express his/her opinion is also envisaged. If the court establishes that in the dispute related to protection of a child's rights or in the dispute related to exercising parental rights the party is a child capable of forming an opinion, the court shall be obliged: 1) to provide that the child timely obtains all the information that he/she might need; 2) to allow the child to express his/her opinion directly and to pay due attention to the opinion of the child, in line with the age and maturity of the child; 3) to take the opinion of the child in the manner and in the place which is in line with the child's age and maturity, unless that would be obviously in contravention to the best interest of the child (art. 357).

31. In accordance with article 164 of the Family Law, prior to determining the family placement, the custodial body is under an obligation to make it possible to the child to express freely its opinion with regard to the family placement and to assess the opinion in accordance with the age and the maturity of the child.

### **G. Adoption (Convention on the Rights of the Child, art. 21)**

32. Under the Family Law, adoption is a special form of family legal protection of children without parents or without adequate parental care, by which parental or the relationship of kinship is created. Adoption may be established in Montenegro as incomplete and complete (art. 121). A child has the right to know that it has been adopted. Adopters are under an obligation to acquaint the child with the fact that it has been adopted at latest up to its seventh year of life i.e. immediately after adoption if an older child has been adopted, as well as to inform the custodial body thereon (art. 122). Adoption may be entered into only if it is done to the best interest of the adoptee (art. 123).

33. A child cannot be adopted before three months from his/her birth expire. A child born to minor parents cannot be adopted either. As an exception, this child can be adopted after expiry of one year from its birth, if there are no prospects of it being raised in the family of parents or other close relatives.

34. A child whose parents are not known may be adopted only after three months expire from his abandonment (art. 124).

35. The custodial body shall keep records and documents on the children adopted. Data on adoption constitute an official secret. An adoptee of age, the adopter and the child's parent who gave consent to adoption of the child by a step father or step mother shall be allowed to inspect the adoption case files. The custodial body shall allow inspection into case files to a minor adoptee if it determines that this is to his/her interest.

36. An inseparable relationship of kinship equal to consanguinity is established through full adoption between the adopters and their relatives on one side, and the adoptee and his descendants on the other.

37. Partial adoption creates between the adopters on one hand and the adoptees and their descendants on the other hand rights and duties which exist among parents and children under the law, unless law prescribes otherwise.

### **H. Inter-country adoption**

38. Adoption between a foreign citizen as an adopter and a domestic citizen as an adoptee cannot be established. As an exception, a foreign citizen may adopt a child if an adopter can not be found among domestic citizens. It is necessary to get the approval for adoption from the ministry competent for social welfare activities. The approval for adoption is given on the basis of the opinion of an expert commission. The expert



commission is established by the Minister competent for social welfare. The Commission is composed of 5 members having professional experience in work with minors (art. 125).

## **I. Right of the child to be protected from economic exploitation (Convention on the Rights of the Child, art. 32)**

39. The Labour Law laid down that an employment contract may be concluded by the person who fulfils general requirements stipulated by this law and special requirements stipulated by the law, other regulations and the job classification act. General requirements are that the person must be minimum 15 years old and must have a generally good health state. Persons with disability that has the health capacity to work in specific jobs may sign an employment contract under the conditions and in the manner stipulated by this law, unless regulated otherwise by some other law (art. 16).

40. An employment contract may be signed with a person below 18 years of age, with the written consent of the parent, adopted parent or guardian, if such work does not endanger the health, moral and education thereof, that is, if such work is not prohibited by the law. A person below 18 years of age may sign an employment contract only on the basis of the certificate issued by the relevant health authority that confirms the capacity thereof to perform the tasks for which the employment contract is signed and that such tasks are not harmful for the health thereof (art. 17).

41. Employees under the age of 18 are not allowed to work in jobs with prevailing hard physical labor, works under ground or water, or jobs involving tasks that can have detrimental effect on and an increased risk for their health and life (art. 104). An employee below 18 years of age shall not be assigned to work longer than full time hours or to night shift. Working hours shorter than full time hours may be determined for the employee under the age of 18 under the employer's collective agreement. Exceptionally, an employee under 18 years of age may be assigned to night shift, when it is necessary that the work interrupted by natural disasters is continued, i.e. to prevent damage to the raw materials or other materials (art. 106).

42. The Criminal Code lays down that a parent, adoptive parent, a guardian or any other person who by gross negligence of his/her duty to take care and bring up a minor s/he is obliged to take care of, neglects him/her shall be punished by an imprisonment sentence not exceeding three years. A more serious form of offence is the case when a parent, adoptive parent, guardian or other person who abuses a minor or forces him/her to excessive labour or labour not suited to his/her age or to begging or for gain leads him/her into doing other acts detrimental for his/her development (art. 219).

## **J. Right of the child to protection from the illicit use of narcotic drugs and psychotropic substances (Convention on the Rights of the Child, art. 33)**

43. According to the Law on Production and Circulation of Narcotic Drugs, the production and trade in narcotic drugs can be done only in medical, veterinarian, teaching, laboratory or scientific purposes on basis of an approval or permit issued by the competent authority. The Law prescribes the terms for the production of these substances and records kept thereon as well as the treatment of seized drugs by competent authorities.

44. The Criminal Code prescribes two criminal offences: 1) Unauthorized production, keeping and releasing for circulation of narcotics 2) Enabling the taking of narcotics. Unlawful production, procession, sale, purchase for the purpose of selling, keeping, transporting, mediation in the selling or buying, or other manners of unlawful release for circulation the substances or preparations pronounced to be narcotics, have been

criminalized (art. 300). Anyone who induces another to take narcotics or gives narcotics to another for his/her or someone else's use, or places at someone's disposal premises for taking the narcotics, or in some other way enables another to take narcotics is subject to punishment. A more serious form of criminal offence is envisaged for the persons committing the afore-mentioned things against a minor (art. 301).

45. As of recently, a public institution for accommodation, rehabilitation and resocialization of psychoactive substances' users was established in Podgorica. It is the first institution of that type in Montenegro. It is planned to accommodate male addicts. Accommodation capacities range in between 70–80 beds. The entire treatment at Podgorica public institution lasts for 24 months and consists of residential and non-residential part. The *residential part* of the treatment generally lasts for 12 months and consists of three phases: adaptation, rehabilitation and resocialization. The *non-residential part* of the treatment also lasts for 12 months and involves self-help groups, volunteer work, training and searching for job. The client is an active participant in the therapeutic process, so he is the primary responsible for achieving personal growth and progress in order to lead a more thought-out and accountable life. That is why the treatment programme is harmonized to the client's individual needs, interests and tendencies.

46. Work experience in the field of drug abuse clearly shows that drugs are present in all layers of the society and unfortunately it involves younger and younger persons. It is necessary to strengthen the preventive activities that need to be directed towards risk groups, for purposes of solving the drug addiction problem more efficiently. Persons going through a recovery phase need to be assisted especially as regards the employment segment, that is, in all spheres of societal reintegration.

#### **K. Right of the child to be protected from sexual exploitation and sexual abuse (Convention on the Rights of the Child, art. 34)**

47. Montenegro has accepted international instruments regulating the field of protection against exploitation and abuse: Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

48. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography implies the obligation to implement it and to harmonize it with the national legislation. To that end, criminal legislation was amended and a draft Law on the Protection against Domestic Violence was prepared.

49. Chapter XVIII of the Criminal Code envisages a number of criminal offences against sexual freedom. Article 206 criminalizes rape of a child or an equal act with a child by a stipulated imprisonment sentence of one to ten years. Article 211 envisages the criminal offence *Displaying pornographic material*: anyone 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. The exploitation of a child to produce pictures, audio-visual or other objects of pornographic nature or for a pornographic show was also criminalized.

50. Certain criminal offences against marriage and family referred to in Chapter XIX are significant for the protection of children against sexual exploitation. Article 216, Paras. 1

and 2 — Extramarital community with a minor — lays down that an adult person who lives in an extramarital community with a minor and a parent, adoptive parent or a guardian who enables a minor to live in an extramarital community with another person or incites him/her into it are perpetrators of that criminal offence. It is a felony if that act was done for gain, that is, if the element of economic exploitation exists.

51. Incest is envisaged as a special criminal offence (art. 223). This criminal offence is committed by an adult person who commits statutory rape or performs an equal act with a minor with whom s/he is a direct blood relative, or with a minor brother or sister.

## **L. Criminal acts against sexual freedom**

52. See below for criminal acts against sexual freedom as set forth in Chapter XVIII of the Criminal Code of Montenegro:

### **Rape – article 204**

(1) Anyone who forces another person to sexual intercourse or an act equal to it by using coercion or by threats to attack the life or body of that or some other person, shall be punished by an imprisonment penalty of two to ten years.

(2) If a person commits an act referred to in paragraph 1 of this article against somebody under threats of doing something that would harm his/her honour or reputation or by serious threat of some other severe evil, s/he shall be punished by an imprisonment sentence of one to eight years.

(3) If due to acts referred to in Paragraphs 1 and 2 of this article a severe bodily injury is inflicted on a person, or if the act is made by more persons or in an especially cruel manner or in an especially humiliating manner, or to a juvenile, or the consequence of the act is pregnancy, the perpetrator shall be punished by an imprisonment sentence of three to fifteen years.

(4) If due to acts referred to in Paragraphs 1 and 2 of this article a person died or the act is done to a child, the perpetrator shall be punished by an imprisonment sentence of five to eighteen years.

### **Sexual intercourse with a helpless person – article 205**

(1) Anyone who performs sexual intercourse or an equal act taking advantage of a person's mental illness, mental retardation or other mental disorder, disability or some other state of that person due to which s/he is not capable of resistance, shall be punished by an imprisonment sentence of one to ten years.

(2) If due to acts referred to in paragraph 1 of this article a severe bodily injury is inflicted on a disabled person or if the act is committed by more persons or in a specially cruel or humiliating manner or it is done to a juvenile or the act resulted in a pregnancy, the perpetrator shall be punished by an imprisonment sentence of two to twelve years.

(3) If due to acts referred to in Paragraphs 1 and 2 of this article a person suffering the act died or the act is done to a child, the perpetrator shall be punished by an imprisonment sentence of five to eighteen years.

### **Sexual intercourse with a child – article 206**

(1) Anyone who performs sexual intercourse or an equal act with a child shall be punished by an imprisonment sentence of one to ten years.

(2) If due to an act referred to in paragraph 1 of this article a severe bodily injury is inflicted to a person, or the act is performed by more persons or it resulted in pregnancy, the perpetrator shall be punished by an imprisonment sentence of two to twelve years.

(3) If due to acts referred to in Paragraphs 1 and 2 of this article a child died, the perpetrator shall be punished by an imprisonment sentence of five to eighteen years.

(4) The perpetrator of an act referred to in paragraph 1 of this article shall not be punished provided that there is no larger difference between the perpetrator and the child in respect to their mental and physical development.

#### **Sexual intercourse by abuse of position – article 207**

(1) Anyone who by abuse of his/her position induces to sexual intercourse or an equal act a person who is in a subordinate or dependent position to him, shall be punished by an imprisonment sentence of three months to three years.

(2) A teacher, instructor, guardian, adoptive parent, stepfather, stepmother or some other person who by abuse of his/her position or authorities performs sexual intercourse or an equal act with a minor entrusted to him/her for teaching, education, custody or care, shall be punished by an imprisonment sentence of one to ten years.

(3) If an act referred to in paragraph 2 of this article is performed over a child, the perpetrator shall be punished by an imprisonment sentence of two to twelve years.

(4) If an act referred to in Paragraphs 1 to 3 of this article resulted in pregnancy, the perpetrator shall be punished for an act referred to in paragraph 1 by an imprisonment sentence of six months to five years, for an act referred to in paragraph 2 by an imprisonment sentence of two to twelve years, and for an act as of paragraph 3 by an imprisonment sentence of three to fifteen years.

(5) If due to an act as of paragraph 3 of this article a child died, the perpetrator shall be punished by an imprisonment sentence of five to eighteen years.

#### **Prohibited sexual acts – article 208**

(1) Anyone who under conditions referred to article 204 Paragraphs 1 and 2, article 205, Paragraphs 1 and 2, article 206 paragraph 1 and article 207, Paragraphs 1 to 3 of the present Code, performs some other sexual act, shall be punished by a fine or an imprisonment sentence not exceeding two years.

(2) If due to acts as of paragraph 1 of this article a severe bodily injury is inflicted to a person, or if the act is performed by more persons or in an extremely cruel or humiliating way or to a child, the perpetrator shall be punished by an imprisonment sentence of two to ten years.

(3) If due to an act as of paragraph 1 of this article a person died, the perpetrator shall be punished by an imprisonment sentence of three to fifteen years.

#### **Solicitation and enabling having a sexual intercourse – article 209**

(1) Anyone who procures a minor for sexual intercourse, an act equal to it or some other sexual act, shall be punished by an imprisonment sentence of three months to five years.

- (2) Anyone who provides for performing rape, an act equal to it or some other sexual act to a minor, shall be punished by an imprisonment sentence not exceeding three years.

#### **Mediation in prostitution – article 210**

- (1) Anyone who leads or incites another person to prostitution or participates in transferring of some person to other for the purpose of prostitution or who by means of public communication or other similar means promotes or advertises prostitution, shall be punished by a fine or an imprisonment sentence not exceeding one year.
- (2) If an act as of paragraph 1 of this article is committed against a minor, the perpetrator shall be punished by an imprisonment sentence of one to ten years.

#### **Displaying pornographic material – article 211**

- (1) Anyone 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.
- (2) Anyone who uses a child to produce pictures, audio-visual or other objects of pornographic nature or for a pornographic show shall be punished by an imprisonment sentence of six months to five years.
- (3) Anyone who sells, shows, publicly exhibits or in electronic or some other way makes available pictures, audio-visual or other objects of pornographic character resulting from acts referred to in paragraph 2 of this article shall be punished by an imprisonment sentence not exceeding two years.
- (4) Objects referred to in paragraphs 1 to 3 of this article shall be forfeited and destroyed.

Some criminal offences referred to in Chapter XIX of the Criminal Code of Montenegro are also significant for the protection from sexual exploitation – criminal acts against marriage and family.

#### **Extramarital community with a minor – article 216**

- (1) An adult person who lives in an extramarital community with a minor shall be punished by an imprisonment sentence of three months to three years.
- (2) A parent, adoptive parent or a guardian who enables a minor to live in an extramarital community with another person or incites him/her into it shall be punished by a penalty referred to in paragraph 1 of this article.
- (3) If an act as of paragraph 2 of this article is done for gain, the perpetrator shall be punished by an imprisonment sentence of six months to five years.
- (4) If a marriage is concluded, prosecution shall not be undertaken, and if it is undertaken it shall be discontinued.

53. See below for criminal offences against marriage and family as set forth in Chapter XIX of the Criminal Code.

#### **Extramarital community with a minor – article 216**

- (1) An adult person who lives in an extramarital community with a minor, shall be punished by an imprisonment sentence of three months to three years.

(2) A parent, adoptive parent or a guardian who enables a minor to live in an extramarital community with another person or incites him/her into it shall be punished by a penalty referred to in paragraph 1 of this article.

(3) If an act referred to in paragraph 2 of this article is done for gain, the perpetrator shall be punished by an imprisonment sentence of six months to five years.

(4) If a marriage is concluded, prosecution shall not be undertaken, and if it is undertaken it shall be discontinued.

#### **Depriving of a minor – article 217**

(1) Anyone who unlawfully keeps a minor from his/her parents, adoptive parent, guardian, other person or an institution, s/he has been entrusted with, or deprives them of him/her, or prevents execution of the decision according to which a minor has been entrusted with a particular person, shall be punished by a fine or an imprisonment sentence not exceeding two years.

(2) Anyone who prevents execution of a decision of a competent body stipulating the way in which personal relationships between a minor and his/her parent or another relative are to be maintained, shall be punished by a fine or an imprisonment sentence not exceeding one year.

(3) If an act as of paragraph 1 of this article is done for gain or other base motives or due to it health, upbringing or education of the minor are seriously endangered, the offender shall be punished by an imprisonment sentence of three months to five years.

(4) Perpetrator of acts as of Paragraphs 1 and 3 of this article, who voluntarily delivers a minor to a person or an institution s/he has been entrusted with or enables the execution of the decision on entrusting a minor, may be remitted from penalty by a court of law.

(5) If a suspended sentence is imposed for an act referred to in Paragraphs 1 to 3 of this article, the court may oblige the perpetrator to deliver the minor within the specified time limit to the person or an institution the minor is entrusted with or to enable execution of the decision on entrusting a minor, or decision stipulating the manner of maintaining the personal relationship between the minor and his/her parents or another relative.

#### **Changing the family status – article 218**

(1) Anyone who changes the family status of a child by setting up, substitution or in some other way shall be punished by an imprisonment sentence ranging from three months to three years.

(2) Anyone who, out of negligence, changes the family status of a child by substitution or in some other way shall be punished by an imprisonment sentence not exceeding one year.

(3) An attempted offence as of paragraph 1 of this article shall be punished.

#### **Neglecting or abusing a minor – article 219**

(1) A parent, adoptive parent, a guardian or any other person who by gross negligence of his/her duty to take care and bring up a minor he is obliged to take care of, neglects him/her shall be punished by an imprisonment sentence not exceeding three years.

(2) A parent, adoptive parent, guardian or other person who abuses a minor or forces him/her to excessive labour or labour not suited to his/her age or to begging or for gain leads him into doing other acts detrimental for his/her development, shall be punished by an imprisonment sentence of three months to five years.

#### **Violence in a family or a family community – article 220**

(1) Anyone who by use of violence endangers physical integrity or mental condition of a member of his/her family or family community shall be sentenced to a fine or imprisonment not exceeding one year.

(2) If for the commission of an act referred to in paragraph 1 of this article any weapons, dangerous tools or other means suitable for inflicting heavy bodily injuries or for seriously impairing health are used, the perpetrator shall be sentenced to imprisonment of three months to three years.

(3) If due to acts referred to in Paragraphs 1 and 2 of this article, a heavy bodily injury is inflicted or health is seriously impaired or if such acts have been done to a minor, the perpetrator shall be sentenced to imprisonment of one to five years.

(4) If due to acts referred to in Paragraphs 1, 2 and 3 of this article, a death of a member of a family or a family community has been caused, the perpetrator shall be sentenced to imprisonment of three to twelve years.

(5) Anyone who violates measures for the protection against domestic violence imposed on him/her on basis of the law shall be punished by a fine or an imprisonment sentence not exceeding six months.

#### **Incest – article 223**

An adult person who performs a sexual intercourse or an equal sexual act with a minor with whom s/he is a direct blood relative, or with a minor brother or sister, shall be punished by an imprisonment sentence not exceeding three years.

54. See below for criminal offences against humanity and rights guaranteed under international law as set forth in Chapter XXXV of the Criminal Code of Montenegro.

#### **Trafficking in human beings – article 444**

(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 forced labour, submission to servitude, commission of crimes, prostitution or 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 a sentence 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 due to acts referred to in Paragraphs 1 and 3 of this article have caused grievous bodily harm to a person, the offender shall be liable to imprisonment for a term of one year to twelve years.

(5) If due to acts referred to in Paras. 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 Paras. 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 five years.

**Trafficking in children for adoption – article 445**

(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 forced labour, submission to servitude, commission of crimes, prostitution or 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 against a juvenile person, the offender shall be liable to a sentence 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 due to acts referred to in Paras. 1 and 3 of this article have caused grievous bodily harm, the offender shall be liable to imprisonment for a term of one year to twelve years.

(5) If due to acts referred to in Paras. 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 Paras. 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 five years.

**Submission to slavery and transportation of enslaved persons – article 446**

(1) Anyone who in contravention of valid regulations deprives a person that has not reached the age of fourteen for purpose of that person's adoption or who adopts such person or mediates in his/her adoption or who with that objective buys, sells or hands another person that has not reached the age of fourteen or transports that person, provides for the person's accommodation or hides him/her, shall be punished by imprisonment for a term of one year to five years.

(2) Anyone who performs activities referred to in paragraph 1 of the present article or if the offence was committed in an organized manner by several persons, shall be punished by imprisonment for a minimum term of three years.



**M. Abduction of, the sale of or traffic in children and protecting children against all other forms of exploitation (Convention on the Rights of the Child, arts. 35 and 36)**

55. Montenegro is a member of the United Nations Convention against Transnational Organized Crime including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

56. Chapter fifteen of the Criminal Code of Montenegro — Criminal Offences against Freedoms and Rights of Man and the Citizen — article 164 criminalizes the criminal offence “Abduction by force”. It is a felony if the offence was committed against a minor. paragraph 3 lays down that if an abducted person was kept longer than ten days or s/he was treated in a cruel manner or his/her health was seriously impaired or other grave consequences have occurred or anyone who commits the offence referred to in paragraph 1 of the present article against a minor, the prescribed sentence is that of imprisonment of two to twelve years.

57. The Government of Montenegro has established the Office of the National Co-ordinator for the Fight against Trafficking in Human Beings in 2005 (as of 2009 it was renamed as the Office for Combating Trafficking in Human Beings). As an organizational entity in the system of public administration, the Office for Combating Trafficking in Human Beings pertains to the Government of Montenegro – General Secretariat of the Government. The Office performs affairs related to implementation of international regulations, conventions, agreements from the field of trafficking in human beings; it starts initiatives for the approximation of domestic legislation with international standards, it exercises relations and cooperation of domestic and international entities with the objective to create efficient mechanisms for the fight against trafficking in human beings, collects statistical data on the victims of trafficking in human beings in Montenegro, whereas the Chief of the Office coordinates the activities of competent public administration authorities and international organizations and NGOs, coordinates Working Group meetings for the implementation of the National Strategy for the Fight against Trafficking in Human Beings, participates in the work of international conferences, presents to international organizations the effects achieved in the field of trafficking in human beings in Montenegro, monitors the amendments and implementation of annual Action Plans for the Fight against Trafficking in Human Beings.

58. In 2007, the Government of Montenegro established the Council for the Rights of the Child, with the task to: monitor the implementation of the National Action Plan for Children from 2004 until 2010; to monitor and foster the rights of the child in the field of social and child protection, health protection, training and education and other fields of significance for the protection of the rights and interests of children; to monitor the implementation of regulations related to the protection of children rights; to monitor the performance of Montenegrin obligations deriving from the Conventions on the Rights of the Child and other international documents related to the protection of the rights of the child; to initiate the adoption of regulations for the enhancement and protection of the rights of the child; to enhance cooperation with NGOs in the implementation and protection of the rights of the child process; to introduce the public to the rights of the child and inform on the state of affairs regarding the rights of the child. In performing envisaged affairs, the Council exercises cooperation with UN agencies and other international organizations engaged in the protection of the rights of the child. The Council has 9 members (6 Government Ministers, a representative of the Statistical Office, a representative of NGOs and a representative of the public and cultural life).

59. The Government of Montenegro has adopted a 2004–2010 National Action Plan for Children in Montenegro (NPA) that represents a framework document for activities, programmes and strategies that the state and the civil society will accept so as to create a world adapted to children by 2010 in Montenegro. This document has a direct relation with the accepted international agreements and documents, and its central standards constitutes the Convention on the Rights of the Child.

60. Among the main aspects of NPA in Montenegro are the protection of children who are exposed to social and economic difficulties, improving accessibility of formal education for children and child participation in formal education, ensuring a healthy life for children, ensuring appropriate recognition of children's right to security and citizenship, as well as protection of environment with sustainable development. The Plan has as its objective to be a specific guidebook for the Government and the civic society in their endeavours towards the creation of a positive environment for children.

61. NPA was done in cooperation with representatives of all authorities' levels, individuals, civic society and children. It reflects key matters and issues related to children, as well as activities that need to be undertaken for purpose of enhancing the lives of children, as seen by people of Montenegro. NPA contains three separate components: (i) considering the proposed Governmental strategies; (ii) consultations with the civic society; and (iii) development of the monitoring system.

### III. Data

62. Although the problem of sale of children, child prostitution and pornography in Montenegro is not a pronounced one, in this chapter we will indicate the data received from relevant institutions and various researches and which are partially related to these issues.

63. According to the data of the Police Directorate, 166 criminal offences against children were committed during 2006 on the territory of Montenegro. There were no child suicides registered. In 2007 the number of criminal offences against children was 206. In the structure of these criminal offences the most common one is domestic violence (27), violent behaviour (25), grievous bodily harm (17), neglect and abuse of a minor (12). Two murder attempts of children were registered. According to MONSTAT data, there was one murder of a child in 2006, whereas in 2007 there was one child suicide. The percentage of child suicides out of the total number of suicides amounts to 0.83%, whereas the percentage of child murders out of the total number of murders is 8.33%.

64. According to the data of the Ministry of Justice, during the reporting period there were no criminal offences of depriving of a minor referred to in article 217 of the Criminal Code.

65. The number of adopted children in Montenegro is not high. The table shows the number of adopted children over the past two years.

Year	No. of adopted children	Sex		Domestic	Foreign
		M	F		
2006	12	4	8	3	9
2007	5	3	2	3	2
2008	11	6	5	6	5

66. Statistically speaking, the number of persons younger than 18 that have been employed is a negligible one.

67. According to the data of Centers for Social Welfare, in 2007, one person was deprived of parental right over one child. The decision was made by the competent court in a non-contentious case, in line with the proposal made by the team for the protection of children against abuse and neglect.

68. At the beginning of the 1990s, when the problem of drug addiction appeared, addicts were mostly between 25 and 30 years old. However, the age limit was becoming lower and lower and nowadays the situation is such that adolescents (who are the most threatened population anyhow) start abusing psychoactive substances at the age of 14–15. Adolescents are the most threatened population and the largest dealer “market”.

69. Unfortunately, drugs are present on the illegal market in our country as everywhere in the world. Our country is on the so-called “Balkan route” of smuggling in narcotic drugs. Many smuggling routes are criss-crossed over our country, leading to other states. Due to its small territory and small number of residents (approximately 700.000), Montenegro is not of interest as a destination country for drugs. It is mostly transit. However, individual distribution and dealing in narcotics are also present.

70. The data indicate that disorders in adolescence range between 15 and 20%. Delinquency in this period is very intensive. Addiction diseases begin at this period exactly. Adolescents rarely ask for assistance on their own, due to shame, lack of trust, fear and alike. Changes in adolescence are noticeable and they are manifested toward parents, peers, school.

71. Some NGOs state that there are few cases of child sexual abuse in the Montenegrin legislation, but that should not be taken as encouragement since it does not reflect the true state of affairs. The SOS phone in Podgorica had 4 incest cases reported over the past two years, and during their nine year work, 14 cases were reported. Not one of them ended up in court because victims themselves and their families remain silent, and the key thing is the relation of the environment towards sexual violence victims generally. It happens that judicial proceedings end up with an acquittal since witnesses availed themselves of their right not to give their testimony and their statements were the only evidence in the criminal law case in question.

72. According to UNDP office in Podgorica data as of 2006, RAE population girls are under a special risk since they contract marriage early, most commonly informal one, according to their parents’ agreements and sometimes for a certain sum of money. Most of them have children while they are still children themselves. According to the research on the position of the Roma women older than 14 years of age, only half of them were allowed to choose their husband independently and only one half of married women were legally married. Even 52% of Roma women had their first child before they were eighteen, whereas 38% of women had four to six children. Among the interviewed Roma women, 75% had no education and 96% were unemployed.

73. According to the 2008 data of the Legal Center, some members of RAE population in Montenegro are not registered at birth. This is an issue more present among children. There are still some Roma women giving birth out of medical institutions. Not registering the birth of a child formally means that the child does not exist, it is invisible for the community. Lack of registration endangers the fundamental rights guaranteed by the Convention on the Rights of the Child, whether they are nationals of Montenegro or not. Lack of identification and other type of documents implies impossibility to use all rights related to health care and social protection, education, use of public services and protection. Unregistered children are under an increased risk of various forms of abuse and neglect, trafficking and other abuse forms.

74. According to the data received by the research “HIV risk behaviour among commercial sexual workers in Montenegro” which was done in 2007–2008 in cooperation

with UNDP, The Global Fund and the Institute for Public Health of Montenegro, respondents of both genders have had their first sexual intercourse approximately at the age of 16. The female respondents had their first sexual intercourse for money on average at the age of 21,8, ranging even from 13 until 48 years of age, whereas when it comes to male respondents, at the age of 23 years, ranging from 16 to 32 years of age. This data clearly indicates to the existence of child prostitution issue. The sample does not include persons younger than 18, so nothing can be said on their participation and exposure to the violation of rights. Some types of drugs were used by 48.7% of female respondents and by 78.6% of male respondents. The number of 36.4% of female respondents and 35.7% of male respondents was exposed to client violence over the past 12 months. The number of 29.4% of female respondents and 7.1% of male respondents was forced to a sexual intercourse. It is an assumption that minors engaged in prostitution are under a great risk of trafficking and all forms of violence.

75. According to the data received from the research “HIV/AIDS related knowledge, attitudes on sexuality and sexual behaviour of the 18–24 years old young people in Montenegro” which was done in 2007 by the Public Health Institute of Montenegro in cooperation with UNDP and The Global Fund on a representative sample, the young are poorly informed on the manner of transferring HIV/AIDS – only 22% answered correctly to questions asked. During the past year, one third of respondents has had “one night stands”, that is, sex with a random partner, whereat, for the last of such intercourses, 67% of them used preservatives, whereas only 38% of girls did the same. When it comes to the question whether they have experienced any type of sexual violence (coercive intercourse or coercion to another sexual activity) while they were minors, 4.2% of the respondents have confirmed that it was so but they were not sure and did not wish to talk about it.

76. The “Global research on the consumption of tobacco in Montenegro”, conducted in 2008 by the Public Health Institute of Montenegro, on a sample of 5.723 children aged 12 to 15 indicated that 31.3% of children tried tobacco, out of whom 5.1% were permanent smokers.

77. The research “Use of Alcoholic Drinks among the Young in Montenegro” conducted by the Public Health Institute of Montenegro in 2008 on a sample of 876 high school students aged 17 to 19 on the territory of Podgorica municipality shows that more than one half of respondents were drunk at some period in the past, and that more than ¼ of them were drunk for the first time before they were 16. Approximately 6% of the young stated that they had 5 and more alcoholic drinks in a row at least ten times in their lives and more, whereas approximately 5% reached acute alcohol intoxication including loss of memory during their last use of alcoholic drinks.

#### **IV. General measures on the implementation of the Optional Protocol**

78. In upgrading the legal system of Montenegro, especially in the adoption of new laws from the field of domestic relations, social and child welfare, education, health system, labour relations, criminal law, the starting basis were provisions of the Convention on the Rights of the Child and the Optional Protocol. The adoption of the new Family Law on January 1, 2007 has special significance since it contains a special part on the rights of the child and special procedural provisions on the protection and exercising of children’s rights before courts. Law on the Protection against Domestic Violence, Law on Juvenile Judiciary and Law Amending the Law on the Ombudsman’s Office are being drafted. They will lay down special rules for Ombudsman’s proceedings in cases of protection of the rights of the child.

79. The Government has adopted a number of strategies and action plans in various fields that are of significance for exercising and protecting the rights of the child. They are as follows: Development and Poverty Reduction Strategy Paper (2003–2007); National Plan of Action (NPA) for Children (2004–2010); National Programme for the Prevention of Unacceptable Behaviour of Children and Young in Montenegro (2004–2006); Strategy for Durable Solutions of Refugees and Internally Displaced Persons in Montenegro (2005–2008); National Action Plan for the “2005–2015 Decade of Roma Inclusion” in the Republic of Montenegro; Strategy for Suppression of Poverty and Social Exclusion (2007–2011); Strategy for Improvement of RAE Position in Montenegro (2008–2012); Strategy for the Development of Social and Child Protection System in Montenegro (2008–2012); Strategy for the Development of Social Protection of the Elderly in Montenegro (2008–2012); Strategy for the Integration of Persons with Disabilities in Montenegro (2008–2016); Action Plan of the Strategy for the Integration of Persons with Disabilities in Montenegro (2008–2009); Strategy on Inclusive Education (2008–2012); Strategy for Civic Education in Primary and Secondary Schools in Montenegro (2007–2010); National Strategic Response to Drugs (2008–2012); Action Plan for the Implementation of the National Strategic Response to Drugs (2008–2009).

80. As regards legislation from the field of education in Montenegro related to the creation of conditions for the protection of children from any type of violence in the framework of educational process, it is important to mention that this issue, primarily, is treated by the General Law on Education (Off. Gazette of RoM, Nos. 64/2002, 31/2005 and 49/2007). article 111 of the said Law, in the part defining the cessation of employment of a teacher states that, apart from cases prescribed by the Labour Law, a teacher’s employment also ceases if:

- S/he persuades any student, or any employee of the institution to sexual intercourse, or to gross indecency
- Humiliates, insults, or punishes students physically

81. At the same time, apart from the General Law on Education that mostly defines the protection of students in relation to teachers, secondary legislation of the Ministry of Education and Science also treat that issue, primarily with relation to imposition of corrective measures to students. They are: the Rule-book on the Manner and Procedure of Imposing Corrective Measures to Students of Vocational Schools (Off. Gazette No. 31/2006), Rule-book on the Manner and Procedure of Imposing Corrective Measures to Grammar School Students (Off. Gazette No. 31/2006) and Rule-book on the Manner and Procedure of Bestowing Honors and Prizes in Corrective Measures for Elementary School Students. Under this secondary legislation (Off. Gazette No. 56/2004), students are imposed the strictest corrective measures if they commit mental, physical and sexual violence, but also for the use of alcohol and drugs, which might lead to various forms of deviant behaviour inside the school community, but also wider.

82. In order to analyze the true state of implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in areas under the competence of the Ministry of Interior and Public Administration and the Police Directorate, the starting basis needs to be the Law on State Administration and the Decree on the Organization and Manner of Work of State Administration and the Law on Police.

83. Furthermore, the Law on Police defines police affairs, police authorizations and duties. Police affairs need to be conducted in line with the law, along with full respect of international standards protecting the dignity of persons, freedoms and rights of citizens, among them – children.

84. Namely, the Law on State Administration laid down that ministries only propose policies, conduct development policy, normative activity and administrative supervision, whereas other affairs are carried out by other public administration authorities, also including the Police Directorate.

85. The next clear separation according to this law relates to questions of organization and establishment of administration authorities, primarily for law enforcement affairs and decision making on rights and obligations of legal entities.

86. The Division for Suppression of General Crime was established within the Police Directorate, in the Criminal Police Department. A job plan was drafted and staff were employed for the suppression of juvenile delinquency. In addition to that, a job plan was drafted and staff was employed for the suppression of juvenile delinquency in all regional units of the Police Directorate on the territory of Montenegro. Therefore, at Podgorica regional unit, a Branch for the Suppression of Offences against Body and Life – Unit for the Suppression of Juvenile Delinquency was envisaged as a part of the organizational structure, with four employees covering exclusively those issues.

87. General and special terms which have to be met by the staff were prescribed for the performance of the said affairs. The general term is college education with at least three years of work experience or vocational post-secondary school degree with at least eight years of experience. The special term for police officers enforcing police authorizations against juveniles and young persons of age in cases of criminal law protection of children and minors was defined in article 16 of the Law on Police by laying down that police officers need to be specially qualified for the suppression of juvenile delinquency.

88. Specially trained police officers for minors were trained for work with the youngest age groups in cases when children and minors are criminal offenders, as well as in cases when certain criminal offences and misdemeanors were committed to their detriment. Police officers covering this working field are continuously specialized through all forms of education, seminars, counselling, trainings etc. These officers are also regularly attending seminars organized by international organizations and NGOs, considering as especially important their presence at conferences for the protection of children against violence, abuse and neglect in Montenegro, organized by UNHCR. Training of police officers who cover this working field is in progress. It is organized by the Center for Mediation of Montenegro in cooperation with UNICEF and OSCE Mission and U.S. Embassy in Podgorica.

## **1. Vocational trainings in the field of prevention and protection of children from abuse and exploitation**

89. The following conferences, seminars and workshops were organized in the field of trafficking in human beings.

### **For 2006**

90. In the period February 6–8, 2006, the international entity Save the Children organized a seminar on the topic of “Combat Trafficking in Children”, which was attended by representatives of public institutions and NGOs sector, relevant for matters related to trafficking in children.

91. A seminar on asylum and migrations was held in Budva in February of 2006, organized by IOM, OSCE and UNHCR. The seminar was attended by representatives of the border police, police stations officers engaged in combat against trafficking in human beings, as well as prosecutors and judges. On that occasion, during the discussion,

participants exchanged opinions and experiences related to legal regulations prescribing the difference in the notions trafficking in human beings and smuggling in humans, status and treatment of refugees applied in Montenegro, the difference between asylum seekers and refugees. Experiences of competent services in Montenegro in treating asylum cases were also presented.

92. A seminar on non-legislative measures for preventing trafficking in human beings and strengthening the protection of victims in Montenegro was held in Igalo in April 2006, organized by the Council of Europe (COE's) Directorate-General of Human Rights – Section Equality between women and men, Office of the National Co-ordinator for the Fight against Trafficking in Human Beings of the Republic of Montenegro and Council of Europe Office in Podgorica. During the mentioned seminar, the national coordinator presented the general situation as regards trafficking in human beings in Montenegro. Representatives of ministries of the Republic of Montenegro in charge of those affairs have given presentations with special emphasis on the criminal law aspect of trafficking in human beings and implementation of the new criminal legislation, the role of the special team of the Ministry of Interior and an overview of illegal migrations on the territory of Montenegro. In addition to that, role of the Ministry of Labour and Social Welfare was emphasized in the prevention of this form of organized crime. It is a general conclusion that the situation in Montenegro is a stable one and that there is no organized form of this criminal offence.

93. In the period from June 5 to 9, 2006, the IOM and MoI's special team for combating trafficking in human beings organized a seminar in Bar entitled "Training of Police Officers for Combating Trafficking and Smuggling in Human Beings".

94. A round table "Public-Private Cooperation in the Prevention of Trafficking and Sexual Exploitation of Minors in Travel and Tourism Industry", organized by OSCE Mission to Montenegro, Department for Economic and Environmental Matters was held during the July of 2006. The objective of this project was for travel, tourist and hospitality branches to adopt and implement the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.

95. A seminar "Coordination of Work of Special Teams for Combating Trafficking in Human Beings" was organized by the OSCE Mission to Montenegro in September of 2006. It was attended by representatives of the Government's Office of the National Co-ordinator for the Fight against Trafficking in Human Beings and the MoI's special team for the combat against trafficking in human beings.

96. In the period 5–8 September 2006, IOM organized a seminar in Budva entitled "Reintegration of Victims of Human Trafficking". On that occasion, seminar participants were introduced in detail with the process of reintegration of victim of trafficking in human beings. The seminar was attended by representatives of the Office, Centers for Social Welfare and NGO sector from the territories of Montenegro and Serbia.

97. The first meeting of the Management Group for Initiation of Support Programmes for the Development of Transnational Referral Mechanisms for Trafficked Persons in South-Eastern Europe was held in September 2006 in Skopje, Macedonia, in a MARRI (Regional Migration, Asylum and Refugee Initiative) center. It was underlined during the meeting that a transnational approach regarding combat against trafficking in human beings is inevitable, taking into consideration that trafficking in human beings is a criminal act of transnational proportions not ending at borders and that none of the aspects of that problem — when it comes to research, or the referral of victims — can be treated and covered only on the national level. A cooperation agreement was signed on that occasion between ICMPD and the National Anti-Trafficking Coordinators. The Office of the National Co-ordinator for the Fight against Trafficking in Human Beings of the Government of

Montenegro has confirmed its commitment regarding the implementation of this regional initiative against the trafficking in human beings.

98. An official ceremony for signing “Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism” was held within the joint project of the OSCE Mission to Montenegro, the Ministry of Tourism and the Office of the National Coordinator, entitled “Public-Private Cooperation in the Prevention of Trafficking and Sexual Exploitation of Minors in Travel and Tourism Industry”, in September 2006 in Bečići, including representatives of the tourism economy in Montenegro.

99. Organized by the OSCE Mission to Montenegro, in October 2006, trainings were held for signatories of the Code of Conduct for the protection of children against sexual exploitation in travel and tourism. Participants of the training “How to Apply the Code in Your Business Operations” were representatives of the Montenegrin hotels, tourism organizations, tour-operators from coastal municipalities, the central region and the north of the Republic.

100. As a part of the project “Grassroots Community Mobilization in Combating Trafficking” non-governmental organization “Montenegrin Women’s Lobby” and international organization “Care” organized on December 6, 2006 a round table aimed at discussing the issue of discriminatory relation towards women victims of trafficking in human beings in exercising fundamental human rights in institutions of the system. The round table was entitled “Slaves without Much Hope”. It was underlined on that occasion that the basic priority should be the position of the victim in the system and her protection, not only in the period of her initial recovery, but also once the judicial proceedings are terminated.

#### **For 2007**

101. In January of 2007, under the auspices of the International Centre for Migration Policy Development and as a part of the project “Transnational Referral Mechanisms for Trafficked Persons in South-Eastern Europe” (TRM guidelines) a round table was held in Podgorica. It was stated on that occasion that transnational referral mechanisms for conducting individual transnational trafficking cases would be developed within that programme, together with agreed quality standards and in line with regulations on data protection and privacy. The round table was attended by representatives of state authorities and NGOs. This meeting was held as stage one of the TRM project.

102. Organized by Save the Children UK, the presentation of research results of “Children speak out: Trafficking risk and resilience in South East Europe – Report for Montenegro” was held in Podgorica, on May 29, 2007. This unique action-partner regional character research began in March 2006 with the objective to get more detailed findings from children on the factors due to which some of them become more exposed to trafficking and exploitation risk, what it is that constitutes their strength and resistance in unfavourable circumstances many of them face. In Montenegro it included children from the biggest Roma camp/settlement in Konik and children without parental care, inmates of the “Mladost” home in Bijela.

103. Organized by OSCE Mission to Montenegro, a training session was held in Kolašin in May 2007 for signatories of the “Code of Conduct for the Protection of Children against Sexual Exploitation in Travel and Tourism”. Training was held for a significant number of personnel of tourist agencies and hotel-managers from the north region of Montenegro. The training in question was a continuation of activities begun in the previous year within the project “Public-Private Cooperation in the Prevention of Trafficking and Sexual Exploitation of Minors in Travel and Tourism Industry”. As a part of that project, training was held in June 2007 for signatories of the Code from the central region.



104. In cooperation with the Government's Office for Combating the Trafficking in Human Beings, the CoE's General Directorate for Human Rights and Legal Affairs and Office of Special Representative of CoE's Secretary-General in Podgorica organized on July 5 and 6 in Kolasin a seminar entitled "Combating Trafficking in Persons in Montenegro: Victim Protection and Prosecution of Traffickers". The seminar focused on two topics: a) Protection and enhancement of rights of trafficking victims and b) substantive criminal law, with emphasis on the prosecution of traffickers. It was a continuation of the previous year's seminar "Non legislative measures for preventing trafficking in human beings and strengthening the protection of victims in Montenegro", held in Igalo in April 2006.

105. In October 2007, cooperation agreement was signed on cooperation against the trafficking in persons between the Supreme State Prosecutor's Office, Ministry of Health, Labour and Social Welfare, Ministry of Science and Education, Police Directorate and 3 NGOs – "Montenegrin Women's Lobby", "Safe Women's Shelter" and "Center plus".

#### **For 2008**

106. In April 2008 in Miločer, the seminar-workshop was organised in the scope of the ICMPD project named as Programme to Support to Development of Trans-national Referral Mechanisms for the Victims of Trafficking in South-eastern Europe. The seminar participants were the representatives of relevant institutions involved in the activities related to fight against trafficking in human beings (National Coordinator for Fight against Trafficking, Ministry of Health, Labour and Social Welfare, Police Directorate, prosecution and judicial representatives, NGO sector). Representatives of the above-mentioned institutions and organisations held presentations on the following topics: Identification of Victim; Protection during the Crisis Intervention; Rehabilitation and Assistance in Reintegration; Victim's Return; Criminal Procedure and Claim for Indemnification.

107. In Prčanj, from May 12 to May 14 the seminar "The Police Best Practices in Prevention of Trafficking of Human Beings" was held. Representatives from Montenegro and Serbia attended the seminar. Also representatives of the Ministry of Health, Labour and Social Welfare were the participants of the seminar.

108. On June 2, 2008, in Podgorica, National Coordinator for Fight against Trafficking, NGO Montenegrin Women Lobby and CARE International Organisation organised the seminar named as "Increasing Sensibility in Teachers in the Prevention and Recognition of the Victims of Trafficking in Human Beings", which represented the end of the project activities. The project, for which the above-mentioned seminar was the end of the activities, was named "Community Mobilisation in the Fight against Trafficking in Human Beings in Montenegro". It was realised in direct work through the workshops with participants from five grammar schools and five elementary schools in Podgorica. At the seminar, the presentations were held by the representatives of the NGO Montenegrin Women Lobby, on which occasion the role and significance of prevention of potential victims of trafficking was pointed out. In that sense, establishment of the SOS telephone line in May 2002 was emphasised, as the activity by which providing initial information and assistance to victims (police, doctors, and social workers) has been ensured, as well as choosing the best way, depending on circumstances, for the victim to get out of the trafficking chain and to be placed on a safe place. A series of campaigns done by the NGO Montenegrin Women Lobby were mentioned to have contributed to prevention of potential victims of trafficking in the period of 2002 and that in continuity. The goal of the seminar was to point out the fact that only with joint and duly prevention programmes and with special measures for protection of children victims of trafficking, produced according to the specific needs and the right of the child, was it possible to achieve a good quality and efficient result, along

with the respect for highly set up standards and obligations of the states in ensuring special measures for the protection of children.

109. From June 5 to 7, in Bar, in the scope of the Project named “Strengthening of the Anti-Trafficking Network in the Western Balkans”, the seminar “What is the Problem” was organised by the National Coordinator for Fight against Trafficking, NGO Montenegrin Women Lobby and CARE International Organisation. The seminar was intended to provide information to judges and prosecutors from Montenegro, while the focus of the agenda was on the project “Trans-national Referral Mechanisms for the Victims of Trafficking in South-eastern Europe”, implementation of which has been continued this year. Training of judges and prosecutors is one of the priorities in regard to prevention or education of the representatives of the relevant institutions. More than twenty judges and prosecutors from Montenegro attended the seminar, among whom, those who had the opportunity or were in the position, at the time, to run cases in trafficking of human beings. The seminar raised great interest among the present representatives of judicial authorities, through which the wish to contribute to setting up a higher level of cooperation among national systems involved in the fight against trafficking in human beings in South-eastern Europe is shown. With better cooperation, the conditions for more efficient national support and protection of the victims of trafficking in human beings would be made.

110. From June 25 to June 27, in Kolašin, a two-day conference on “Intensifying Cooperation in Implementation of the Cooperation Agreement” was organised by the National Coordinator for Fight against Trafficking. During the opening speech the National Coordinator emphasised the fact that the coordination in applying the Agreement in practice is one of the priorities in the National Coordinator’s Office, bearing in mind the great significance of the Agreement provisions, especially related to efficient conducting of criminal proceedings, protection and prevention, in conjunction with the activities of the relevant institutions involved in the combat against trafficking in human beings. The conference was attended by the representatives of the institutions and organisations that had signed the Agreement, as well as representatives of the international organisations. The initiative for organising the conference came from the National Coordinator for Fight against Trafficking in Human Beings, which has coordinated the activities in the implementation of the Agreement, among the above-mentioned institutions. The financial support was provided from the CARE International Organisation, with the aim to ensure continuity in the implementation of the above mentioned Agreement.

111. In the Law on State Prosecution Office (“Official Gazette of the Republic of Montenegro, No.: 69/03 and “Official Gazette of Montenegro”, No.: 40/08), Chapter VI regulates the position of the Special Prosecutor For Fighting Organised Crime, Corruption, Terrorism And War Crimes, and with article 66 it is stipulated that within the Supreme State Prosecution there will be Department for Fighting Organised Crime, Corruption, Terrorism and War Crimes, governed by the Special Prosecutor.

112. According to article 67, the Special Prosecutor has a deputy, while the number of deputies is determined by the Prosecutorial Council at the proposal of the Supreme State Prosecutor, based on the initiative coming from Special Prosecutor.

113. According to article 68 of the Law the Special Prosecutor undertakes the activities which he/she is authorised for before the competent court or other authority, pursuant to the Law.

114. The National Coordinator for Fight against Trafficking in Human Beings and an associate from the National Coordinator’s Office participated at the third World Congress against Sexual Exploitation of Children and Adolescents, held in Brazil, in Rio de Janeiro, from November 25–28, 2008. The Third World Congress on this topic was organised by UNICEF and the Government of Brazil. The goal of the Congress was to further develop

and advance joint actions in the area of protection of children and adolescents from sexual exploitation and abuse. The Congress was organised as a kind of dialogue among high government officials, and the topics were the following: types of commercial sexual exploitation, legal framework and responsibility, integrated inter-sectoral policies, initiatives for social accountability and strategies for international cooperation. On behalf of the Montenegrin delegation, the National Coordinator actively participated in sharing experiences in the area of trafficking in human beings in a dialogue with the National Coordinator from Brazil, Mrs. Cytntiom Bicalho Uchoa.

115. At the meeting of the Working group responsible for monitoring of the implementation of the National Strategy for Combat against Trafficking in Human Beings, held on December 25, the Action Plan was adopted. The Plan defines concrete activities to be implemented by the relevant stakeholders in the fight against trafficking in human beings for 2009. The Action Plan incorporated the Recommendations provided by the international stakeholders that the National Coordinator's Office has had a very good quality cooperation with in this field.

116. During December 2008 the Government's Office for Combating Trafficking in Human Beings organised six workshops named "Enhancing Mechanisms in the Fight against Trafficking of Human Beings", the two for each northern, central and southern regions of Montenegro. The goal of the above-mentioned workshops was strengthening capacities in prosecution, judiciary, local authorities, border police, customs employees, health institutions, social work centres, schools and NGO sector in the field of combating trafficking in human beings.

## **2. Trainings implemented by IOM in Montenegro in the period from 2004–2008 in the area of combating trafficking in human beings**

117. At training for trainers for the Border Police with the trainers from Interpol, 16 trainers received certificates for trainers. After that, IOM organised the training for 301 border policemen. During the project implementation, the Manual for Border Police for Combating Trafficking in Human Beings was written.

## **3. Seminar for counter clerks was held in Belgrade**

118. Within the scope of the project intended for judges and prosecutors, the Manual for Judges and Prosecutors in the field of countering trafficking in human beings was prepared. The training for trainers for 20 judges and prosecutors was organised, while after that 150 judges and prosecutors passed the same training.

119. In the scope of CARPO training Module 2 of the CARDS project, six people received certificates for trainers in the fields of illegal migration, smuggling and trafficking in humans. In the scope of the same project, the training for 50 high-ranking police inspectors related to the same subject was organised and during that period the manual for lecturers, as well as for the Police Academy attendants was produced.

120. Temporary Shelter for Victims of Trafficking – in the scope of this project various round tables and conferences for the representatives of relevant institutions were held. Those were: police, judiciary, prosecution, NGO sector. On that occasion IOM initiated development of the guidebook for issuing permit for temporary shelter for victims of trafficking, which initiative the Ministry of Interior Affairs adopted.

121. Two study visits to Vienna for members of the Special Team and Criminal Police, social work centres and NGOs were organised.

122. The training in the country, for NGOs and social work centres which work is closely connected to shelters, was held.

123. Four seminars related to Direct Assistance to Victims of Trafficking in Human Beings, together with international experts, were held for the police, social workers, health care workers and NGOs. Total of 80 participants attended the seminars.

124. Following the initiative of the Stability Pact Working Group for Combating Trafficking in Human Beings, on February 10th, 2004, the Sub-group for Fight against Trafficking in Children was formed within the Project Committee for the Fight against Trafficking in Human Beings. The Sub-group is represented by: Government's Office for Combating Trafficking in Human Beings, Ministry of Health, Labour and Social Welfare, UNICEF, Save the Children and Roma NGOs. The Government's Office for Combating Trafficking in Human Beings and UNICEF preside over the Sub-group, convene the meetings and give proposals for further activities in the field of combating trafficking in children. The Sub-group functions according to the principles of transparency, collaboration, cooperation and information flow, ensuring the best for the interests of the child.

125. In 2003 the Government of Montenegro, in cooperation with the USA Government, OSCE, Council of Europe and IOM, adopted the National Strategy for Fight against Trafficking in Human Beings (relating also to juveniles). It has also formed the Working Group for the implementation of the National Strategy and it is represented by State Prosecution Office, Ministry of Justice, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police Directorate (at the level of deputy ministers), as well as USA Embassy, Council of Europe and international organisations such as OSCE and IOM, as observers. Pursuant to the National Strategy provisions, the Working Group annually passes the Action Plan for combating trafficking in human beings (related to juveniles also) and it comprises three parts: prevention, criminal prosecution and protection of victims of trafficking in human beings.

126. With the reforms within the Ministry of Interiors, the Police Directorate took the responsibility in the field of combating trafficking in human beings, so that the issue of trafficking (including juveniles) is in charge of the Criminal Police Sector – the Department for the Fight against Organised Crime and Corruption.

127. Necessary financial resources for functioning of the Government's Shelter for the Victims of Trafficking in Human Beings are allocated from the Government's Office for Combating Trafficking in Human Beings budget, with the aim of providing shelter, food and other types of assistance to victims (firstly health care, social, psychological, legal and other kind of assistance).

128. Protector of Human Rights and Freedoms – Ombudsman Office was established in 2003. This institution was formed due to the need to ensure more efficient, institutional human rights and freedoms protection in Montenegro.

129. The main objective and aim of this institution work is human rights and freedoms protection, but also creating awareness on and environment for the rule of law, full and consistent exercising of rights and freedoms for the citizens, legal security, legality and transparency of the state authorities' work, before which the citizens exercise their rights. Acting upon the complaints submitted by citizens or upon his/her own initiative, Ombudsman investigates the violation of human rights and freedoms, when violated through acting or not-acting by the state bodies or other publicly authorised institutions. Ombudsman undertakes the activities and tries to find the means for remedy, in accordance with the law (art. 23). The Ombudsman acts in two directions: he/she gives early warnings about the citizens' human rights violation and assists in achieving these rights, as well as

contributing to democratic control of the executive power and its improvement and advancement.

130. The Ombudsman deals with the general issues important for the protection and improvement of human rights and freedoms and achieves collaboration with the appropriate organisations and institutions which also deal with human rights and freedoms. Every citizen, as well as children, may submit complaint to the Ombudsman without special formalities and expenses, with the aim to have faster and more efficient intervention. In Montenegro, there is no special Ombudsman for protection of the right of the child, but the Parliament will soon appoint a deputy Ombudsman who will be in charge of the issues exclusively related to the protection of the rights of juveniles.

## **V. Prevention (art. 9, paras. 1 and 2)**

131. In the period from 2006 to 2008, on a few occasions the Police Directorate presented the issue of juvenile delinquency to public through informative electronic and printing media, as well as through responses to questions by journalists from daily and weekly newspapers. The aim was to increase awareness about general prevention concerning juvenile delinquency.

132. However, with inspection, instructive and control activities, as well as by monitoring and analysis of the situation regarding juvenile delinquency in Montenegro, in last two years, it has been noted that former preventive activities regardless of positive results, were insufficiently effective. The scope and quality of prevention activities do not suit the real needs for efficient preventing and combating juvenile delinquency as a socially pathological phenomenon.

133. With the aim to improve the situation, through the implementation of the project entitled "Police in the Community", the Police Directorate developed a Pilot Project in which the measures for countering juvenile delinquency were foreseen. This project has been currently implemented in the regional Police Directorate units in Podgorica, Bar and Bijelo Polje and it is related to prevention of drug abuse in the first place. The implementation of the Pilot Project has been directly monitored, analysed and coordinated by the Criminal Police Department.

134. The Pilot Project foresees the prevention activities related to the work with juveniles in cooperation with all social and other associations and institutions such as Social Work Centres, schools, NGOs that deal with the issues concerning children and juveniles on any basis.

135. The Police Directorate has realised the activities concerning the increased control of prohibition of alcohol sales to minors, by assisting to Communal Police. Such activities are being implemented during the course of visits and control of catering facilities in the late-night hours, according to the Plan and activities of the regional Police Directorate units.

136. In order to create safer condition for children in traffic, a permanent road traffic police presence has now been ensured on the streets and crossroads near elementary and high schools. When planning and executing the actions related to traffic control, the focus is primarily on undertaking measures and activities that will create safer condition for children and minors in the traffic.

137. During 2008, traffic courses were organised in elementary schools, on which occasions the pupils received the fluorescent vests and books with basic information on traffic. In the scope of "Traffic Safety" campaign, implemented by the Police Directorate under slogan "Slow Down! There is but One Life", the thematic lectures in traffic safety

were organised in high schools. The goal was to create awareness among youngsters about present issues and their education in the sense of respecting laws in this field.

138. The judges running the family law cases are obliged to acquire special training in the field of the rights of the child (art. 316). The training is provided in the Judicial Training Centre, which is a special organisational unit within the Supreme Court of Montenegro. According to the Law on Education in Judiciary, the education is being organised according to the annual program and special education programmes (art. 8). The Juvenile Justice Law is being developed currently, which will regulate this area in a new way.

139. In the field of training judges and prosecutors, the Ministry of Justice in cooperation with the IOM has produced the Manual for Training Judges and Prosecutors. On a few occasions, immediately after publishing the Manual, there were trainings held that were attended by judges and prosecutors from few Montenegrin towns.

140. Regarding drug abuse prevention, proceeding from the OSCE recommendations in which the combat against organised crime has been listed as one of the priorities, while trafficking in human beings is especially emphasised, the Government adopted the Strategy for Combating Trafficking in Human Beings, as well as the Action Plan for combating trafficking in human beings. Montenegro is among the first in the region to adopt these documents in cooperation with the international organisations. This strategically important act consists of three parts: prevention, criminal prosecution and victims' protection. It has foreseen undertaking concrete legal, administrative and practical measures related to countering trafficking in human beings. In order to fully implement the National Strategy, the Government established the Working Group represented by the competent ministries, State Prosecutor and relevant international organisations from Montenegro. At the beginning of 2000, the NGO "Montenegrin Women's Lobby" established the SOS line for combating trafficking in human beings.

141. The content of preventive-education messages has to be adjusted to age and intellectual level. Methods and manner of providing information to young people need to be adjusted to their needs. That is the reason why the drawings, brochures and direct communication are unacceptable techniques for information providing. The approaches based on information providing are concerned with obtaining new information about different substances.

142. In Montenegro, the police role in the crime prevention, especially of drug abuse is very significant. The police has data about crime spread and trends in a certain area. It can also identify places that in certain areas contribute to crime spread and it has power greater than any other service dealing with this issue. The police is well informed and it contacts the offenders first and more than often the pre-delinquent minors. The main goal of the police work is to disrupt the illegal chain of drugs sale, seize drugs and prevent the access to drugs by undertaking legal measures.

143. The Government of Montenegro and the OSCE Mission have implemented the joint project named "Cooperation of Public and Private Sector in the Prevention of Sales and Sexual Exploitation of Minors in Travels and Tourism". On September 15, 2006, "The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism" was signed by the representatives of tourism economy. The Code's goal is to increase and ensure the commitment of tourism companies from Montenegro to join the efforts in the fight against trafficking in children or abuse of children.

144. At the beginning of 2004, in cooperation with the IOM and OSCE, the Government established the Shelter for the victims of trafficking in human beings, led by the activists from the NGO "Montenegrin Women's Lobby". From 2006, in its effort to enhance the system of the protection for the victims of trafficking in human beings, the Government has started to allocate resources necessary for the Shelter functioning in order to offer health

care, psychological, social and legal help as well as shelter, food and other kind of assistance to the victims of trafficking. Besides the above mentioned NGO, the shelter to victims of trafficking in human beings is being offered by NGO “Safe Women’s Home”, NGO “Centre Plus” and NGO “House of Hope”.

145. On October 18th, the day of fight against trafficking in human beings, the Ministry of Health, Labour and Social Welfare in cooperation with the National Coordinator for Combating Trafficking in Human Beings and OSCE Mission signed the Cooperation Agreement among State Prosecution Office, Ministry of Health, Labour and Social Welfare, Ministry of Education and Science, Police Directorate and NGOs “Montenegrin Women’s Lobby”, “Safe Women’s House” and “Centre Plus”. The goal is to provide more complete and comprehensive assistance, as well as to have better cooperation in countering trafficking in human beings in practice through prevention, education, criminal prosecution and protection of potential victims of trafficking in humans, especially women and children. This Ministry, in cooperation with the network of municipal social work centres, is the main responsible for numerous activities related to prevention of phenomena which are listed in the Optional Protocol, and for the protection of children victims of these punishable acts.

146. Representatives of the Ministry of Health, Labour and Social Welfare attended many working meetings, workshops, seminars, lectures and study visits, where they were trained and got acquainted with contemporary and best practices in this field.

147. Ministry of Education and Science has offered a full support to NGOs in the implementation of the projects that are being realised in elementary and high schools in Montenegro. The goal of the projects is to reduce drug and other substances abuse among children and youth, as well as to increase awareness about necessity and significance of the constant fight against addiction, with the belief that in that way it contributes to prevention of some more deviant behaviour

148. Besides legal framework, the Ministry of Education and Science of Montenegro, in cooperation with the partners from public and civil sector, has implemented projects and activities focussed on educational institutions. Most of these projects relate to violence prevention among schoolchildren. Based on the research conducted in eight elementary schools in Montenegro, the Ministry in cooperation with UNICEF, initiated the programme “School without Violence – Towards Safe and Enabling Environment”, primarily meant for schoolchildren, but also for teachers and other employees in schools, parents as well as for the whole community, all with the aim to decrease and prevent violence among schoolchildren population in Montenegro. Through this programme, schoolchildren and adults learn various techniques for solving conflicts in peaceful way, as well as how to act when violence happens.

149. School mediation which relates to peaceful conflicts` solving and ensuring better relationship between the sides in conflict is the part of the project “Peaceful Education” that the Ministry has been implementing with the support of and in cooperation with the Nansen Dialogue Centre. This year, the first generation of mediators have been trained in the scope of the project, which is being implemented in the elementary school “Marko Miljanov” in Podgorica.

150. Issues of violence and trafficking are being elaborated in School Parliaments through the project activities realised by the Child Rights Centre, while the activities related to trafficking issues are realised through the projects implemented by the Montenegrin Women’s Lobby. Also, in cooperation with the Institute for Public Health, the project entitled Programme for Prevention of Drug Abuse has been implemented in the elementary schools. In the scope of the projects there are workshops on the issue of “Risky Groups”, but also the issue of trafficking in humans is being elaborated and analysed. The Ministry

has cooperated with the Ministry of Health, Labour and Social Welfare, Social Work Centre, Children's Home "Mladost" from Bijela and Public Institution Bureau "Komanski most" from Podgorica.

151. Through various forms of art and literary competitions, with symbolic prizes, non-governmental organisations motivate children to form and affirm positive attitudes about peaceful conflicts` solving and violence prevention in schools. Ministry of Education and Science gives full support to NGOs in the implementation of projects in elementary and secondary schools, which aim to reduce drug and other psychoactive substances abuse among children and youth population, as well as to increase awareness about necessity and significance of the constant fight against addiction, with the belief that in that way it contributes to prevention of some more deviant forms of behaviour.

152. In the schools, through the programmes with certain mandatory and optional subjects, as well as through activities of psychological-pedagogy services and the work of the class supervisor, special attention is paid to prevention of children prostitution and pornography. The mandatory subject is Civic Education, while the optional subjects are those related to issues of violence and trafficking such as Healthy Life Styles in elementary schools and Individual in a Group, Sociology of Culture, Communication and Debate as the subjects in grammar schools.

153. Based on articles 8 and 21 of the Law on Broadcasting, the bylaws concerning children's right to expression are adopted. Pursuant to the Law on Media, Law on Broadcasting, Broadcasting Development Strategy in Montenegro, Council of Europe Convention on Trans-frontier Television and other positive, legal domestic and international acts, the decision on minimum programme standards in electronic media regulates that programme contents and its parts have to be based on the respect for dignity and basic human rights. They also cannot emit contents that may obviously cause damage to physical, spiritual and moral development of children and other vulnerable social groups.

154. The period from 23.00 to 06.00 has also been regulated, at which time TV programmes are meant exclusively for adults. The programs forbidden to be broadcasted outside that period are:

- Programme contents containing causeless violence scenes in any form or broadcasting scenes that can have effects of approval, promotion or even glorification of violence among the protected audience (minors)
- Explicit sex scenes and other contents that can have negative effects on the protected audience in the sense of proper acceptance of intimacy and making distinction between this and pornography, sexual abuse, incest and similar
- Unconventional language and expressions (swearing, offences)

155. Before broadcasting certain programme contents, radios stations must use auditory warnings about the inappropriateness of the programme for minors, as well as to publicly announce it when publicly publishing their programme schemes. Radio stations also must take into account the structure of its listeners' population when planning on broadcasting explicit dramatisations of sexual activities, as well as other contents that are not suitable for minors.

156. Electronic media must warn the public before broadcasting scenes inappropriate for the protected part of the audience, so that certain groups of spectators or listeners are warned about the contents that may be unsuitable and may cause damaging consequences, and which by their nature do not belong to programmes broadcasted in the regulated period. In this case TV stations must give auditory and visual warnings on inappropriateness of the programme contents for certain groups of spectators.



157. In announcing their programme schemes, TV stations must visually signal and mark the above mentioned programme contents that are unsuitable for minors. In daily newspapers and other printing media, the visual sign may be significantly small, depending upon the font of printed text and may be printed in black and white.

158. Electronic media must not ask opinions from children related to their private family issues, nor may they ask them something for which the answer cannot be reached in their domain of thinking.

159. Engaging children in advertisements, campaigns and for other promotional purposes has to be in accordance with the Rulebook for Advertising and Sponsorship in Electronic Media. In the electronic media reports, it is not permitted to reveal the identity of a child below the age of 16 who is involved in police investigation or court proceedings related to criminal acts, regardless of whether a child is victim, witness or the accused. The electronic media reports related to sexual offences against a minor must avoid anything that could in any way reveal the identity of the minor. Identity of a minor, legally convicted of a criminal offence, may be revealed in electronic media only if there is justified interest for the public to be acquainted with that fact.

160. The Rulebook for Advertising and Sponsorship in Electronic Media regulates the standards for advertising, quantity, type and timetable for advertising and sponsorship in electronic media programmes, in accordance with the Law on Media, Broadcasting Law, Broadcasting Development Strategy for Montenegro, Council of Europe Convention on Trans-frontier Television and other positive, legal domestic and international acts.

161. The rules for advertising foresee, inter alia, that advertisements must not contain the material that may cause social, moral or psychological disorder in children. They also forbid advertising of “hot line” services outside the regulated period, which was prescribed by the Decision on Minimum Programme Standards in Electronic Media in the Republic of Montenegro (art. 25).

162. It is forbidden to broadcast advertisements that contain scenes of sexual activities or violence as well as movies which are marked not to be watched below the age of 18, within the scope of children programmes, (art. 41).

163. According to the Law on Public Broadcasting Services, the obligation of the Radio and TV Montenegro is to produce and broadcast contents meant to be watched by all in the society, especially taking into account children and youth, members of national minorities, disabled persons, socially vulnerable groups and other specific groups.

## **VI. Protection of the rights of child victims (arts. 8 and 9, paras. 3 and 4)**

164. Regarding items 3 and 4 of articles 8 and 9 of the Optional Protocol concerning legal, judicial and administrative measures which are adopted in order to protect the interests and rights of child victims of offences forbidden by the Protocol in every phase of a criminal proceedings, and with respect for the right of the accused on just and unbiased trial, it is pointed out that the governing principle “the best interest of the child” has been built into the Family Law, in which the rights of the child as special rights have been regulated in our legislation for the first time. The Family Law prescribes that everybody has to take care of the best interest of the child in all activities concerning the child (art. 5). In cases regarding protection of the interest of the child and in parental cases (attaining or restricting parental rights) the court has to regard the best interest of the child as the governing and the most important principle (arts. 78–87).

165. The charges regarding protection of the right of the child may be pressed by: a child, child's parent, state prosecutor and the guardianship authority. The charges may be pressed in regards to all rights of the child recognised by this law, which are not protected by some other act (art. 354, item 1).

166. If between a child and its legal guardian there are contradictory interests, the child will be represented by a collision guardian. A child over the age of 10 who is able to form his/her opinion may alone or with the assistance from other person or an institution ask from the guardianship authority to have collision guardian appointed. A child over the age of 10 who is able to form his/her opinion may alone or with the assistance from other person or an institution ask from the guardianship authority to have temporary guardian appointed due to contradictory interest that may exist between a child and his/her legal attorney (art. 356).

167. The Family Law prescribes that the proceeding regarding protection of the rights of the child is urgent. In cases concerning confirmation or denial of fatherhood or motherhood, the guardianship authority may appoint a special guardian for the child, if between a child and parents there are contradictory interests. If the court makes estimation that a child has not been properly represented in cases concerning protection of the rights of the child or in parental cases, it is obliged to appoint a temporary guardian for the child (art. 357, item 2).

168. As said in the above mentioned paragraph, the Family Law prescribes that if a child is able to form his/her opinion, he/she has the right to express that opinion. The competent authority confirms the child's opinion in an informal conversation, in an appropriate place, in cooperation with a school psychologist or a guardianship authority, family counselling centre or other institution specialised for dealing with family issues, and in presence of the person that a child itself chooses (art. 67).

169. The Family Law guarantees a child the right to express its opinion in different circumstances. The general principle is that a child who is able to form its opinion has the right to express it (art. 67). It is entitled to duly obtaining all the information necessary for forming its opinion. The opinion of the child has to be paid due attention in regards to all the issues of concern for it and all the proceedings in which the decisions on its rights will be passed, in accordance with its age and maturity. A child over the age of 10 may freely and directly express its own opinion in all the proceedings in which the decisions on its rights will be passed. A child over the age of 10 may alone, or with the assistance from other person or an institution, address the court or the administrative body and ask help in exercising its right to freely express its opinion. The competent authority confirms the child's opinion in an informal conversation, in an appropriate place, in cooperation with a school psychologist or a guardianship authority, family counselling centre or other institution specialised for dealing with family issues, and in presence of the person that a child alone chooses.

170. A set of measures aimed at the protection of the interest of the child is foreseen in juvenile legislation field. Criminal Procedure Law, which contains special provision regarding treatment accorded to minors, foresees that during the course of actions attended by minors, and especially during the hearing, participants in the procedure are obliged to act cautiously, taking into account psychological development, sensibility, personal features and minors' privacy, so that the criminal prosecution does not cause damaging consequences on minors' development (art. 468, item 2). Without the court's permit the information on the course of the criminal proceeding must not be published, nor may the decision brought in the proceeding. Only some information about the proceeding or a part of the decision with the approval from the court may be published, but even in this case the name and other data about a minor based on which the conclusion about the identity may be drawn, must not be given (art. 475). The bodies involved in the proceeding against a minor, as well as other organs and institutions that are asked to submit information, reports or

opinions, are obliged to act urgently so that the proceeding is finished as soon as possible (art. 476).

171. With the decision brought in extra-judicial proceeding, the court may restrict the parental right to a parent who exercises his/her parental rights and duties unconscientiously. By restricting the parental right a parent may be deprived of exercising one or more rights and duties towards a child, except the duty to be responsible for a child's welfare. The court may deprive a parent of the right to live with a child if he/she neglects it significantly or due to the circumstances in the family which can jeopardise a proper child's growth and development (art. 85).

172. It is considered that a parent neglects a child when he/she does not care sufficiently about its nutrition, hygiene, clothes, medical care, attending school or when he/she does not prevent a child from socialising with bad company, stroll, begging and theft. The proceeding regarding restriction of the parental right is initiated by the court, ex officio, at the proposal of a guardianship authority, other parent or the child.

173. Parents who misuse parental rights or roughly neglect parental duties will be deprived of parental rights. Misuse of rights is considered to be physical, sexual or emotional child abuse, as well as exploitation of a child labour or labour which jeopardises morale, health or education of the child i.e. the labour forbidden by the law. Parents are considered to misuse their parental rights if they motivate a child to committing criminal acts or developing bad habits etc.

174. A parent neglects parental duties if he/she abandons the child or does not take care about basic necessities of the child; if he/she avoids to take care about child's welfare, avoids personal contacts with the child he/she does not live with or prevents personal contacts of the child and the parent the child doesn't live with; if he/she intentionally and unjustifiably avoids to create conditions for mutual life with the child who is placed in a social centre or in a children protection institution. A parent may be deprived of the parental rights in regards to all children, and in special circumstances he/she may be deprived of the parental rights regarding an individual child (art. 87).

175. The decision on deprivation of parental rights is brought by the competent court in the extra-judicial proceeding. The proceeding may be instituted by another parent, guardianship authority or by the State Prosecutor.

176. Activities concerning protection of the rights of the child from abuse and neglect are performed in social work centres. In cooperation with UNICEF and UNHCR, multidisciplinary operation teams are established in seven out of ten social work centres. The National Action Plan for Children to 2010 foresees establishing three multidisciplinary teams in the remaining three social work centres in Plav, Pljevlja and Rožaje. In the scope of the teams' work, 908 children, victims of abuse and neglect, have been analysed so far.

177. In cooperation with UNICEF, the Ministry of Justice of Montenegro has been implementing the project "Applying Alternative Measures and Sanctions for Juveniles in Conflict with the Law". The aim of the project is to apply alternative ways of solving cases and to expand possibilities of their application, as in democratic countries. The project's realisation has started in April 2004 as a part of the programme "Children's Chance for Change" financed by SIDA. Bearing in mind that respect for human rights and freedoms is one of the basic values of Montenegrin constitutional order, it may be noted that in the context, the rights of the child have significant place in the scope of economic, social and cultural rights and freedoms. The goal of the above-mentioned project is to develop a diversion pilot model in the Municipality of Bijelo Polje, where the juveniles in conflict with the law would be "diverted" from judicial and administrative procedure and prevented from committing new offences, assisted in rehabilitation and in diverting their life into positive direction and activities. Two courses for mediation between victims and mediators

were carried out, as well as the seminar – training for trainers. Ministry of Justice adopted the training programme for mediators in criminal cases, specialised for mediation between a victim and a juvenile offender. 38 mediators are appointed in the field of juvenile justice. They were all trained with the support of UNICEF. The Centre for Family and Children Support in Bijelo Polje and the Mediation Centre in Podgorica are established.

178. Provisions regarding the implementation of educational orders are inserted into the Criminal Law (“Official Gazette of the Republic of Montenegro”, No.: 70/03 and No.: 47/06), which are the subject of the special Rulebook. Applying the educational orders regulates the victim-offender reconciliation so that the damaging consequences, wholly or partially, are removed by indemnity, apology, labour or some other way, which would then enable the offender to attend school regularly or to go to work regularly, to get involved into humanitarian work or some other work of social, local or ecological character. It would also enable juvenile offenders’ research and make possible for them to start with fight against alcohol and drug addiction by their inclusion into individual and group treatments in an appropriate health care institution or counselling centre. The goal of the juvenile justice system reform, as a segment of overall justice reform in Montenegro, through setting up the legal assumptions for enhancing protection of rights of children in risk and children in conflict with the law, will be realised by adopting a separate Juvenile Justice Law and the bylaws in accordance with the relevant international standards.

179. Multidisciplinary teams are made of professionals from social care services, health care services, judiciary, prosecution, police, education field and NGO sector. In order to increase the quality of their work, continuing trainings of professionals from all sectors as regular supervision activities are carried out. This model has been proved to be very successful which is shown in the evaluation of the project performed by UNICEF.

180. The Constitution of Montenegro guarantees the right to freedom of expression through speech, writing and painting or in other manner. The right to freedom of expression may be restricted only if it jeopardises the right of a person to dignity, reputation and honour or of it jeopardises public interest of Montenegro (art. 47).

181. The Constitution of Montenegro guarantees freedom of press and other forms of public information. It guarantees the right to set up the newspapers and other forms of public information, without approval, by registering at the competent authority. The Constitution guarantees the right to response to correction of untrue, incomplete or incorrectly transmitted information violating someone’s right or interest. It also guarantees the right to indemnity if the damage was caused by publishing incorrect information or data (art. 49).

182. There is no censure in Montenegro (art. 50, item 1).

183. Regarding the rights of child victims in the media, the rights are regulated by the following laws: Media Law — “Official Gazette of the Republic of Montenegro” No.: 51/02 and 60/02, Law on Broadcasting — “Official Gazette of the Republic of Montenegro” No.: 79/08 and 60/02 and Law on Broadcasting Services in Montenegro — “Official Gazette of Montenegro” No.: 79/08.

184. By ratifying the European Convention on Transfrontier Television, Montenegro accepted the legal framework that enables free broadcasting of trans-frontier television programmes. The Convention provisions relates to freedom of expression, reception and rebroadcast of programmes, prohibiting pornography, violence and instigating racial hatred, juveniles protection etc.

185. Article 22 of the Media Law stipulates the obligation of protection of juveniles’ integrity in the media. Programme contents that may cause damage to health, moral, intellectual, emotional and social development in children must be clearly and visibly

marked as such in advance and distributed in a way that will be the least possible for children to use. The media must not publish the identity of a juvenile under the age of 18 who are involved in criminal acts, be it victims or offenders. The same article regulates the exception that the identity of a juvenile convicted for criminal offence may be revealed if there is justified public interest for it.

186. The Broadcasting Law regulates the field of broadcasting and the work of electronic media, as a specific form of the right to freedom of expression based on the principles of freedom, professionalism and independence of electronic media. It also regulates the prohibition of censure or illegal involvement in the media work, competition development and pluralism in the broadcasting field, objectivity, non-discrimination and other forms of media work in the context of affirmation of basic human rights and freedoms.

187. Every broadcasting company is responsible for the contents of the broadcasted programmes in accordance with this law and the Media Law. There are specific rights and obligations of the broadcasting companies which are prescribed and these are: obligation to provide public with true, complete, unbiased and duly information about events in the country and abroad, respect for and promotion of basic human rights and freedoms, democratic values and institutions, pluralism of ideas, improving public dialogue culture and respect for language standards, privacy and dignity of citizens (art. 56 of the Broadcasting Law).

188. Item 3 in the article 95 of this Law stipulates the obligation of a broadcasting company to produce and broadcast programmes for all in the society without discrimination, especially taking into account specific social groups such as children and youth, national minorities, handicapped persons, socially vulnerable groups, people with health problems, etc.

189. The Code of Ethics for Montenegrin Journalists, signed by all relevant journalists' associations in Montenegro on May 25, 2002, outlines 12 basic principles of professional journalism. It is said that "a journalist has to protect juveniles' integrity, as well as the integrity of the handicapped or in any other way different people" (Principle 9). In the Guidelines for the Code implementation, the interest of the child is stressed in regards to the principle 9:

- Media are obliged to act in accordance with the principles contained in the UN Convention on the Rights of the Child and to pay special attention when investigating information which concern children's interests
- Media are obliged to pay special attention when interviewing and recording juveniles and taking photos of them

## **VII. International aid and cooperation (art. 10)**

190. Signatory states will take all the necessary steps to strengthen international cooperation by the means of multilateral, regional and bilateral agreements concerning prevention, revealing, investigation, prosecution and sanctions for persons responsible for acts involving the sale of children, children prostitution, children pornography and tourism generating income from sex with children. Signatory states will also improve international cooperation and coordination among their state bodies, national and international non-governmental organisations and international organisations.

191. Signatory states will enhance international cooperation in order to help children-victims in their physical and emotional recovery, social reintegration and return to their mother country.

192. Signatory states will enhance and strengthen international cooperation so that they could deal with the key causes, such as poverty and underdevelopment, which contribute to availability of children for sale, children prostitution, children pornography and tourism generating income from sex with children.

193. The criminal legislation is valid for anyone who commits a criminal offence on its territory. Article 25 of the Criminal Procedure Law – Official Gazette of the Republic of Montenegro No.: 71/03, prescribes that the territorial jurisdiction falls under the court on which territory a criminal offence was committed or a criminal attempt occurred. Item 3 stipulates that if a criminal offence was committed or if a criminal attempt occurred on the territories of various courts or at the border lines of the courts' territories or if it is not known on which territory a criminal offence was committed or a criminal attempt occurred, the jurisdiction falls under the court which initiated the proceeding first upon the request of prosecutor. If the proceeding has not been initiated yet, the jurisdiction will fall under the court which first receives the request for initiating the proceeding. Article 31 of the Law on International Legal Aid in Criminal Matters prescribes that if a criminal proceeding is conducted in Montenegro against a person who is abroad or if a person abroad is sentenced by the relevant court in Montenegro, the Minister of Justice may submit the request for extradition.

194. According to article 26 of Criminal Procedure Law, territorial jurisdiction for the act committed on a domestic ship or on a plane falls under the court on which territory there is a port. In other cases, when a criminal act was committed on a domestic ship or a domestic plane, the jurisdiction falls under the court on which territory there is a head port for ships or planes or a domestic port where the ship or the plane stops first.

195. When the place of a crime committed is not known, territorial jurisdiction falls under the court where the accused has the place of residence. If the place of the crime committed or place of residence are not known, or both places are outside Montenegro, the jurisdiction falls under the court where the accused is apprehended or where the accused turns him/herself.

196. Article 29 of the CPA prescribes that if a person committed a criminal offence in Montenegro or abroad, the court with the jurisdiction is the court authorised for the criminal offence committed in Montenegro.

197. Regardless of conditions listed in article 1 of the Law in International Aid for Montenegro, the article 34 prescribes that if a foreigner with the place of residence in Montenegro committed a criminal offence, criminal documents or records for conducting criminal prosecution and trial may be ceded to the state the foreigner comes from, unless the foreign country objects to it. The decision on ceding the criminal prosecution may be made for the criminal offences with 10 years prison sentence, as well as for public traffic offences.

198. Article 50 of the Law on International Aid for Montenegro prescribes that in criminal cases the data concerning forged money, money laundering, production, procession and sale of drugs and poisons, as well as other criminal offences are foreseen to be centralised according to international treaties. The court where the criminal proceeding is conducted is obliged, without delay, to submit to the INTERPOL National Central Bureau, the data about the criminal offences and the offenders, while the first instance court is obliged to deliver a verdict.

199. At the proposal of domestic judiciary bodies or the foreign ones, the Ministry of Justice of Montenegro will obtain the texts of laws that are or were valid in other countries, and if necessary the data and information about certain legal issue.

200. Extradition of accused or convicted persons is requested or performed in accordance with the Law on International Legal Aid in Criminal Matters for Montenegro. The Law on International Legal Aid in Criminal Matters for Montenegro regulates legal cooperation with other states in the criminal-legal field. Simultaneously, this kind of cooperation is arranged by the international treaties, as well as by bilateral and numerous multilateral conventions (United Nations or Council of Europe). Provisions from the international treaties have a primary position in comparison with the provisions of the Law on International Legal Aid in Criminal Matters for Montenegro, which implies that its provisions are applied only if there isn't the international treaty or if certain issues are not regulated by the provisions of international treaties. The above-mentioned law foresees cooperation with other states in regards to all forms of international criminal assistance generally (procedure activities such as – hearing the accused and witnesses, visit to the crime scene, judicial examination of the crime scene, search, seizure, submission of evidence and other material regarding the committed criminal offences), extradition of accused and convicted persons, ceding and taking charge of the criminal prosecution, execution of verdicts delivered abroad.

201. According to the Law provision of the international legal assistance is not conditioned by the existence of the international treaties, including extradition. In case of extradition of accused and convicted persons, it should be pointed out that if the extradition of a person is refused, there is a possibility to conduct the prosecution regarding the committed criminal offence in Montenegro.

### **VIII. Other legal provisions (art. 11)**

202. On the grounds of succession Montenegro has acceded to International Covenant on Civil and Political Rights including both Optional Protocols, International Covenant on Economic, Social and Cultural Rights, The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention on the Elimination of All Forms of Racial Discrimination, International Convention on the Elimination of All Forms of Discrimination of Women and Optional Protocol, Convention on the Rights of the Child including both Optional Protocols, UN Convention against Trans-national Organized Crime from 2000 and Protocol against the Smuggling of Migrants by Land, Sea and Air and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Hague Convention on the Civic Aspects of International Child Abduction, Convention on the Prevention and Punishment of the Crime of Genocide, Apartheid Convention, Convention against Apartheid in Sports, Convention on Refugee Status, Convention on the Status of Stateless Persons and Geneva Conventions. Montenegro is the state signatory to International Convention on the Protection of the Rights of All Migrant Workers, International Convention for the Protection of All Persons from Enforced Disappearance, Convention on the Rights of Persons with Disabilities and Optional Protocol on the Rights of Persons with Disabilities. It accepted Council of Europe Conventions: European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with the two Protocols.

203. A significant number of laws concerning special protection and the best interests of the child are applied in Montenegro, such as:

Constitution of Montenegro (“Official Gazette of Montenegro”, No.: 01/07)

Family Law (“Official Gazette of the Republic of Montenegro”, No.: 01/07)

- Law On Social And Child Protection (“Official Gazette of the Republic of Montenegro”, No.: 78/05)
- Inheritance Law (“Official Gazette of the Socialist Republic of Montenegro”, No.: 4/76, 10/76, 22/78, 34/86, 64/06, “Official Gazette of Montenegro”, No.: 47/08)
- Law on Children’s Week (“Official Gazette of the Socialist Republic of Montenegro”, No.: 26/73, 29/89, 39/89, 48/91, 17/92, 27/94)
- Labour Law (“Official Gazette of Montenegro”, No.: 49/08)
- Law on Health Care (“Official Gazette of the Republic of Montenegro”, No.: 39/04)
- Law on Health Insurance (“Official Gazette of the Republic of Montenegro”, No.: 39/04, 23/05, 29/05 and “Official Gazette of Montenegro”, No.: 12/07, 13/07)
- The Law on Protection and Rights of Mentally Ill (“Official Gazette of the Republic of Montenegro”, No.: 32/05)
- General Law on Education (“Official Gazette of the Republic of Montenegro”, No.: 64/02, 31/05, 49/07)
- Elementary School Law (“Official Gazette of the Republic of Montenegro”, No.: 34/91, 48/91, 17/92, 56/92, 32/93, 27/94, 2/95, 20/95)
- Law on Elementary Education (“Official Gazette of the Republic of Montenegro”, No.: 64/02, 49/07)
- Law on Gymnasium (“Official Gazette of the Republic of Montenegro”, No.: 64/02, 49/07)
- Secondary School Law (“Official Gazette of the Socialist Republic of Montenegro”, No.: 28/91 and “Official Gazette of the Republic of Montenegro”, No.: 35/91, 56/92, 27/94)
- Special Education Law (“Official Gazette of the Republic of Montenegro”, No.: 56/92)
- Law on Education of Children with Special Needs (“Official Gazette of the Republic of Montenegro”, No.: 80/04)
- Law on Vocational Education (“Official Gazette of the Republic of Montenegro”, No.: 64/02, 49/07)
- Criminal Procedure Law (“Official Gazette of the Republic of Montenegro”, No.: 71/03, 07/04, 47/06)
- Criminal Law (“Official Gazette of the Republic of Montenegro”, No.: 70/03, 13/04, 47/06, “Official Gazette of Montenegro”, No.: 40/08)
- Law on Execution of Criminal Sanctions (“Official Gazette of the Republic of Montenegro”, No.: 25/94, 29/94, 69/03, 65/04)
- Law on Extra-judicial Procedure (“Official Gazette of the Republic of Montenegro”, No.: 27/06)
- Law on Police (“Official Gazette of Montenegro”, No.: 28/05)
- Law On Registers Of Temporary And Permanent Residence (“Official Gazette of Montenegro”, No.: 47/08)
- Law on Asylum (“Official Gazette of the Republic of Montenegro”, No.: 45/06)
- Law on Personal Data Protection (“Official Gazette of Montenegro”, No.: 47/08)
- Montenegrin Citizenship Law (“Official Gazette of Montenegro”, No.: 13/08)



Law on Protector of Human Rights and Freedoms (“Official Gazette of the Republic of Montenegro”, No.: 41/03)

Law on Protection of National Minorities Rights and Freedoms (“Official Gazette of the Republic of Montenegro”, No.: 31/06, 51/06, 38/07)

Media Law (“Official Gazette of the Republic of Montenegro”, No.: 51/02, 62/02)

Broadcasting Law (“Official Gazette of the Republic of Montenegro”, No.: 51/02, 62/02, 46/04, 56/04, 77/06, “Official Gazette of Montenegro”, No.: 50/08)

Law on Montenegrin Army (“Official Gazette of the Republic of Montenegro”, No.: 47/07)

Law on Defence (“Official Gazette of the Republic of Montenegro”, No.: 47/07)

Law on NGOs (“Official Gazette of the Republic of Montenegro”, No.: 27/99, 09/02, 30/02, “Official Gazette of Montenegro”, No.: 11/07)

Law on Public Order and Peace (“Official Gazette of the Republic of Montenegro”, No.: 41/94)

Administration Procedure Law (“Official Gazette of the Republic of Montenegro”, No.: 23/04)

Law on Environment (“Official Gazette of Montenegro”, No.: 48/08)

Law on Mediation (“Official Gazette of the Republic of Montenegro”, No.: 30/05)

The international instruments concerning protection and promotion of human rights and freedoms, including humanitarian right, ratified by FRY/Serbia and Montenegro, of which Montenegro became a successor to after regaining independence, we would like to point out the following.

### **Main UN Convention and Protocols concerning protection and promotion of human rights and freedoms**

International Covenant on Civil and Political Rights, adopted on December 16th, 1966. Official Gazette of SFRJ (International treaty) 7/71

Optional Protocol to the International Covenant on Civil and Political Rights adopted on December 16th, 1966, Official Gazette of SFRJ (International treaty) 7/1971 & Official Gazette of FRJ (International treaty) 04/01

Second Optional Protocol to the International Covenant on Civil and Political Rights, with the goal of abolishing the death penalty, adopted on December 16th, 1966, Official Gazette of FRJ (International treaty) 04/01

(Second) Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted on May 25th, 2000, Official Gazette of FRJ (International treaty) No.: 7/2002-58

International Covenant on Economic, Social and Cultural Rights, adopted on December 16th, 1966. Official Gazette of SFRJ International treaty) 7/71

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted on December 10th, 1984, Official Gazette of SFRJ (International treaty) 9/91-3

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted on 18th, 2002, Official Gazette of Serbia and Montenegro (International treaty) 16/2005-28 & 2/2006-60

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted on December 21st, 1965, Official Gazette of SFRJ (International treaty) No.: 31/67-889 & 6/67-747

International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted on December 18th 1979., Official Gazette of SFRJ (International treaty) No.: 11/81-613

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted on December 10th, 1999, Official Gazette of FRJ (International treaty) No.: 13/2002-46

Convention on the Rights of the Child (CRC), adopted on November 20th, 1989, Official Gazette of SFRJ (International treaty) No.: 15/90-8 & 4/96-68

(First) Optional Protocol to the Convention on the. Rights of the Child on the involvement of children in armed conflict, adopted on May 25th, 2000, Official Gazette of SRJ (International treaty) No.: 7/2002-64

### **Other UN Conventions concerning human rights protection**

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others from 1950

Final Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

UN Convention against Transnational Organized Crime from 2000 and Protocol against the Smuggling of Migrants by Land, Sea and Air and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

International Convention against the Recruitment, Use, Financing and Training of Mercenaries, December 4th 1989

### **Conventions and Protocols – The Hague Conference on Private International Law (HCCH)**

Hague Convention on the Civil Aspects of International Child Abduction, signed in Hague on October 25th, 1980, Official Gazette of SFRJ (International treaty) No.: 7/91-19

Convention No. 29 concerning Forced Labour, adopted in 1930

Convention (No. 105) Concerning the Abolition of Forced Labour, adopted in 1957

Convention No. 138. Minimum Age Convention, adopted in 1973

Convention No. 182 on the Worst Forms of Child Labour, adopted in 1999

Council of Europe Conventions (*updated on October 17, 2008*)

### **Family Law – children’s rights (legal cooperation in civic matters)**

European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, Official Gazette of FRJ (International treaty) No.: 1/2001-38

- European Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of Serbia and Montenegro (International treaty) No.: 9/2003-16 & 5/2005-31
- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of SCG (International treaty) No. 9/2003-16 & 5/2005-31
- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of SCG (International treaty) No.: 9/2003-16 & 5/2005-31
- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of SCG (International treaty) No.: 9/2003-16 & 5/2005-31
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- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of SCG (International treaty) No.: 9/2003-16 & 5/2005-31
- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of SCG (International treaty) No.: 9/2003-16 & 5/2005-31
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Official Gazette of SCG (International treaty) No.: 9/2003-7 & 5/2005-31
- The European Charter for Regional or Minority Languages, Official Gazette of SCG (International treaty) No.: 18/2005-3
- Protocol No.: 1 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Official Gazette of SCG (International treaty) No.: 9/2003-7
- Protocol No.: 2 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Official Gazette of SCG (International treaty) No.: 9/2003-7 and 5/2005-31
- Protocol No.: 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of SCG (International treaty) No.: 9/2003-16 & 5/2005-31
- Framework Convention for the Protection of National Minorities, Official Gazette of FRJ (International treaty) No.: 6/98-3
- Protocol No.: 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of SCG International treaty) No.: 9/2003-16 & 5/2005-31
- Protocol No.: 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of SCG (International treaty) No.: 9/2003-16 & 5/2005-31
- Protocol No.: 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of SCG (International treaty) No.: 5/2005-25 & 7/2005-47
- Council of Europe Convention on Action against Trafficking in Human Beings, Official Gazette of SCG International treaty) No.: 4/2008-38