

**Government of Montenegro**

**Ministry of European Integration**

## **Questionnaire**

Information requested by the European Commission to the Government of Montenegro for the preparation of the Opinion on the application of Montenegro for membership of the European Union

– ADDITIONAL QUESTIONS –

## **II Human rights**

Minister:

**Gordana Djurovic**

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## **POLITICAL CRITERIA**

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**50. (Ref to Q. 74 see also Q. 96 of the Ch. 23): Should not Council of Europe's conventions on exercise of children's rights, protection against sexual exploitation and adoption of children, which according to our information was signed in June 2009 be included in the list?**

Considering the fact that the question 74 was the following: „Provide a list of human rights instruments and related protocols **ratified by Montenegro along with the date of signature and ratification...**”, the list contains, as it was requested, the instruments and protocols that have been **ratified**, while those international instruments that have been signed **but not still ratified** are not contained in the list.

The European Commission information with regard to the signature of the Council of Europe Convention on Children's Rights, protection against sexual exploitation and on adoption is correct. Beside mentioned three Council of Europe conventions, Montenegro is the signatory of the following international instruments which is the depository of Council of Europe, and which are directly or indirectly related to the protection and promotion of human rights and fundamental freedoms.

Title	Date of signature	Phase of the procedure
European Convention on the Exercise of Children's Rights	18 June 2009	Signed
Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine	9 February 2005	The instrument of ratification is developed and submitted to the Permanent Mission of Montenegro to CoE for the depository
Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin	9 February 2005	The instrument of ratification is developed and submitted to the Permanent Mission of Montenegro to CoE for the depository
Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research	9 February 2005	Signed
Council of Europe Convention on the avoidance of statelessness in relation to State succession	11 May 2007	The Parliament has adopted the Law on ratification
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	18 June 2009	Signed
European Convention on the Adoption of Children (Revised)	18 June 2009	Signed
Council of Europe Convention on Access to Official Documents	18 June 2009	Signed

**51. (Ref to Q. 76 see also Q. 62 of the Ch. 23):**

**- Please provide details on staff and budget for the Ombudsman.**

During 2008 and 2009, the total number of employees and officials in the Ombudsman Office was from 21 to 24 and at the end of 2009 the total number was 22 employees according to the payment list. The funds allocated according to the Law on Budget of Montenegro for 2008 was 367.235, 26€ (out of which 252.720.01 for incomes and contributions), and for 2009 it was 375.362, 65€ (out of which 244.787,40 for incomes and contributions).

The Rulebook on Interior Organisation and Job Description of the administrative service of the Ombudsman, (article 4) stipulates the following 18 personnel positions: Secretary of the Ombudsman, Advisor to the Ombudsman, Advisor to the Ombudsman for the state administration, Senior Adviser I to the Ombudsman, Adviser for the local self government, Adviser to the Ombudsman for judiciary, prosecution and execution of criminal sanctions, Adviser to the Ombudsman for the protection of minority and religious rights, gender equality and other equalities of citizens, Adviser to the Ombudsman for the protection of children rights and social protection, social insurance and labour relation, Senior Adviser I for public relations and international cooperation, Senior Adviser I to the Ombudsman, Senior Adviser II to the Ombudsman, Adviser for the finances, State employee I or IV- archivist; State employee IV – technical secretary; State employee IV-PC operator; State employee VI- driver/courier; State employee IV-application officer-operator; Senior state employee III for maintenance of information technologies to the Ombudsman.

**- Please provide an update on the data for 2009 regarding complaints, recommendations and implemented recommendations of Ombudsman. Please explain the reasons why the figures on cases for 2009 are considerably lower than in previous years.**

Ombudsman received 525 complaints in 2009.

Acting upon complaints the Ombudsman made the following:

- in 102 cases it suspended the procedure, because the violation has been eliminated during the interrogation procedure;
- in 137 cases it was determined that there wasn't the violation of rights;
- in 152 cases the Ombudsman wasn't in charge for the proceeding;

In 18 cases the Ombudsman made the opinion with the recommendation after the interrogation procedure.

Out of total number of recommendations 6 of them have been respected in due course; for 6 recommendations the deadline hasn't expired for the proceeding in the reported year; 3 recommendations have been respected after the deadline; in 3 cases in which the recommendations have not been accepted the court proceeding has started (in which the meritory decision will be adopted).

According to the remaining complaints, the Ombudsman suspended the procedure on the grounds of legal reasons and referring to the usage of other remedies, and in few cases there was no legal base for the action of Ombudsman (for example: the request was to review the legality of court decisions and similar)

**- When will the amendments to the law on the Ombudsman be adopted?**

During the work on the Draft Law on the Amendments to the Law on Ombudsman, due to a number of amendments, the working group, suggested by the Secretariat for Legislative, has started working on the new text of the Law on Ombudsman. The adoption of the proposal for the Law is expected altogether with the adoption of the proposal for the Law on Protection against Discrimination (which envisages the Ombudsman to be the national mechanism for the protection against discrimination), in the first quarter of this year, according to the Government Agenda for 2010.

**- Please specify what is planned to increase the independence of the Ombudsman.**

Draft Law on Ombudsman of Montenegro, which is in preparation, envisages that the Ombudsman submits a proposal for budget allocations to the Parliamentary competent working body (Committee for Human Rights), which, based on this proposal, submits the request for budget allocation for the work of this Institution. According to the current law, the proposal for the budget allocation is submitted to the Government of Montenegro.

Financial means for the work of Ombudsman for the prevention of torture and other forms of inhuman or degrading treatments and punishment, as well as for the protection against discrimination, are shown as separated programs within the budget of this institution.

The Draft Law envisages that the Ombudsman has at least 4 deputies, who will be in charge for certain areas of concern, aimed at strengthening of administrative capacities.

**52. (Ref to Q. 77): Is there an independent body dealing with Fundamental rights such as a Commission for the Protection of Fundamental rights based on the "Paris principles". (This function, or at least parts of it, seems to be assumed by the Ombudsman (Protector of Human Rights)).**

Beside the Ombudsman, there is no other independent body of this kind at the national level.

Law on Banks, Article 92 (Official Gazette of Montenegro, 17/2008) envisages the Bank Ombudsman for the protection of the rights of bank clients, with the following competencies:

A client of a bank or micro-credit financial institution and credit union that is not satisfied by any document, action or failure to act by the bank or micro-credit financial institution and credit union may refer to the protector of client's rights (hereinafter referred to as the banking ombudsman), as an independent person that participates in out of court procedure in resolution of disputed issues between the clients and banks and/or micro-credit financial institutions and credit unions.

The banking ombudsman shall be elected by the Parliament of Montenegro upon the proposal of the committee competent for finances.

A person, who is not connected with banks and/or micro-credit financial institutions and credit unions, having significant experience in the area of banking operations and in whose fairness may not be doubted, may be elected as the banking ombudsman.

The banking ombudsman shall:

- Review clients' objections and propose to disputed parties a settlement or other way of completion of a dispute;
- Give recommendations to banks and micro-credit financial institutions and credit unions for the improvement of their relationships with clients;
- Advise clients with respect to the further conduction of the dispute;
- Perform other operations contributing to accomplishment of protecting the rights of clients.

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- The banking ombudsman shall adhere, in its operations, to the principles of fairness, independence, justice, equity, availability, consistency and informality.
- A client of the bank may refer to the banking ombudsman only if it has previously used all legal possibilities of protection of its rights in the proceedings against the bank and/or micro-credit financial institution and credit union.
- The proceedings before the banking ombudsman shall not prevent the client from commencing the dispute under the same matter before the competent court.
- The Central Bank shall prescribe in more details in its regulations, the conditions that the banking ombudsman should meet; principles on which the operations of the banking ombudsman are based; the manner of provision of material and technical conditions for its operations; and the procedure of the protection of clients' rights before the banking ombudsman.

**53. (Ref to Q. 78): Please provide details on Right of life case law.**

On the following pages the table review is given for the court practice:

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**Article 143 of the Criminal Code - Homicide**

Year	Number of criminal proceedings - Article 143	Number of defendants	Number of convictions	Prison	Security Measure for obligatory psychological treatment and keeping in the health institution	Exceed of the necessary defence	Number of verdict of release – necessary defence	Number of verdict of release due to lack of evidence	Suspension	Number of unfinished matters
2005	22	23	5	5	-	-	1	1	-	15
2006	29	33	9	9	-	-	-	1	1	18
2007	25	25	18	10	1	-	-	1	-	22
2008	27	30	14	14	-	-	-	1	-	12
2009	27	35	11	16	1	-	-	3	-	13
<b>total</b>	130	146	57	54	2	-	1	7	1	80

**Article 144 of the Criminal Code - Severe Homicide**

Year	Number of criminal proceedings - Article 143	Number of defendants	Number of convictions	prison	Security Measure for obligatory psychological treatment and keeping in the health institution	Exceed of the necessary defence	Number of verdict of release – necessary defence	Number of verdict of release due to lack of evidence	Suspension	Number of unfinished matters
2005	16	38	3	3	-	-	-	1	1	11
2006	24	28	8	6	2	-	2	1	-	15
2007	24	31	11	10	1	-	-	2	-	11
2008	28	39	15	15	-	-	-	-	-	13
2009	21	27	11	10	1	-	-	-	-	10
<b>Total</b>	113	163	48	44	4	-	2	4	1	60

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**Article 145 of the Criminal Code - Manslaughter**

Year	Number of criminal proceedings - Article 143	Number of defendants	Number of convictions	Prison	Security Measure for obligatory psychological treatment and keeping in the health institution	Exceed of the necessary defence	Number of verdict of release – necessary defence	Number of verdict of release due to lack of evidence	Suspension	Number of unfinished matters
2005	-	-	-	-						-
2006	-	-	-	-						-
2007	2	4	1	1						1
2008	1	1	1	1						-
2009	-	-	-	-						-
<b>Total</b>	3	5	2	2						1

Note: The number of proceedings is not adequate to the number of criminal offences of homicide in one year, considering the fact that judicial procedures last more than a year.

#### **54. (Ref to Q. 79):**

**- Please provide further information on the implementation (state of affairs; budget) of Strategies in place to ensure respect of fundamental rights.**

Regarding the creation of conditions for separation of different categories of prisoners, i.e. detainees, and having regarded the fact that accommodation prison conditions have requested the improvement, we have started the process of building of new, reconstruction and adaptation of the existing facilities. Until now these processes resulted in the completion of building, equipment, and starting working on four new prison facilities: the facility for accommodation of male convicts (*1250 m2 area and capacity for 144 persons*), facility for the accommodation of juveniles, female persons and foreigners (*1250 m2 area and capacity for 56 persons*), facility for short prison sentences – up to six months (*1250 m2 area and capacity for 92 persons*), as well as the facility for disciplinary sanctions – lone cell (eight single rooms). In addition, the reconstruction and adaptation of two existing facilities for the accommodation of male convicts is finished (*998 m2 area and capacity for 100 persons*).

In order to provide the continuity in activities related to the reconstruction and adaptation of existing facilities, as well as building of the new ones, the series of measures have been defined related to the following: reconstruction and adaptation of existing prison units in Podgorica and Bijelo Polje, building and equipment of the prison unit facility for the south region, facility for the execution of other prison sentences (2008-2010) and facility for religious needs of prisoners (2008-2010), reconstruction and adaptation of the facility of former prison restaurant for lodging of prison kitchen, as well as building and equipment of the facility needed for the ZIKS management (Institute for Execution of Criminal Sanctions). The realisation of these measures is in progress, i.e. they are partly implemented, considering the fact that they all are of a building character, and that they mean the realisation of more phases for obtaining the status „Implemented measures“. In that regard, the following activities have been implemented regarding the development of project documentation, after which comes the tender advertisement, building, technical application, equipment, and putting into practice of those facilities).

Beside above mentioned, aimed at solving the problem of overcrowded prison units and as the alternative to the prison, the new measure is envisaged for providing of presence of the accused and for ease conduct of the criminal procedure. It is about the supervision measure – prohibition of leaving the apartment (with the possibility to control this by electronic supervision), which is stipulated by the new Criminal Procedure Code adopted in meanwhile.

When it comes to the prison hospital, the work on equipment of the hospital is finished, and for the conditions for psychiatric control and medical treatment, as well as the treatment of alcohol and drug abusers, they have not still been created due to limited accommodation and personnel capacities of that hospital.

For the purposes of improvement of the security systems there is a need for procurement of modern technical devices, and with regard to this the equipment for video surveillance has been procured, as well as special prison vehicles, and the procurement of special equipment for security officers remained to be procured.

Vocational education, re-training and assessment of the knowledge of employees in the Institute for Execution of Criminal Sanctions has been treated as the goal that has to have its continuity, and having regard the legal obligation for the education of civil servants and state employees, as well as considering the fact that there is the Centre for education of the institute personnel, as the special organisation unit. Thus, the measures defined for the achievement of this very goal have the character of permanent activities, as following: organisation of vocational training according to the regular working program, organisation of vocational improvements through different forms of training (workshops, round tables etc.), and the improvement of the training program as well. There is also the initiative for considering the opportunity for education of the institute personnel within the Police Academy in Danilovgrad.

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With regard to the improvement of convict's treatment, there are certain measures defined that are also of the building character and thus having the status of partly implemented measures (building of the hall for sport activities, building of outside courts for sport activities). Realisation of measures of building and starting working of workshops capacities is in progress, while for the period 2008-2012 the measure for increasing the books fund aimed for the convicted persons is envisaged, as well as measures for additional education and training of prisoners. Measure that envisaged giving the certificate to the convicted persons for obtaining vocational knowledge through the prison treatment has the equal importance as the knowledge obtained in freedom, is not still implemented, and with regard to this there have been communications with the Centre for Education of Adults.

With regard to the establishment of the national mechanisms for the prevention of torture according to the Optional Protocol to the UN Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Law on Ratification of Optional Protocol has been adopted. The activities regarding to the amendments to the Law on Ombudsman are in progress, considering the determination that the Ombudsman is to perform the function of national mechanism for the prevention of torture, i.e. that Ombudsman may adequately respond to the requests given by the Optional Protocol.

The activities related to the establishment of the service for the suspended freedom have been started and with that regard the opinions and comments from the Council of Europe experts have been received, aimed at implementing those opinions as well as recommendations of the Committee of Ministers of the Council of Europe during the upcoming amendments to the Law on Execution of Criminal Sanctions (during 2010). The recommendations are related to the sanctions and measures implemented in the community, and to define monitoring the execution of suspended sentence, conditional release and sentence of work in public interest. The measure on the implementation of training of personnel who will work on monitoring the execution of suspended sentence, conditional release and sentence of work in public interest has not been implemented, since the implementation of this measure is conditioned by certain preconditions of organisational (job description) and normative character (adoption of the Law on Amendments to the Law on Criminal Sanctions)

Regarding the improvement of conditions in police stations and detention centres the activities were directed towards engineering and technical adaptations and establishment of the system of video surveillance in those premises. With regard to this, the engineering and technical works are finished, thus the capacities for keeping persons deprived of freedom are renovated in all branch organisational units of the National Police, and in all premises the following is provided: access to drinking water, daily lights (by posting of so called "anti-vandal glasses"), ventilation system and warm and cold air, wooden beds and sanitary knot (within the premise for keeping or the annex to the premise).

As a technical support to the security of detainees the system of video surveillance has been installed and started working in branch police units in Podgorica, Bar, Herceg Novi, Niksic, Budva, Bijelo Polje, Pljevlja, Berane, as well as in branch offices in Tivat, Kotor, Ulcinj, Danilovgrad, Kolasin, Cetinje, Mojkovac, Plav, Rozaje and Zabljak. Monitoring of detainees is ensured in that way, i.e. recording, archiving and exploitation of memorised video material. In addition, the direct interphone two ways line (panic button) is provided in all organisational units of National Police between detainees and duty police officer. Aimed at increasing capacities of detention centres, in the branch unit of police in Bar, the re-adaptation of existing premise has been performed, i.e. one more bigger premise has been built, with the sanitary content, ventilation system, and with possibility of warm and cold air, video surveillance, and interphone communication as well. In addition, the bases for beds have been provided in all organisational units of National Police, and the procurement and embedding of application equipment has been performed (fixed tables) for those premises.

In all detention centres there is, beside daily hygiene, the periodic white washing and refreshment of premises with neutral colours, as well as deep cleaning of the furniture and rooms.

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The National Police has provided twenty four hours duty in order to provide detainees with regular meals (by providing “lunch packages”) and according to their religious affiliations. In those organisational units of the National Police that don't have employees in charge for offering accommodation and meals, the meals are provided over local selling objects by delivering food.

Aimed at protection of persons deprived of freedom and their rights, ensuring legality of treatment, the minutes on keeping persons deprived of freedom has been established, which contain data on all aspects of detention, from the reception of persons in police stations until the transmission to the competent state bodies (Institute for Execution of Sanctions, competent courts, other state bodies of interior), reception of persons in the duty service, accommodation in the detention premises, taking away of personal things and items, providing of meals, data on eventual medical assistance, complaints to the decision on keeping, noted injuries during the taking over of persons, as well as data about transmission of detainee to the competent bodies to further proceeding. The minutes is the base of file for each detainee, and it contains the decision on keeping the person with calling on the legal base, minutes on alcohol test (if the person is being on the test), the report from doctor if the detainee is controlled, the copy of possible complaints of detainees to the decision on keeping of person and decision on abolition of keeping.

Every person is being given the “informative list for the detainee” which is signed by the detainee, and is printed out in Montenegrin, English, French, German, Russian and Albanian language. The aim is to introduce the detainee with his/her rights and in his/her language or the language he/she understands about the reasons of deprivation of freedom, and that he/she is not obliged to give any statement, that may engage the attorney he/she wishes to, that relatives are to be informed about his/her deprivation of freedom upon request, that he/she may ask for medical treatment from the doctor engaged by the police, to have meals in line with his/her religious beliefs and that he/she is provided with the access to drinking water.

Telephones for complaints and reclamations by citizens for police treatment are functioning in the operational communication centre of the National Police, and this is promoted through the media campaign (TV spots, flyers, complement cards), especially the way of submission of complaints by citizens who consider that he/she is illegally deprived of freedom or that he/she suffered the torture.

### **- Please provide further information measures related to human dignity, right to life, right to integrity of a person**

The rights of person are the rights of non property character and are inseparable linked to the human being personality. The rights of personality contain the right to life, right to physical integrity, right to psychological integrity, right to freedom, right to honour and dignity, right to private life, right to personal identity and integrity, right to name.

Inviolable of life represents the right to life, to personal integrity, human dignity. The right to life of human being is the supreme value and fundamental right of human beings. The Constitution of Montenegro prohibits the death penalty. In addition, the dignity and security of a human being, inviolability of physical and psychological integrity of a human being, his/her privacy and personal rights is guaranteed by the Constitution of Montenegro (Official Gazette 1/07), with the provision that no one shall be the subject of torture or inhuman or degrading treatment, and no one shall be kept in slavery position. The respect of human personality and dignity in criminal and other procedures is guaranteed, in cases of deprivation or limitation of freedom, as well as during the execution of sentence. In addition, every kind of violence, inhuman or degrading behaviour over the person deprived from freedom or limited freedom, as well as extortion of confession and statements.

The Constitution of Montenegro guarantees the right and dignity of a human being with regard to the application of biology and medicine. The same article stipulates two prohibitions related to the

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following: interventions related to cloning, performance of medical and other experiments without consent of that person.

Right to life is guaranteed by the Criminal Code of Montenegro through series of criminal offences against life and body, as following: homicide, severe homicide, manslaughter, infanticide, compassionate murder/euthanasia, unintended homicide, inciting to a suicide and assisted suicide, and illegal termination of pregnancy.

Aimed at the protection of right to life, to human dignity in the Proposal to the Amendments to the Criminal Code the criminal offence of slander is significantly narrowed with relation to journalists and editors with the introduction of the special basis of exclusion of illegitimacy. Namely, the journalist or editor who acted with professional attention shall not be punished for the criminal offence of slander, i.e. in that case it will not exist even though all elements for this criminal act are achieved. By doing this, the real measure between the need to protect by the criminal law honour and dignity as fundamental human value and freedom of expression in media, i.e. rights of citizens to be informed on the other side.

In that context there is further decriminalisation of criminal offences of insult (Article 195), slender (Article 196) and exposing personal and family life (Article 197) by means of press in a way that there is a possibility for the court to set free from the punishment the perpetrator of some of those criminal offences by imposing the security measure of the publishing of the verdict, if it assesses that it is enough to impose that measure for the achievement of general purpose of the sanction.

Recently, the protection of honour and dignity is being achieved though the civil court proceedings. The requests by injured person in civil proceeding is frequently related to asking for a reimbursement for suffered immaterial harm, violation of the rights of personality, dignity, honour and other rights, and rarely to non financial or preventive measure that is also envisaged by the provisions of the Law on Obligations of Montenegro.

In addition, strategic documents adopted by the Government of Montenegro, like the Strategy for the Judiciary Reform, i.e. Action Plan for the Implementation of the Strategy for the Judiciary Reform, as well as the Action Plan for the Prevention of Torture are aimed to provide the respect of fundamental human rights.

Criminal Law Convention of the Council of Europe on Corruption is aimed to provide effective remedy to each state party for the persons who suffered damage as the cause of the corruption acts, in order to protect their rights and interest, as well as to provide compensation of damage.

The Parliament of Montenegro adopted the Law on Ratification of Criminal Law Convention of the Council of Europe on Corruption on 26 December 2007, and mentioned institutes of the Convention are regulated and applied mostly through the implementation of the Law on Obligations (Official Gazette of Montenegro, 47/08), and especially in relation to the institute of the damage compensation. Every year, the Administration for Anti-Corruption Initiative undertakes activities on the promotion and incitement to the implementation of the Convention provisions and provisions from the national legislative related to the possibility of damage compensation as the consequence that came out from the execution of criminal offences with the corruption characteristics. Stemming out from the integrity principle importance in the public service, that is stressed in numerous international documents (UN Convention against Corruption, Committee of Ministers Resolution (97)24 on XX leading principles for combating corruption and Ministers Declaration on X joint measures for combating corruption in Southeast Europe), it is envisaged to legally regulate this issue in Montenegrin legal system during this year.

The aim of legal regulation of this principle is the increase of transparency of the work of public sector, responsibility of every single employee, and the confidence of the public in their work as well. New principles that will bring the normative of the integrity principle are the following: analysis and identification of working positions and procedures that are exposed to the risk of corruption or abuse of authorisation; determination of control measures that will contribute to the integrity of state body and decrease the risk of corruption. The state bodies, local self governments, public services and public enterprises are to adopt integrity plans.

Considering the importance of this institute, the Administration for Anti-Corruption Initiative, within the IPA 2010, applied with the project that is entirely dedicated to the implementation of the integrity principle in the public service. The European Commission approved this project and its implementation is expected at the end of 2010. For now on, the Customs Administration has developed and successfully implementing the integrity plan. Administration for Anti-Corruption Initiative, with the assistance of experts from IPA 2007, has developed its internal integrity plan in March 2010, which is to be adopted soon and start implementing.

**55. (Ref to Q. 80): Please provide details on the concrete measures undertaken in the framework of inspections of detention centres or police stations, in particular regarding the correction of irregularities.**

Based on the Article 28 of the Law on Ombudsman "Official Gazette of the Republic of Montenegro, 41/2003", the Ombudsman may, without prior notification, undertake a checkout of all spaces in the prisons and in other premises in which individuals deprived of their freedom are held. Acting upon above mentioned authority from the Article 28 of the Law, the Ombudsman, while checking out the premises for keeping and detention centres, confirmed that the National Police haven't corrected the irregularities in the prison premises, and that those were not in line with the Rulebook on conditions that the premises for keeping persons deprived of freedom shall fulfil (Official Gazette of the Republic of Montenegro, 57/06). With relation to that, and aimed at correction of the irregularities, the Ombudsman have made the final opinion and recommendation to the National Police (Recommendation, 71/08) on 28 October, 2008, to undertake all necessary actions and measures for the fulfilment of conditions for the premises where persons deprived of freedom are kept in Police centres and branch units in line with international standards that treat this area and the Rulebook on conditions that the premises for keeping persons deprived of freedom shall fulfil. The National Police has informed the Ombudsman on 17 February 2007 on acting upon the recommendation and undertaken measures, pointing out that all building and technical works are finalised in all detention centres and police stations in Montenegro, at the end of 2008, in the possible measures and that the following is provided: access to the drinking water, daily light, imposing of so called "anti-vandal" glasses, ventilation system and warm and cold air, wooden desk chairs and sanitary knot (as an annex). The hygienic whitewashing and reconstruction of the existing installation for lighting has been performed in all premises. In addition, the video surveillance has been provided in all premises. The two-line interphone link has been provided in most premises and currently there are activities performed to provide this in the remaining premises.

The Ombudsman has checked out premises for keeping persons deprived of freedom in 4 branch units and 8 police centres in 2009. The checkout of the premises in the branch unit in Bijelo Polje has been conducted in 2010. It was determined that the premises are in line with CPT standards and above mentioned Rulebook.

The working plan for 2010 envisages the visit-checkout of premises in the rest branch units and police centres. According to the draft Law on Ombudsman, the Ombudsman is determined as the national mechanism for the prevention of torture and it envisages the obligation for regular or temporary visits to all places where persons deprived of freedom are kept.

**56. (Ref to Q. 80):**

**- Please specify if the mentioned articles are from the new or old CPC.**

**- Please explain if the amendments foreseen for the CC will change any of the articles mentioned and if yes in what way.**

In developing the responses to the question 80, and regarding the concrete legal and administrative measures aimed at prevention of torture, inhuman or degrading treatment or punishment, the provisions of the current Criminal Procedure Code have been given (Official Gazette of the Republic of Montenegro, 71/03 and 47/06), i.e. the Code that is still applied. Besides that, and aimed at informing about certain legal changes related to this issue, we have given the overview of relevant provisions of the new Criminal Procedure Code (Official Gazette of Montenegro, 57/09), which entered into force on 26 August 2009, and its application starts on 26 August 2010.

Since the provisions of the Criminal Procedure Code, which are given in the respond to the question, are related to the one of main principles of criminal procedure (prohibition of the application of violence and extortion of confession), as well as the rules on the execution of detention, it can be said that amendments to the Criminal Code will not have the impact on mentioned provisions of the Criminal Procedure Code considering the fact that when it comes to torture or harassment, the proposal of the amendments to the Criminal Code.

**57. (Ref to Q. 83):**

**- Which religious communities are financially supported by the State?**

The financial support by the State to religious communities is performed through the participation in contribution for the pension, social and health insurance of priests, and in the most amounts in the investment in sacred facilities, especially in the protection of those facilities that are of the cultural monuments character. The state financially supports spiritual manifestations and cultural activities of religious communities. Religious communities dispose with their own property, and may collect voluntary contributions for the religious purposes and they dispose by itself with them.

Montenegro, over the General Secretariat of the Government, financially assists the following communities:

1. Serbian Orthodox Church
2. Montenegrin Orthodox Church
3. Islamic Religious Community
4. Roman Catholic Church

In 2009 the religious communities received the amount of 320.000,00 Euros.

**- Please provide information on relations between Serbian and Montenegrin orthodox churches.**

Relations between Serbian Orthodox Church (SPC) and Montenegrin Orthodox Church (CPC) are reflected through three main issues: national, state, and property.

#### **National**

SPC in its name (few days ago they have published formal change of the name into the Orthodox Church in Montenegro) is headed in Montenegro by the Metropolitanate of Montenegro and the Littoral. According to the insofar surveys it enjoys the positive attitude of the public with regard to its traditional religious activities.

The presence of the national attribute in the official name of the church implicates, especially in one part of the public, that its function, beside the religious, is potentially determined by the national characteristic in its name, and in other segments of the public activities.

Simultaneously, CPC tends to, beside religious role, show its public engagement as the activity related towards defence of the national and cultural identity of Montenegrins, unlike SPC which according to their opinion affirms exclusively Serbian national interest.

#### **State**

SPC is in organisational terms related to the Holy Sinod of SPC in Belgrade, as their member, and the Mitropolitan of Montenegro and Littoral participates in its work, and he was also one of the candidates for the patriarch of the SPC.

CPC, headed by the Montenegrin Mitropolitan, dominantly performs its activities at the territory of Montenegro, stressing its loyalty to its mother state. At the same time it points out the restraint of SPC towards the decision on independence of Montenegro, or publicly negative attitude of their representatives on the occasion of some state decisions of Montenegro as the independent state, which was the case in recognition of Kosovo.

#### **Property**

CPC points out the reason of historical fairness towards the request for return of the property, that was taken away from them by the reunion of orthodox churches in 1920 in the newly established state and its autocephality was abolished.

Contrary to that SPC bases its right to property on the fact that in all official state books this church is mentioned as the only owner of the orthodox church property, and according to them it is based on the principle of continuity and formal-legal legitimacy of the owner.

In such relations, state bodies of Montenegro provide the affirmation of two main principles of democratic states which is the freedom of expression of religion and the state is set apart from the church.

Besides obvious expectations of the one and another church that the state will "make the decision" regarding their differences, the respect of European principles of affirmation may only permanently lead to the resolution of those relations, without interference of the state and politics in the independence of performing their religious works.

**- Please explain which "measures and activities that are undertaken aimed at to preventing religious discrimination and thereby ensure equality of citizens".**

Undertaken measures and activities that aimed at equality of citizens and prevention of any form of discrimination, as well as the discrimination based on religion, are explained in the response to the question 86.

Above all, the overview has been given with regard to the legislative, i.e. prohibition of discrimination and equality of all citizens in the Constitution, laws and strategic documents, educational-promotional measures (new educational system, campaigns, workshops, seminars, media activities) and the institutional system as well (Government of Montenegro, Parliament of Montenegro, Ombudsman, judicial system, civil society). In addition, in the respond to the question 102 there is the overview of the measures of affirmative actions towards minority groups and other

minority national communities in different areas of social life, with the respect for religious diversities as one of the most important segments of the entire national identity.

**58. (Ref to Q. 83b see also Q. 83 of the Ch. 23): Please provide further information on precise measures and activities undertaken to prevent religious discrimination and thereby ensure equality of citizens.**

Undertaken measures and activities that aimed at equality of citizens and prevention of any form of discrimination, as well as the discrimination based on religion, are explained in the response to the question 86.

Above all there is the overview of the following:

- Legal framework, prohibition of discrimination and equality of citizens in the Constitution, laws and strategic documents,
- Educational and promotional measures (new educational system, campaigns, workshops, seminars, media activities)
- Institutional system (Government of Montenegro, Parliament of Montenegro, Ombudsman, judicial system, civil society)

In addition, in the respond to the question 102 there is the overview of the measures of affirmative actions towards minority groups and other minority national communities in different areas of social life, with the respect for religious diversities as one of the most important segments of the entire national identity.

**59. (Ref to Q. 84): Please specify which state administration body trade unions have to be registered with.**

Rights of employees to the free organising of trade unions and their action, without previous approval, and by registering in the competent body, is guaranteed by the Constitution.

According to the Article 155 of the Labour Law, trade unions are registered in the Register of Trade Unions kept by the Ministry of Labour and Social Welfare. The procedure of registering, change of the register and erase from the register is prescribed by the Ministry of Labour and Social Welfare.

The Decree on registration of trade unions prescribes the way of registering of trade unions, the content and the way of keeping of register as well as the erase from the register.

The register of the trade unions is performed on the basis of the application, which is followed by the documents: The Decision on establishment, Statute and program goals of the trade union. Trade unions become the legal entity at the day when they are registered in the Register of trade unions.

According to the Article 5 of the Decree on registration of trade unions the Register contains the columns where the following data are written: sequence number of the register, name of the trade union, date of registration, the address of the trade union, area of work of the trade union, the name of the person in charge for representing the trade union, number and date of the confirmation on registering the trade union, the reason for erasing from the register and the note.

Trade unions are obliged, according to the mentioned Decree, to inform the Ministry of Labour and Social Welfare, about all changes of facts that are to be signed in the Register of trade unions, within 15 day from the day when the change occurred.

**60. (Ref to Q. 84b): Please provide information on eligibility criteria of selection of projects to be supported under the fund from the Games of Chance and of proposals launched by the Parliament Commission.**

Upon the initiative of the NGO Coalition "With Cooperation to the End", the Government of Montenegro adopted the Decree on criteria for determination of users and the method of allocation of a part of income from the games of chance (Official Gazette, 45/08). The allocation of income from the games of changes is performed annually, based on the open competition, in January. Criteria for the allocation of incomes from the games of chance are determined in line with priorities envisaged by the strategies and programs, adopted by the Government of Montenegro.

The allocation of funds is performed on the basis of the following criteria:

1. Contribution of the program to the achievement of public interest in certain area;
2. Linkage of the program to the previous activities and the mission of the organisation;
3. Personal card of the organisation (number of membership, previous achievements, capacities of the organisation (in management of human resources and finances, working premises), references of the personnel involved in the realisation of the program);
4. Clearly defined target groups and number of users;
5. Detail justification of the problem/need for the realisation of the program;
6. Precise and achievable goals of the program;
7. Precise and logical timeframe of the activities;
8. Evaluation and assessment plan of the success of the program;
9. Involvement of the principle of gender equality;
10. Recommendations by the experts for the area applied in the program.

The allocation of incomes from the games of chance is performed by the Commission for the allocation of incomes from the games of chance. The Decision is submitted to the applicants at the competition and published at the web site of the Commission and in one printed media at least, which is distributed all over Montenegro.

The Commission consists of the president and 12 members appointed by the Government. The Commission consists of the representatives: Ministry of Health, Labour and Social Welfare – 3 members, Ministry of Culture, Sports and Media – 2 members, Ministry of Education and Science – 1 member, non-governmental organisations – 2 members, experts – 5 members.

The allocation of income from the games of chance is performed for the programs of A and B category.

The program of A category means the program for which the allocation 15.000 Euros is envisaged.

The program of B category means the program for which the allocation more than 15.000 Euros is envisaged, with the maximum that may not exceed 30% of the total amount in the applied area.

For the program of B category there may not be allocated more than 50% of income from games of chance.

Program of A category contains the following elements:

- 1) Area of the program;
- 2) Category of the program;
- 3) Name of the organisation, with basic information;
- 4) Title of the program;
- 5) Summary of the program;
- 6) Description of the problem;
- 7) Goals of the program;
- 8) Target groups;
- 9) Detailed description of the program activities;
- 10) Time frame for the realisation of the program;
- 11) Evaluation and assessment of the success of the program;

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- 12) Sustainability of the program;
- 13) Budget of the program and total amount applied;
- 14) Data about the responsible person for the realisation of the program with contact details;
- 15) Data on the composition Steering Committee of the organisation;
- 16) Account number and PIB of the organisation.

Program of B category contains the following elements:

- 1) Area of the program;
- 2) Category of the program;
- 3) Name of the organisation, with basic information;
- 4) Title of the program;
- 5) Summary of the program;
- 6) Description of the problem;
- 7) Goals of the program;
- 8) Target groups;
- 9) Detailed description of the program activities;
- 10) Time frame for the realisation of the program;
- 11) Expected results of the program
- 12) Publications and other results
- 13) Evaluation and assessment of the success of the program;
- 14) Sustainability of the program;
- 15) Budget of the program and total amount applied;
- 16) Other donors
- 17) Description of the applicant of the program;
- 16) Data on the capacities of the organisation;
- 17) Data about the responsible person for the realisation of the program with contact details;
- 18) Data on the composition Steering Committee of the organisation;
- 19) Account number and PIB of the organisation.

Commission of the Parliament of Montenegro for the allocation of funds to non-governmental organisations allocated the funds in a way that is prescribed by the Decision on the criteria, methods and procedure for the allocation of the funds by the Parliament Commission to the non-governmental organisations. The Commission is appointed by the Parliament of Montenegro on the proposal of the competent working body, and on the basis of public competition which is published in the daily newspaper. The Commission adopts the decision on the basis of the project submitted by the non-governmental organisations, assessing the following criteria:

- Contribution of the project to the achievement of the public interest in certain area;
- Transparency and possibility of control of the project realisation;
- Compatibility and project cooperation with international subjects;
- Recommendations by the experts on the project from the relevant area.

**61. (Ref to Q. 85): Please provide information on the body responsible for fact finding in cases of consequences of extradition and on institutional framework to facilitate effective action.**

The Law prescribes that the request for extradition shall be submitted to the court, which will inform the person, whose extradition is being requested, about the reasons and on which basis his/her extradition is requested. The investigate judge may stipulate the detention or undertake measures for providing the presence of that person. After the hearing of the State Prosecutor and the attorney, the investigate judge shall undertake other actions for the purposes of fact finding are

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there reasons for the extradition envisaged by the Article 11 of the Law, and after that the case documents shall be submitted to the competent judiciary council.

In the case when the council finds out that the conditions haven't been fulfilled for the extradition prescribed by the law, the decision shall be made about the refusal of the request.

When the council finds out that there are conditions fulfilled for the extradition the decision shall be adopted, which allows for the complaint. The final decision shall be submitted to the Ministry of Justice for making the decision about the permission for the extradition.

Law on Courts of Montenegro prescribes that the tasks related to international criminal-legal aid is performed by higher courts –Higher Court in Podgorica and Higher Court in Bijelo Polje.

In the Ministry of Justice, within the Section for Judiciary, there is the Department for judiciary and international legal aid which perform tasks related to international criminal-legal aid.

### **62. (Ref to Q. 86): Please provide further information on the state of play as regards results of the anti-discrimination policy and on the institutions dealing with this issue (composition/staff/resources).**

1. The result of the entire policy aimed at achievement of equality of all citizens and prevention of all forms of discrimination on any grounds whatsoever may be reviewed through the structure of the complaints submitted by citizens to the Ombudsman.

In 2008, out of the total number of complaints – 430:

- 1 complaint was related to the protection from discrimination;
- 3 were related to the violation of minority rights;
- 1 complaint related to the violation of the freedom of thoughts, conscience and religion;
- 1 compliant related to the inducing and inciting of racial, religious and other intolerance.

In 2009, out of total number of complaints – 525:

- 1 complaint was related to the protection from discrimination;
- 2 were related to the violation of minority rights;
- 1 complaint related to the violation of the freedom of thoughts, conscience and religion;
- 1 compliant related to the inducing and inciting of racial, religious and other intolerance.

It should be mentioned that the Government of Montenegro at its session of 3 December, 2009 adopted the Draft Law on the Protection against Discrimination with the Program of public discussion. The public discussion lasted from 5 December, 2009 until 5 January, 2010. The draft law was issued as the appendix in the daily newspaper "Pobjeda", published at the web site of the Ministry of Human and Minority Rights, the round tables in three Montenegrin municipalities have been organised (Bijelo Polje, Podgorica i Budva). In addition, the draft law has been discussed at the joint session of the parliament committees for human rights and freedoms and gender equality (on 18 December 2009). The round table has been organised by the Ministry of Human and Minority Rights, Council of Europe and OSCE in Podgorica on 19 February 2010, with the participation of domestic and foreign experts, representatives of political parties, governmental institutions and non-governmental organisations. The Government agenda for 2010 envisages the adoption of the Proposal of this Law in I quarter, after which it will be submitted to the Parliament for adoption.

2. In Montenegro there is not separate institution or the body that deals with the protection from discrimination. As it was explained in the response to the question 86, all ministries, state administration bodies are working on the guarantees of equality and non discrimination, from the scope of their competences. The following ministries and state administration bodies deal with combating discrimination, as the base for the entire respect of guaranteed human rights and freedoms: Ministry of Human and Minority Rights, Ministry of Justice, Ministry of Labour and Social Welfare, Ministry of Education and Science, Ministry of Health, Ministry of Culture, Sport and

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Media, Ministry of Interior and Public Administration, National Police, Institute for the Execution of Criminal Sanctions, Refugee Care and Support Office, Human Resources Authority. Besides Governmental institutions there is also the Parliament of Montenegro (with their working bodies), Ombudsman, judiciary, civil sector.

The most important institutions are the Ministry of Human and Minority Rights and the Ombudsman.

Institution	Number of employees		Funds	
	2008	2009	2008	2009
Ministry of Human and Minority Rights	8	12	1.139.887,22	1.523.610,64
Ombudsman	21	22	367.235,26	375.362,65

### **63. (Ref to Q. 87): Please provide details on the implementation of the legal framework on equality of men and women.**

Implementation of the Law on Gender Equality is in charge of all state bodies, both at national and local level, and all other entities having the public authority. It envisages the activities of normative nature, planning as well as concrete measures and activities. The specificity of this law is that it does not deal with every single area related to gender equality and as such is the integral part of the legal system of Montenegro, providing a good base for the implementation of gender equality policy. The intention was to leave the opportunity to other system laws to integrate gender equality in their areas of concern, and in that way to make a strong system altogether with the Law on Gender Equality.

Aimed at introducing the representatives of NGOs and governmental official with the essence of the Law, the Gender Equality Office, in January 2009, issued the publication "Comment of the Law" prepared by experts from the field of legislative and gender equality. The Comment contains the theory and practice of the gender equality policy with concrete examples in what way it may be implemented in the practice, following the practice from the region and European states.

According to the Law on Gender Equality, state administration bodies appointed civil servants who are the coordinators of activities related to gender equality from the areas of their concern, and participate in the implementation of the Action Plan for the Achievement of Gender Equality. There is the continuous cooperation with the coordinators on gender mainstreaming in all programs and politics adopted by the Government of Montenegro. With that regard, we point out series of strategic documents adopted by the Government of Montenegro, containing the gender equality component: National Program of Integration of Montenegro into the EU, National Strategy of Sustainable Development, National Strategy of Employment and Human Resources Development, Strategy for the Advancement of the Reproductive Health, National Strategy HIV/AIDS, National Youth Action Plan, Individual Action Plan with NATO, Action Plan for the Reform of Local Self Government, Action Plan for Combating Trafficking.

One of the segments of the vocational training programme for civil servants and state employees implemented by Human Resources Management Authority is introduction of the gender equality principle in practice. The programme aims to introduce basic principles of gender equality and implementation of the Law on Gender Equality, as well as to provide guidelines for introduction of gender equality principle in practice. The programme has been implemented since 2007. In addition to the above mentioned programme, since its establishment the Government mechanism for gender equality has organised trainings for civil servants and state employees on various aspects of gender equality.

All job vacancies and public announcements published by the Human Resources Management Authority are written in gender sensitive language. In addition, all rulebooks on internal

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organisation and job descriptions of the ministries and other administrative bodies are written in gender sensitive language.

The Government mechanism for gender equality have signed the Memorandum of Understanding with ten municipalities in Montenegro, aimed at implementation of the activities related to the achievement of gender equality at the local level (Nikšić, Bijelo Polje, Pljevlja, Berane, Cetinje, Kotor, Budva, Bar, Herceg Novi and Ulcinj). Persons trained to implement gender equality principles in local community are employed in these municipalities, while commissions/councils for gender equality operate in municipal assemblies. In six municipalities the local action plans for gender equality are developed, out of which the Municipality of Pljevlja adopted mentioned document on 26 February 2010 at the municipal assembly. The adoption of the remaining action plans is expected to be soon.

In order to increase women's participation in politics and empower them there has been a considerable number of education activities for women and men – members of political parties. Education activities were mostly conducted by women's non-governmental organisations under the project "Women Can Do It". Since 2004 the Gender Equality Office in cooperation with foundations Konrad Adenauer i Eduardo Frei has implemented the project whose target group are women from political parties. Initially, the project included conferences on various topics concerning women, whereas since 2007 we have been implementing a cycle of three education activities for women from political parties aimed at empowering them and have the more actively involved in politics. The Gender Equality Department continued implementation of this activity.

However, beside a number of education that was implemented so far aimed at increasing the number of women at decision making positions, the data on the participation of women in political parties structures show low level of their participation, as well as their weak participation at the top positions including the decision making.

\*Data on participation of women in organisational structure of parties were collected by the Gender Equality Department, 2009.

Data cover all the political parties, except the Democratic Union and Albanian Coalition Perspective

	Presidency		Head Committee		Executive Committee		Club of MPs	
	total	women	total	women	total	women	total	women
Democratic Party Socialists	16	1	139	24	10	1	34	4
Social Democratic Party	14	2	82	11	6	1	7	1
Social People` s Party	-	-	107	9	36	3	16	3
New Serbian Democracy	9	-	181	18	21	-	8	-
Movement for Changes	20	2	85	19	-	-	5	1
Democratic Union Of Albanians	10	2	30	5	-	-	1	-
New Democratic Forca	-	-	19	3	-	-	1	-
Bosniak Party	15	1	65	3	5	0	3	0
Croatian Civil Initiative	9	1	16	1	-	-	1	1

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When it comes to the parliamentary parties, there is only one woman in one party performing the function of the President of the Party (Croatian Civil Initiative), while a woman performs the function of the Vice-President of the party in the Movement for Changes.

In the last parliamentary elections, out of total number of registered voters 498,825 (80.44% of the total population) there were 250,165 women or 50.15%. Number of women MPs in the new Parliament remained unchanged compared to the previous one and out of the total of 81 MPs, there are 9 which accounts for 11%.

Data at the local government level also show a low percentage of women's representation in decision making positions. Only in one municipality, a woman serves as Mayor of the municipality. In the total 21 municipalities, two women serve position of Deputy Mayor of the municipality. Women are Speakers of Municipal Assemblies in 4 municipalities. Women perform function of Chief Administrator in two municipalities, while one woman performs the function of City Manager in one municipality.

There are a significant number of women in judicial power. Women perform function of the Supreme State Prosecutor and President of the Supreme Court.

\*Data on participation of women in courts. Source: Judicial Council as on 31 December 2009

N o.	COURT	No. of Women Judges	Total Number of Judges	President of the Court	Percentage of Women
1	Supreme Court	6	15	Woman	40%
2	Administrative Court	3	9	Man	33.3%
3	Appellate Court	5	9	Man	55.5%
4	Commercial Court Bijelo Polje	1	5	Man	20%
5	Commercial Court Podgorica	13	19	Man	68.42%
6	Higher Court Bijelo Polje	2	15	Man	13.32%
7	Higher Court Podgorica	23	34	Man	67.64%
8	Basic Court Bar	4	12	Man	33.3%
9	Basic Court Berane	5	10	Man	50%
10	Basic Court Bijelo Polje	8	13	Man	61.53%
11	Basic Court Cetinje	2	5	Man	40%
12	Basic Court Danilovgrad	1	4	Woman	25%
13	Basic Court Herceg Novi	5	9	Man	55.5%
14	Basic Court Kolašin	2	4	Man	50%
15	Basic Court Kotor	7	14	Man	50%
16	Basic Court Nikšić	8	17	Man	47.05%
17	Basic Court Plav	1	3	Man	33.3%

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18	Basic Court Pljevlja	6	8	Woman	75%
19	Basic Court Podgorica	23	37	Man	62.16%
20	Basic Court Rožaje	1	4	Man	25%
21	Basic Court Ulcinj	1	4	Woman	25%
22	Basic Court Žabljak	0	3	Man	0%

The Judicial Council is run by a woman, while out of 9 members 3 are women. The Prosecutorial Council has 10 members, of whom 4 are women.

The Law on Gender Equality prescribes special measures for ensuring and promoting gender equality. By making reference to the provisions of the Law on Gender Equality, the Ministry of Human and Minority Rights, Gender Equality Committee of the Parliament and municipality of Bar in November 2009 addressed the Working Group for amendments to the electoral legislation with the initiative to introduce quotas (of 30%) for less represented sex in electoral legislation.

The Law on Gender Equality prescribes obligation of the media to promote gender equality in their programme concept. Media in Montenegro devote attention to gender equality. There is noticeable increase in coverage in print and electronic media on domestic violence and measures taken to protect women and children victims of violence. During the campaign "Sixteen Days against Violence against Women" media are particularly willing to prepare coverage on the violence against women and domestic violence and to broadcast videos on television and radio jingles free of charge in support of the campaign. However, it is evident that both, men journalists and women journalists, are not sufficiently sensible for gender equality and that media programmes frequently transmit patriarchal gender roles which restrict women to the private sphere only. It is also necessary to further work on the use of gender sensitive language in media since it is not yet fully used even though there is a good example of certain media using it continuously. In cooperation of the Ministry of Human and Minority Rights – Gender Equality Department, UNDP Office in Podgorica and TV PINK M there is the TV show broadcasted, once a week, under the title "Imagine Equality". The TV show is of educational character and consists of discussions on different aspects of work and life of women and men in Montenegro.

The Gender Equality Department continuously cooperates with the Statistical Office (MONSTAT) on issues related to gender disaggregated statistics. With that regard, there are two editions so far of the book "Women and Men in Montenegro". Currently, preparation of the third edition is ongoing, expected to be issued in II quarter of 2010. New book edition will be much advanced and for the first time it will include data on domestic violence and violence against women.

One entire chapter of the Law on Gender Equality concerns acting upon the complaints related to the direct or indirect discrimination based on sex. The complaint shall be submitted to the Ministry of Human and Minority Rights, which prepares the opinion with conclusions and assessments of the circumstance from the complaint, from the aspect of existence of the discrimination based on sex. The Ministry informs the person submitting the complaint and the other party about this.

On several occasions so far the Government mechanism for gender equality has received complaints and has been also addressed for legal advice. We hereby provide an example of the complaint lodged with the Gender Equality Office on the basis of the Law on Gender Equality. Namely, the woman applicant sought protection of the right regarding payment of the benefit during maternity leave. Acting upon the complaint, the Office addressed the Labour Inspection – Regional Office in Podgorica with the request for inspection control. After the control has been carried out, the Labour Inspection submitted findings and notified the Gender Equality Office of the measures that had been taken. Since lodging the complaint with the Ministry for Human and Minority Rights is a new institute in Montenegrin legislation and also having in mind that there have been few

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cases of lodging the complaints so far, it is necessary to continuously work on improvement of knowledge of women about their rights and the ways to exercise them.

Aimed at introducing of labour inspectors and inspector for the protection at work with basic principles of gender equality, with domestic and international legislative from this field, and especially its implementation in the practice, the Gender Equality Department, organise two seminars for them in September 2009. Seminars addressed also the issues of sexual harassment and mobbing.

When it comes to gender equality in the area of education data on the number of students in primary and secondary schools do not indicate significant disparities in the share of boys and girls at these levels of education. The data for the school year 2008-2009 are the following: out of the total number of 74,220 primary school pupils, 38,149 or 51.39% were boys, while 36,071 or 48.6% were girls. In the school year 2008-2009, out of the total number of 31,333 high school students, 15,761 or 50.3% were male and 15,572 or 49.6% female. In 2008-2009 there were 20,490 students enrolling the university studies at the University of Montenegro, out of which 11,048 or 53.9% are female. In 2008, out of total number of graduate university students 2,812, female were 1792 or 63.7%. Out of 140 holders of master's degrees 69 or 49.2 were female in 2008. In the same year, out of 14 holders of PhD 3 are women or 21.4%

For several years now the University of Montenegro has implemented a project in cooperation with the University in Oslo on introduction of gender studies in the curricula. A series of workshops, seminars and research projects has been organised at the Faculty of Philosophy under the project with the basic aim of better understanding and expanding knowledge on gender relations between the University professors and students on the Western Balkans. The school "Gender Studies" was organised at the Mediterranean University in March 2009 with assistance of the Gender Equality Office and in cooperation with UNDP Office in Podgorica. Private university UDG also launched implementation of women`s studies in the framework of postgraduate Master studies. NGO "Anima" has been implementing the programme "Women`s Studies" since 2002 in order to develop women`s self-awareness and feminist theory and to encourage active involvement of women in public life.

The Institute for Textbooks and Teaching Aids of Montenegro is launching a new series of textbooks while the textbooks designed for the nine year elementary school take care of gender sensitive language. In order to suppress gender stereotypes in the curricula, the Institute for Textbooks hired an expert commission that reacted in this area. Civic education was introduced as a new, mandatory subject for the sixth and the seventh grade of elementary school. Gender equality and domestic violence are taught within this subject. Civic education is also taught from the first to the fourth grade as mandatory subject in high school. Around 1000 students in 19 out of 23 high schools decided to attend classes of civic education in the school year 2006/2007. Topics regarding gender equality are the following ones: Political Systems of My Country (which includes optional topic the Position and Gender Equality in Montenegro in Working and Local Environment); Tradition and Culture (operational goals – gender equality); Healthy Life Styles (operational goals – students should be introduced with and understand basic differences in relations between sexes in adolescence, social impact on sexual behaviour, transformation of manhood); Human Rights – a Universal – Standards and Protection (optional topic: Feminism); Occupation, Profession and Gender (Gender equality – Discrimination in the Field of Gender); Position of the Woman and Gender Equality in Montenegro/Working/Local Environment – survey; Gender Equality – Discrimination in the Field of Labour (optional topic).

When it comes to the equality of women and men in the area of labour and employment the data of Statistical Office show that the share of women in the overall number of the unemployed is around 45%.

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The number of unemployed persons by years, with the share of women are indicated in the following table:

No.	Date							
1	31.12.2006.		31.12.2007.		31.12.2008.		15.3.2009.	
2	Total	Women	Total	Women	Total	Women	Total	Women
3	39387	17975 (45.63%)	32011	14250 (44.51%)	28478	12785 (44.89%)	29130	13017 (44.68%)

	Unemployment rate for women	Unemployment rate for men
31.12.2006.	16,02%	14,08%
31.12.2007.	12,70%	11,68%
31.12.2008	11,40%	10,32%
15.03.2009.	11,60%	10,59%

Women constitute around 45% of the unemployed in Montenegro. If we consider the qualifications structure of unemployed women, the predominance of those with secondary education is evident: around 39% have level IV; around 24% have level III; around 16% have no qualifications. The main characteristic of the situation and tendencies in the area of employment of women in Montenegro over the recent years has been the constantly declining share of women in the overall number of the unemployed: 45.64% on 31 Dec 2006; 44.52% on 31 Dec 2007; 44.89% on 31 Dec 2008, and 44.69% on 15 March 2009. This trend was influenced by the significant increase in employment of women in certain industries that normally hire more women (retail, hospitality and tourism etc.). In addition, women are more active in seeking employment, accepting the jobs offered to them and responding to programmes of preparation for employment organized by the Employment Office of Montenegro (vocational training, retraining, and further training).

The unemployment rate by sex, shown by individual regions, mirrors the unemployment at the national level, and is the highest in the northern region. According to the data from 31 December 2008 and 15 March 2009, the unemployment rate for men and women in the southern part of the country is almost identical.

The Employment Office is implementing the active employment policy and is making an effort, by implementing the measures and development projects that include creation of new jobs, to achieve a fall in the number of unemployed persons. In this sense, the right to be involved in the programmes within active employment policy measures pertains to the following: unemployed persons; employed persons working less than full working hours (part-time work) and persons who have been made redundant due to technological, economic or organizational changes. Thus, the right of women to be involved in active employment policy measures is not specifically defined; instead, identical rights are assumed for all unemployed persons.

Of the total number of unemployed persons who are trained, throughout the year, within different forms of vocational training for the identified employer and within the programmes of preparation for the labour market (occupational training and programmes for acquisition of specific knowledge), women make up around 57%.

The self-employment programme is one of the programmes implemented by the Employment Office of Montenegro within the active employment policy with the aim, inter alia, to expedite the equality between men and women. It is evident that female enterprises are achieving significant success, not only in the category of small businesses but in the sectors that were until recently considered untypical of female entrepreneurship such as IT, machine industry, construction industry and many others.

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The Employment Office wants to motivate the women who are pursuing or are about to pursue the path of entrepreneurship in order to secure jobs and professional development. Therefore, as a special employment incentive, the interest rate has been structured to equal 3% annually for financing the projects implemented by women and those implemented in northern municipalities. For the rest of the projects, the annual interest rate is 4%.

Between May 2006 and February 2009, 959 projects were approved for existing and future enterprises owned by women; this is 39.33% of the total number of projects approved during this period. The projects employed 1,355 persons and the budget for their implementation was €5,089,197.

Within the Programme "State support and help to small and medium-sized enterprises in 2008 and 2009", by 5 November 2009, the Directorate for Development of SMEs, in cooperation with commercial banks approved a total of 88 projects under the "Start UP" and "Fostering Entrepreneurship" credit facilities. 30 projects were approved within the credit facility "Encouraging start up businesses"; in 10 projects the founders and managers were women, and in the remaining 20 they were men. 58 projects were approved within the credit facility "Fostering Entrepreneurship"; women were managers in 8 projects, while men were managers in the remaining 50.<sup>1</sup>

**64. (Ref to Q. 88): Please clarify to what extent the Ombudsman recommendation to review the Criminal Procedure Code's provision on the authorization of detention and its control after indictment are taken into account / are planned to be taken into account in order to shorten the duration of proceedings and the length of detention.**

The Criminal Procedure Code (Official Gazette of the Republic of Montenegro 57/09) which came into force on 26<sup>th</sup> August 2009 and will begin to apply starting from 26<sup>th</sup> August 2010, regulates the issue of custody. The issue of custody regulated by this Code is fully compliant with the European Convention on Human Rights and Fundamental Freedoms. While working on the preparation of the Criminal Procedure Code, the Delegation of the European Commission in Montenegro hired the expert Mr. Christian Schernitzky who, in his expert opinion, commented on the issue of custody.

According to the information received from the Protector of Human Rights and Fundamental Freedoms (the Ombudsman), the recommendation in regard with the issue of custody was related to the provision of Article 572 of the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03 and 47/06) and its relation under the previous Criminal Procedure Code of 1977. The essence of the Ombudsman's recommendation was that the persons against whom the criminal proceedings started before the entry into force of the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03 and 47/06) are placed in a more difficult position in regard to the persons against whom the proceedings begun after the entry into force of this Code. Namely, the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03 and 47/06) regulates the custody time limits in criminal proceedings, while in the Code of 1977 it was not the case. In its recommendation, Ombudsman devalued for the application of, in his opinion, the favourable procedural law in relation to persons to whom custody has been ordered under the provisions of the Criminal Procedure Code of 1977. Thus, the opinion of the Ombudsman was that the provisions on custody of the Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03 and 47/06) are more favourable for persons who had given custody according to the Criminal Procedure Code of 1977. By adopting the new Criminal Procedure Code in 2009, Ombudsman's recommendation is inserted in the new Code.

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<sup>1</sup> Data from the Directorate for Development of SMEs

Also, it is recommended to limit the custody since in the draft Code there were no provisions on the limitation of custody. The new Criminal Procedure Code of 2009 contains a provision on the limitation of the duration of custody.

**65. (Ref to Q. 90):**

**- To what extent limitations to ensuring public hearing or public pronouncement of judgements apply? How often this happens?**

The public is always excluded from the main trial when the proceedings are pending against a juvenile and when it comes to crimes under Chapter XVIII of the Criminal Code (against sexual freedom).

In an earlier response given, it is noted that the exclusion of the public contrary to the legal regulations presents substantial violation of the criminal proceeding regulations, which pulls the abolition of the verdict reached in the proceeding in which the public, contrary to the law, was excluded from the main trial. Thus, the public is excluded from the main trial only in cases prescribed by law.

According to data obtained from the Supreme Court, there were no cases in which is committed a substantial violation of the criminal procedure regulations which pulls the abolition of the verdict reached in the proceeding in which the public, contrary to the law, was excluded from the main trial.

**- Is the lack of adequate court rooms a reason for non-admittance of the public to public hearing or pronouncement of judgements? If yes, at which courts?**

According to data from the Supreme Court, the main courts in Pljevlja, Kotor, Plav, Rožaje, Danilovgrad, Kolasin and Podgorica have one large courtroom where is possible to organize a trial in the presence of a large number of interested persons. In other courts, there are a large number of such courtroom facilities. The exception is the Basic Court in Zabljak, which has one courtroom in which, apart from persons whose presence at the trial is mandatory, five persons can attend the trial at most.

**- Is access to courts and courtrooms for handicapped persons ensured in all courts?**

The Basic courts in Kotor, Ulcinj and Bar have provided for wheelchair access for disabled persons to the main door of the court. Other courts do not have provided access for disabled persons.

**- Is the time-table of main hearings and pronouncement of judgements publicly announced and in which manner?**

The Basic Court in Podgorica and the High Court in Podgorica publish the main trial schedule on its display. In other courts, the trial schedule is published on the bulletin boards. The exception is the Basic Court in Danilovgrad where the trial schedule is not published, but this court will start to publish the trial schedule no later than 1<sup>st</sup> April 2010.

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**- Have there been any established cases of excluding the public from the main hearing contrary to the law, how have such cases been established and what have the consequences been?**

In an earlier response given, it is noted that the exclusion of the public contrary to the legal regulations presents substantial violation of the criminal proceeding regulations, which pulls the abolition of the verdict reached in the proceeding in which the public, contrary to the law, was excluded from the main trial. Thus, the public is excluded from the main trial only in cases prescribed by law.

According to data obtained from the Supreme Court, there were no cases in which is committed a substantial violation of the criminal procedure regulations which pulls the abolition of the verdict reached in the proceeding in which the public, contrary to the law, was excluded from the main trial.

**66. (Ref to Q. 91): Please clarify the underlined sentence in the following abstract from the answer: "Already at the first hearing, the suspect must be notified on the act of crime he/she is charged with and the grounds for suspicion against him/her. The accused must have the opportunity to plead on all the facts and evidence he/she is charged with and to present all the facts and evidence that are in his/her favour. The suspect, or the accused is not allowed to present his/her defence nor to respond to questions." This last sentence seems to be contrary to the provisions of the CPC.**

Underlined sentence in your question is the result of inaccurate translation. Namely, in answer to question number 91, second paragraph, a sentence that is properly prepared in the Montenegrin language, has not been precisely translated into English. It should be worded like this: "A suspect or accused **is not obliged** to present his/her defence or to respond to questions." The proof of this is the correct translation of the next sentence where it says "Also, **the accused is not obliged** to comment on the charge, nor presents a defence, it is assumed that he/she is innocent."

**67. (Ref to Q. 92):**

**- Please provide information on the implementation of the legal framework on freedom of expression and on general trend in court decisions.**

Data on the criminal proceedings against journalists for criminal act of defamation under the Article 196 of the Criminal Code.

Year	No. of cases	Against media	Process is not completed	Resolved	Acquittal	Condemning	
						Fine	Suspended
2004	93	10					
2005	80	6					
2006	73	3					
2007	78	9					
2008	65	4					
<b>Total</b>	<b>389</b>	<b>32 (8.2%)</b>	<b>15</b>	<b>17</b>	<b>13</b>	<b>4</b>	

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						(total € 9.000)	
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**- In relation to the damages awarded for defamation cases the reply indicates that between 2004 and 2008 32 proceedings were being conducted against journalists for the act of crime of defamation. The fines imposed in 4 cases are also mentioned (the highest fine imposed is 5000 Euros), whilst there are 15 ongoing proceedings. Concerning civil proceedings for defamation in 30 cases the amounts mentioned were between 1 000 and 8 000 Euros. However, according to information at the Commission's disposal on 19 May 2008, a judge imposed a punishment of 20 000 Euros on a daily in a defamation case. In another case the same daily and a political leader were reportedly condemned to pay 33 000 Euros in libel damages to a businessman, whereas another case of damages due to defamation to the amount of 12 000 Euros for a weekly has been cited. Could you please clarify the numbers?'**

Data on the legal procedure for immaterial damage compensation for the suffered emotional distress due to the violation of reputation, honor and personal rights against journalists and media, regarding the charges since 2005 and following years.

Year	Number of charges	total amount of charges	Withdrawal of charge	Rejected claim	Approved claim	total awarded amount	Separate awarded amounts	Rejected	Incomplete
2005	13	€ 581.000	4	2	6	€ 41.500	1 x € 8.000 1 x € 10.000 1 x € 3.000 1 x € 500 1 x € 15.000 1 x € 5.000		1
2006	18	€ 513.710	8	7	1	€ 30.000	€ 30.000		2
2007	15	€ 1.346.500	5	4	3	€ 14.500	1 x € 500 1 x € 10.000 1 x € 4.000	1	2
2008	13	€ 10.450.000	2	-	5	€ 55.000	1 x € 5.000 1 x € 3.000 1 x € 33.000 1 x € 8.000 1 x € 6.000		6
2009	10	€ 437.000	1	2	-	-	-		7
Total:	69	€ 13.338.210	20	15	15	€ 141.000	1 x € 33.000 1 x € 30.000 1 x € 15.000 2 x € 10.000 2 x € 8.000 1 x € 6.000 2 x € 5.000 1 x € 4.000	1	18

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							2 x € 3.000		
							2 x € 500		

The text of received question contains the following: "However, according to information at the Commission's disposal on 19<sup>th</sup> May 2009, a judge imposed a punishment of 20.000 Euros on a daily in a defamation case. In another case the same daily and a political leader were reported condemned to pay 33.000 Euros in libel damages to a businessman, whereas another case of damages due to defamation to the amount of 12.000 Euros for a weekly has been cited. Could you please clarify the numbers?"

Please provide up-to-date data on defamation cases in 2009.

In regard with mentioned above, we provide to following data:

In 2004, the charge of K.E. against "Monitor" and A.N. for damage compensation has been brought in the Basic Court in Podgorica. The amount of EUR 100.000,00 was claimed with the charge, and with the verdict of the Superior Court in Podgorica no. 727/06 of 15<sup>th</sup> February 2008, the first instance verdict has been altered to immaterial damage compensation for the suffered emotional distress due to the violation of reputation, honour and personal rights and the defendants are obliged to pay the prosecutor jointly the sum of EUR 12.000,00, with a corresponding interest of arrear.

The above stated case is not entered in the submitted table since it originates from 2004.

In 2008, the charge of MNSS BV from the Netherlands and Corporation Steelworks from Niksic (Zeljezara AD Niksic) against defendant N.M. and Company with limited liability "DAILY PRESS" (DOO "DAILY PRESS") for immaterial damage compensation due to the violation of business reputation has been brought in the Basic Court in Podgorica. The amount of EUR 10.000.000,00 was claimed with the charge. The verdict of the Basic Court in Podgorica partially accepted the claim and prosecutors are awarded an amount of EUR 33.000,00 on the grounds of immaterial damage compensation. This sentence is out of effect, because they appealed against the same. The stated case, although out of effect, is entered in the above table for 2008.

According to the data from the Basic Court in Podgorica, the third case from the above question is not identified.

#### **- Please provide up-to-date data on defamation cases in 2009.**

Information on the criminal procedures against journalists for the criminal offence of defamation under the Article 196 of the Criminal Code in 2009

Number of cases		Against media	Procedure is not completed	Resolved	Condemning		Acquittal	Rejected	Stoppage of the procedure	
					Fine	Suspended				
					2	-				
227	16	7.04%	3	13	1x € 3.000	-	4	-	7	
					1x € 6.000					
					total 2 – € 9.000					

**68. (Ref to Q. 94): Please provide further information on the lawsuit lodged to the European Court of Human Rights regarding the restitution of property by a group of citizens.**

The Ministry of Finance of Montenegro, with the aim of credibility and suitability, the answer to the question searched from the Protector of human rights and freedoms in Montenegro.

The Protector of human rights and freedoms gave the answer that the whole procedure, according to the charge that a group of citizens launched by the European Court of Human Rights in regard to restitution, is in the initial phase; all the knowledge on this matter are informal and official and formal response on this basis are not yet obtained.

**69. (Ref to Q. 96):**

**- Please provide details on alignment with UN convention on Rights of the Child, on the activities carried out by the Council on Child rights, on the development of data collection capacity on violence against child and on results of the measures of child protection from violence (statistics)**

The upgrade of the legal system of Montenegro, especially in making new laws from the field of family relations, social and child welfare, education, health, employment, criminal law, went from the provisions of the Convention on the Rights of the Child. Of particular importance is the adoption of the new Family Law, which contains a special section on children's rights and special procedural provisions on the protection and realization of children's rights in court. The Law on Protection from Domestic Violence, the Juvenile Justice Law and the Law on Amendments to the Law on the Protector of Human Rights and Freedoms are in preparation, and they will regulate special rules for acting of the Protector for protecting the rights of the child.

Certain activities on a broader introducing children and adults with the essence of the Convention have been conducted. Seminars, round tables and workshops are organized, where particularly the teaching staff and social workers are familiarizing with the importance of the Convention and contemporary methods of knowledge transfer of the rights and duties of children. Books and brochures for children are printed, in which in a child friendly and popular language are talked about their rights. Initial activities for the mass introduction of children and adults with the Convention on the Rights of the Child already started in electronic and print media. A significant contribution to the implementation of the Convention gives NGOs. Through targeted projects and activities, non-governmental organizations are running various social activities in regard to further popularization of the Convention (education of teachers, social workers, police officers; printing the manuals, adequate posters and similar).

In 2007 the Government of Montenegro established the Council for the Rights of the Child to be in charge of: monitoring of the implementation of the National Plan of Action 2004 - 2010; protection and promotion of the rights of the child within the areas of social and child protection, health protection, education and other areas important for protection of the rights and interests of the child; monitoring of the implementation of regulations related to the protection of the rights of the child; monitoring of the fulfilment of obligations of Montenegro arising from the Convention on the Rights of the Child and other international documents related to the protection of the rights of the child; initiation of the adoption of regulations for improvement and protection of the rights of the child; promotion of cooperation with local self government in the process of implementation and protection of the rights of the child; improvement of cooperation with non-governmental organizations in the implementation and protection of the rights of the child; raising public awareness on the rights of the child and reporting on the status of the rights of the child. In performing envisaged activities, the Council develops cooperation with UN agencies and other international organizations dealing with protection of the rights of the child. The Council has 9

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members (6 ministers in the Government, representative of the Statistical Office, NGO representative and representative of public and cultural life).

So far, records of reported cases of violence, victims, perpetrators of violence, have been led by Centres for social welfare, Police, State Prosecution, Court, Health institutions, and other bodies or institutions dealing with the protection within their authorities.

Multi-professional teams were formed with the aim to protect children from violence, abuse and neglect; training of professionals from all departments were conducted in the form of regular supervision

For more details, please see the answer to additional question number 22 in the Chapter 23.

#### **- Please specify when will the law on juvenile justice be adopted?**

The Draft Law on Juvenile Justice is adopted by the Government of Montenegro at its session held on 24<sup>th</sup> December 2009. There were three round tables organized by the Ministry of Justice of Montenegro, UNICEF and the Delegation of the European Union in Montenegro, within the framework of the Public Hearing Program in order to contribute to the quality of the Law through gathering remarks, proposals and suggestions. According to the Working schedule of the Government of Montenegro for 2010, activities to identify the Draft Law on Juvenile Justice are related to the second quarter of this year.

#### **- Please provide further information on measures undertaken to promote and implement minority children's right to education in own language and alphabet in public institutions.**

Starting from 2000, when the reform of educational system in Montenegro is officially launched, great attention was paid to the training of the teachers and principals of primary and secondary schools, since the new curricula and textbooks are prepared in accordance with the idea of establishing a system of education and training programs that follow a certain experience and practice of the European Union countries. When it comes to Roma children, in early 2004, the Ministry of Education and Science in cooperation with UNICEF and the Open Society Institute began a project - Roma educational initiative. The aim of this project is involvement of Roma assistants in schools where they could work with teaching staff and parents and help in the interpretation and communication among teachers and children during the teaching process.

The rights of minorities and their representatives related to the education are stipulated by the General Law on Education and by laws regulating certain levels of education (Official Gazette of the Republic of Montenegro 64/02, 31/05 and 49/07), as well as by the Law on Minority Rights and Freedoms (Official Gazette of the Republic of Montenegro 31/06 and 38/07). Laws in the area of education guarantee the equality for all citizens in achievement of the right to education, regardless of national belonging, race, sex, language, religion, social origin or other personal characteristic.

The teaching in the kindergartens, primary and secondary schools is accomplished in the Montenegrin language. It is important to emphasize that the Constitution of Montenegro stipulates the Montenegrin language as the official language but at the same time allows the official use of Serbian, Bosnian and Croatian languages.

The current decision affirms the right to own language and alphabet in public institutions through the concept of a unified education system since the Montenegrin language is related to Serbian, Croatian and Bosnian language which allows these ethnic groups full understanding and interaction.

Education in the Albanian language is accomplished in the areas within which the significant part of population is Albanian. Education in Albanian language is present at all levels: preschool, primary

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and secondary. The curriculum for pupils who attend classes in Albanian language, under the unified educational system, is identical with the official curriculum except in the part that relates to the teaching of the Albanian language and literature.

In three preschool institutions, within the educational groups, education is accomplished in Albanian language. Preschool education in Albanian language enrolls 226 children.

In elementary schools in Montenegro, teachings in Albanian language attend 3.190 pupils (boys – 1.658, girls – 1.532). In the school year 2008/2009, out of 162 primary schools in Montenegro, teaching in Albanian language is carried out in 12 primary schools in 5 municipalities in Montenegro, namely:

- Ulcinj – PI PS "Bosko Strugar, PI PS "Marsal Tito", PI PS "Marko Nukulović", PI PS "Bedri Elezaga";
- Bar - PI PS "Djerdj Kastrioti Skenderbeg";
- Podgorica - PI PS "Mahmut Lekic", PI PS "Jedinstvo", PI PS "29. novembar", PI PS "Djerdj Kastrioti Skenderbeg";
- Plav - PI PS "Dzafer Nikocecic", PI PS "Hajro Sahmanovic";
- Rozaje - PI PS "Dacic".

In secondary schools in Montenegro, 1.067 pupils (boys - 687, girls - 380) attend classes in Albanian language. Education in Albanian language in secondary schools is accomplished in municipalities Ulcinj, Podgorica and Plav in following schools:

- Ulcinj - PI Secondary Mixed School "Marshal Tito", a private grammar school "Drita".
- Podgorica – PI Secondary Mixed School "25. maj" Tuzi,
- Plav - PI Secondary Mixed School "Beco Basic".

Textbooks for all grades of primary schools were printed in Albanian language, as well as for the first, second and third year of grammar school. The translation of textbooks for the fourth year of grammar school is in progress.

Roma people have minority status in Montenegro. According to the database for the RAE population in Montenegro from October 2008, which was published in May 2009 by the MONSTAT, Montenegro has 9.934 members of the Roma, Egyptian and Ashkali population (RAE population). Only 4.094 of them have Montenegrin citizenship. Native language for 6.422 of RAE population is Roma language, for the 2.707 Albanian language, while for the remaining Montenegrin/Serbian language. RAE population of children aged 0 to 14 years is 4.175.

The Government of Montenegro is one of the signers of the Decade of Roma. Consequently, the Strategy and Action Plan for Roma Inclusion was approved and adopted.

There are no organized classes in Roma language in Montenegro. In fact, there are not enough qualified Roma teachers, more precisely, personnel problems are reflected in the lack of competent persons who have an adequate level of education, professional profile and knowledge of Roma language.

The Ministry of Education and Science has provided free textbooks for these children and in this commitment is to provide for transportation for pupils who attend classes on the principle of dispersion in urban schools.

UNHCR, the Foundation for scholarships for Roma (FSR), Roma educational circle, and PI PS "Bozidar Vukovic Podgoričanin" are implementing additional teaching program in order to improve pupils' school success, with the involvement of Roma assistants.

In order to become Roma assistants and to provide for the support at the field and the teaching, persons who are recognizable in the Roma community, have completed at least secondary school and have significant experience in similar programs, have been selected. To facilitate the communication, the selection of assistants was taken into account the knowledge of the official and the Roma language.

During 2008, the Ministry of Education and Science in cooperation with UNICEF, has provided support to schools that include Roma in the regular educational system in terms of training the staff, through the project "Integration of Roma children in the regular educational system."

The Ministry of Education and Science within its activities, through the IPA 2010 Program, is included in the project "Social Inclusion" which has yet to be realized. One of the objectives of the project "Social Inclusion" refers to the process of preschool education of Roma children.

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In the primary school "Drago Novak" in Tivat, a number of children of the Croatian nationality whose parents want it (55 pupils) have additional classes in Croatian language, history and culture. This teaching program is organized as a part of the project of Croatian Civil Initiative - affiliates for the Bay of Kotor.

#### 70. (Ref to Q. 97):

#### **- When will the law on protection form family violence be adopted? Please provide further information on judicial practice**

The Government of Montenegro adopted the Draft Law on Protection from Violence in Family, and conducted a public hearing on the Draft Law which lasted from 10<sup>th</sup> October to 24<sup>th</sup> November 2009. As a part of the public hearing, a round table with the support of UNICEF was held. According to the Working schedule of the Government of Montenegro for 2010, the Draft Law on Protection from Violence in Family has been adopted at the session of the Parliament on 1<sup>st</sup> April 2010.

The first time when the criminal act of the Violence in a family or a family community was included into the Montenegrin criminal legislation was introduction of it in the Criminal Code of Montenegro of 2004.

Specified criminal act is stipulated in the Article 220 of the Criminal Code.

#### **Violence in a family or a family community**

#### **Article 220 paragraph 1 of the Criminal Code**

Anyone who by use of violence endangers physical or mental integrity of members of his family or family unit,

- shall be sentenced to a fine or imprisonment for a term of up to one year.

Total work	in	Unsolved	Resolved	Condemning					Acquittal	Rejected	Stoppage
				Prison	Fine	Suspended	Court warning	Security measure			
255		99	156	19	31	75	8	3	8	11	1
									Total 136		

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#### **Article 220 paragraph 2 of the Criminal Code**

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.

Total in work	Unsolved	Resolved	Condemning				Acquittal	Rejected	Delegated
			Prison	Fine	Suspended	Security measure			
90	37	53	23	2	21	1	4	1	1
			Total 47						

#### **Article 220 paragraph 3 of the Criminal Code**

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.

Total in work	Unsolved	Resolved	Condemning			Acquittal	Rejected
			Prison	Fine	Suspended		
43	16	27	9	-	13	2	3
			Total 22				

#### **Article 220 paragraph 4 of the Criminal Code**

If by acts referred to in Paragraphs 1, 2 and 3 of this Article, a death of a member of a family or a family unit has been caused,

- the perpetrator shall be sentenced to imprisonment of three to twelve years.

Total in work	Unsolved	Resolved	Condemning			Acquittal	Rejected
			Prison	Fine	Suspended		
2	1	1	8 years	-			

**- Please provide further information on measures undertaken to encourage women victims of violence to report on that to the police or lodge charges against perpetrator, what is done to inform them on their rights.**

Strategic documents that define the basic directions of the development of Montenegro are dealing with the problem of domestic violence. Thus, the National Programme for Integration of Montenegro into the EU for the period 2008-2012, under the chapter - Human rights and protection of minorities - as a short-term priority determine to strengthen the efforts to combat all forms of violence against women, to establish a shelter for the victims of domestic violence, to support research and dissemination of information on all forms of violence against women.

Within the Judicial Reform Strategy 2007-2012, a special chapter is dedicated to strengthen the availability of judicial authorities, in other words for gaining access to justice. The Draft Law on Protection from Violence in Family foresees that the police, the authority for the violations, the State prosecutor's office, social services and other bodies or institutions in charge of protection are obliged to, within their competencies, to provide for a complete and coordinated protection to the victims. It is significant that is explicitly foreseen that NGOs can offer protection from domestic violence and that multidisciplinary teams, for the purpose of monitoring and improving the protection, can be formed in cooperation with NGOs. Women, victims of violence, are entitled to psychosocial, legal assistance and social protection. The principle of emergency treatment in cases relating to protection from violence is anticipated, and in all cases the priority is to protect the interests and welfare of the child who is the victim. The principle of emergency treatment anticipates that the police will after learning of domestic violence without delay take an action and measures in order to protect the victims. Responsible person from a state body, another body or agencies, health, educational and other institution, is obliged to report the violence to the police when learn about it during the performance of his/her duties.

The Police Department pays special attention to victims of domestic violence and the affirmation of their right by informing them on the legal process and rights, roles, responsibilities and authorities of the police, prosecutors, court and other institutions. In this sense, a series of actions are taken to provide them with adequate help and support, to protect them and take all necessary measures to suppress further violence.

Since 2007, police branch departments systematized new positions for police commissioners and police sergeants for combating domestic violence which resulted in better and more efficient work on preventing these crimes.

The Police branch department in Podgorica in the Sector for the suppression of crimes of blood, due to the scope of issue, formed the special Branch to combat crimes of domestic violence in which two female police officers are engaged.

In addition to efforts to provide additional training to officers working on the prevention of crimes of violence in the family, through partnership with the Police Academy in Danilovgrad and non-governmental organizations (among others, with NGO SOS hotline), and in order to educate and raise awareness of police officers about the problems and consequences of domestic violence, the importance of prevention and more effective sanctions for perpetrators, the Police Department has supported a series of activities launched by activists of these organizations.

Educations and training sessions were organized on the principle of modern learning methods for adults. The trainings are focused on the basic concepts and principles of protection from domestic violence, and procedures to identify, establish and evaluate the risk of domestic violence. It is also envisaged that the training participants improve their knowledge of planning interventions, monitoring and evaluation of effects, recording and documenting cases of violence. In order to develop necessary inter-professional cooperation in the field of domestic violence, Memorandum of Understanding and mandatory joint acting amongst Police Departments, Centres for Social Welfare, Basic Courts, local governments, Health centres and NGOs SOS hotline were signed in the municipalities of Podgorica, Bijelo Polje, Ulcinj and Niksic.

**- Please provide information on measures undertaken to improve legal framework on Protection from Family Violence.**

The plan for improvement of the legal framework that regulates the issue of the protection from domestic violence, at the same time bearing in mind the constitutional proclaiming the family as a social unit which enjoys special protection, proceeded from incriminating such a form of behaviour, which resulted with defining violence in family or family community as a specific criminal act in the Criminal Code of Montenegro.

Also, the Criminal Code prescribes a number of incriminations that can be correlated with the suppression of domestic violence, especially in regard to protection of children from violence, for example, sexual intercourse with a child - Article 206 of the CC; deprivation of a minor - Article 217 of the CC; changing the family status - Article 218 of the CC; neglecting or abusing a minor - Article 219 of the CC; omission of maintenance - Article 221 of the CC; violation of family obligations – Article 222 of the CC; incest - Article 223 of the CC, and trafficking in children for adoption - Article 445 of the CC.

The Family Law, in the part that regulates the rights of the child, gives the misdemeanour authority the possibility to bring the decision to separate children from their parents in case of domestic violence. In case of domestic violence, misdemeanour authority may also decide to restrict rights of the child to maintain personal relationships with their parents they do not live with.

**71. (Ref to Q. 98): Please provide further explanation on specific legislative protection for the rights of the elderly and on Family Cash Benefit**

The Law on Social and Child Welfare (Official Gazette of the Republic of Montenegro 78/05), defines the Basic benefits in the field of social welfare regarding elderly.

Rights to social protection that can make an old person are:

- The Family Cash Benefit;
- The Personal Disability Benefit;
- Home Care and Assistance Allowance;
- Placement in an Institution;
- Placement in a Foster Family;
- Health care;
- Coverage of Funeral Expenses, and
- The Lump Sum Cash Benefit.

*Family Cash Benefit*

The right to the Family Cash Benefit, as the basic right to social welfare, is a form of financial support, and a family or a family member may be entitled to it if he/she is incapacitated for work, or able to work on condition regulated by this Law in accordance with the income and property. Persons over 65 years of age are considered incapacitated for work.

The amounts of the cash benefit to a family that has no monthly incomes are as follows: for a single-member family - € 60.50; for a family of two members - € 72.60; for a family of three members - € 87.15; for a family of four members € 102.85; for a family with five or more members € 114.95. The amount of the cash benefit for the family that has earned an income is determined by the height difference of the amounts, as for the family with no income and for the family with average monthly income earned in the previous quarter.

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A family or a family member is entitled to the cash benefit as long as they meet the conditions prescribed for the exercise of this right. The beneficiary is obliged to report any change that is influencing on the exercise of the right height. Conditions prescribed for the exercising of the rights are examined by the authorised person every three months.

Cash benefit on the grounds of the right to Family cash benefit is not deemed to be the income subject to taxation, and is to be paid monthly.

#### **72. (Ref to Q. 99):**

**- Please provide information on measures undertaken to improve participation of people with disabilities in the occupational life.**

Detailed information on measures taken to improve the participation of persons with disabilities in their professional life is given in the answer to question 123 in the Chapter 19 - Social Policy and Employment.

The Law on Professional and Social Rehabilitation and Employment of Persons with Disabilities (Official Gazette of Montenegro 49/08) is a legal base which, for the first time comprehensively, legally regulates such a complex area like professional rehabilitation and employment of persons with disabilities.

The Law on Professional Rehabilitation and Employment of Persons with Disabilities came into force in 2008, and secondary legislation (the Rulebook on conditions and manner of exercising the right to professional rehabilitation; the Rulebook on detailed conditions, criteria and standards for the implementation of measures and activities of professional rehabilitation; the Rulebook on the conditions and criteria for determining remaining business capability and employment opportunities; the Rulebook on detailed conditions and manner of exercising the right to subsidize the salaries of persons with disabilities and the Rulebook on conditions to be fulfilled by an institution for professional rehabilitation, working centre and protection section) are adopted in August 2009.

The main objective of the Law and secondary legislation is to create conditions for increasing the employment of persons with disabilities and their equal participation in the labour market by removing barriers and creating equal opportunities.

The provisions of stated Law regulate the manner and the procedure for exercising the right to professional rehabilitation of persons with disabilities, and measures and incentives for their employment, method of financing and other issues of importance for professional rehabilitation and employment of persons with disabilities. Persons with disabilities are entitled to professional rehabilitation and employment, in the manner and under conditions prescribed by this Law, Collective Agreement, ratified and published international treaties and generally accepted rules of international law. The same Law provides the person who has not been determined with the remaining business capability and employment opportunity by the competent authorities, to initiate proceedings for the determination of remaining business capability by the authorized Committee of the Employment Office of Montenegro, all in the purpose of incentives to employment of persons with disabilities.

According to this Law, professional rehabilitation includes measures and activities that are implementing in order to appropriately train person with disabilities for work, so that he/she can maintain the employment, make professional progress or change his/her professional career.

Measures and activities of professional rehabilitation are:

- Career information, counselling and evaluation of professional capabilities, aimed at selection of occupation and program of training and employment;

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- Implementation of procedures and practices to determine business capabilities and skills;
- Psychosocial and motivational support and help to direct persons to appropriate rehabilitation programs;
- Implementation of programs of training for persons with disabilities for respective occupations and involvement in the labour market, or maintaining the employment;
- Adapting the workplace for persons with disabilities;
- Professional assistance and monitoring of persons with disabilities in order to effectively participate in the work environment, maintain the employment and to progress;
- Analysis of the labour market, possibilities for employment and involvement of persons with disabilities in work;
- Assessment of performance, development and advanced training programs of vocational rehabilitation;
- Professional training, additional training, retraining and programs for maintaining and improving business and social skills and abilities in a purpose of preparation for employment;
- Information and counselling on the application of different technologies and techniques in learning and work;
- Information and support on funding sources;
- Technical assistance, support, monitoring and evaluation of results of work of persons with disabilities, etc.

Professional rehabilitation of persons with disabilities is organized and carried out by an Institution for professional rehabilitation, special school or other legal entity that meets the criteria for performance of measures and activities of professional rehabilitation.

The Law on Professional Rehabilitation and Employment of Persons with Disabilities contains provisions which stipulate that a person with disabilities can be employed under the general or special conditions. According to the general conditions, disabled person is to be employed in the open labour market, and under special conditions he/she can be employed in specific organizations, if based on business skills and health conditions can not be employed in the open market.

Special organizations for the employment of persons with disabilities are: the Institution for Professional Rehabilitation, Working centre, Protection section and Protection workshop.

In order to encourage the employment of persons with disabilities, and bearing in mind the role and importance of specific organizations, according to the present Law, the following organizations have a privileged status that includes:

- The exemption from customs duty on import of specialized equipment, appliances, spare parts, tools and supplies for persons with disabilities, if they are not produced in the country;
- The exemption from income tax in proportion to the number of employed persons with disabilities with the number of total employees with the employer.

Also, in order to stimulate the employment of persons with disabilities, the Law stipulates the quota (the number of disabled persons that the employer is obliged to employ depending on the total number of employees).

Employer who hires the person with disabilities under the stated Law shall be entitled to subsidies that are realized through the following forms:

- Non refundable means for adapting the workplace and working conditions for employment of persons with disabilities;

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- Loans under favourable conditions for purchase of machinery, equipment and tools required for employment of persons with disabilities;
- Participation in financing the costs of personal assistant (helper in work) of persons with disabilities;
- Subsidy to incomes for the persons with disabilities who is employed.

An employer who did not employ the person with disabilities has the obligation to pay special contributions to the Fund for Professional Rehabilitation and Employment of Persons with Disabilities. The means of the Fund are used for: development and improvement of professional rehabilitation and employment of persons with disabilities; co-funding of specific organizations; payment of subsidies prescribed by this Law; co-funding of programs for maintaining the employment of persons with disabilities; funding other activities related to professional rehabilitation of persons with disabilities.

Namely, bearing in mind above provisions of the Law, it can be concluded that the solutions contained in this Law proceeded from the basic premise that every person with disabilities are capable of some kind of work, which for the employer and the state, as well as for the person with disabilities itself, can be worthwhile. Depending on business capabilities and labour market needs, through a special organizations for the employment of persons with disabilities, as well as through providing certain benefits and subsidies to employers who employ the persons with disabilities, the state creates the preconditions for employment of these persons, and persons with disabilities exercise protection of their material and social security and safety of their families through their work, not through social benefits.

### **- Please provide information on measures undertaken to ensure accessibility to public buildings, to what extent legal provisions are respected.**

In order to achieve accessibility to public facilities for persons with disabilities, a range of activities are undertaken: the Law on Spatial Planning and Construction is adopted in September 2008 and the Rulebook on closer conditions and manner of providing accessibility of facilities to the persons with reduced mobility is adopted in 2009.

Also, by the end of 2009, the Strategy for improving safety in highway traffic is drafted and adopted with the aim to provide for road traffic system in Montenegro which will be safe, secure, efficient, reliable, and environmentally friendly, integrated into the European systems and, as such, meet all the needs and expectations for quality life.

The Decision on public parking lots on the territory of the capital - Podgorica (Official Gazette of Montenegro 38/09) on mandatory provision of 5% of parking lots for persons with disabilities and issuing stickers for cars that use persons with disabilities, is adopted.

Pursuant to the Law on Traffic Safety on the Roads, the Ministry of Transport, Maritime Affairs and Telecommunications will adopt a regulation on marking of the vehicles operated by persons with disabilities in 2010.

The Law on Safety of Railway Traffic, which entered into force on 1<sup>st</sup> July 2008, stipulates that the railway car for the transport of passengers should have marked places for people with disabilities. The Draft Law on Contractual Relations in the Railway Traffic, which adoption is foreseen in the first quarter of this year, stipulates the obligation of giving the information by transporters to the persons with disabilities and to persons with reduced mobility on the access to railway transport, the conditions for access to railway cars as well as obligation of notification of persons with disabilities on the content in the train and free help in order to assist them to access the train and use the train in order to travel.

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The Law on Obligations in Air transport, which drafting is in progress and should come into force in 2010, foresees the adoption of the Decree on the Rights of Persons with Disabilities and Persons with Reduced Mobility in Air Transport.

The Ministry of Transport, Maritime Affairs and Telecommunications, in cooperation with the European Bank for Reconstruction and Development prepared a draft of the Decree on Universal Service, whose adoption is expected in the second quarter of this year.

This Decree foresees favorable conditions for the persons with disabilities by the side of the operator designated as the operator of public telephone booth. The Ministry of Transport, Maritime Affairs and Telecommunications, with the consent of the Ministry competent for social welfare, defines categories of consumers who are considered as persons with low incomes, that is persons with disabilities, taking into account the definitions that have been already provided by the provisions relevant for social protection and status of the persons with disabilities, as well as introducing additional definitions, if needed, to enable the users with the widest possible availability of Universal Service. The Agency, with special document, determines the manner of evaluation of the accessibility of Universal service prices and special price packages, and determines the maximum prices for certain services from the scope of Universal Services, which are to be provided to the customers with low incomes and persons with special needs (persons with disabilities).

Also, continuous activities for providing of accessibility to facilities in the areas of health, education and social and child protection, as well as tourist's facilities, are being implemented.

**- Please provide information on measures undertaken to harmonize the Law on Child and Social Protection and its bylaws, as well as the Standards for Social Services with international standards (UN, EU, CoE) in order to provide the institutional framework and capacity to implement the reform process, which would e.g. include the creation of child protection standards (comprising also the de-institutionalisation and the development of care plans – also for adults), the establishment of an Institute for Social Welfare, developing social services standards.**

The Law on Social and Child Welfare (Official Gazette of the Republic of Montenegro 78/05) stipulates that the aim of social and child welfare is providing the care for family, an individual, children who are at risk, and persons with social needs, or socially excluded. Detailed conditions for the exercise of the rights, in accordance with the Law, are governed by secondary legislation. In the phase of drafting the Law, the draft Law has been submitted to relevant international organizations (UNICEF, Save the Children, representatives of the European Commission), which have expressed a positive attitude toward the attached Draft of the Law .

Since the Law on Social and Child Welfare was drafted on the grounds of the European Social Charter, adopted in 1961 and amended in 1988, with the additional Protocol, to a large extent is consistent with it. Also, the Law is to a large extent in compliance with the Convention on the Rights of the Child and other relevant documents whose subject area is social and child protection.

In accordance with the recommendations of the European Partnership, the basic priorities of the further development of social welfare and child protection, including strengthening the institutional and personnel systems, the development of information systems, statistics, monitoring and analyzing social protection, transformation of social welfare institutions, standardization of services in institutions for children and adults, the development of intersectoral cooperation for the high-risk categories, improving professional capacities in the institutions of social welfare-reform of the social welfare centres, standardization of services, staff training, introducing supervision and evaluation of work, conditions for licensing and accreditation, development of services that are directed towards strengthening the social mechanisms (parents, family, relatives) that allow the stay of the children, old persons and persons with disabilities in the family, the elimination and

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reduction of architectural barriers to free access to people with disabilities in social and child protection.

In this regard, a series of strategic documents are adopted, with the aim of improving the protection of vulnerable categories of individuals and families in all areas of life (Poverty Reduction Strategy Paper (2003-2007); National Action Plan for Children (2004-2010); National Program of Prevention of Unacceptable Behaviour of Children and Youth in Montenegro (2004-2006); Strategy for Permanent Solution of Issues of Refugees and Internally Displaced Persons in Montenegro (2005-2008); National Action Plan for "Decade of Roma Inclusion 2005-2015" in the Republic of Montenegro; Strategy on Poverty Reduction and Social Exclusion (2007-2011); Strategy for Improvement of RAE Population Status in Montenegro (2008-2012); Strategy for the Development of Social and Child Protection (2008-2012); Strategy for Integration of Persons with Disabilities (2008-2016); Action Plan for the Strategy for Integration of Persons with Disabilities Montenegro (2008-2009); Inclusive Education Strategy (2008-2012); National Strategic Drug Response (2008-2012); Action Plan for Implementing the National Strategic Drug Response (2008-2009)). It is important to note that these documents were made in accordance with international standards and best practices in these areas, and in cooperation with international partners.

In the field of social and child welfare, the Government of Montenegro in its Working Schedule for 2010, predicted the adoption of the Law on Amendments to the Law on Social and Child Welfare. The aim of these amendments is to improve system of social welfare and child protection in accordance with the relevant strategic policy documents and international standards.

**- Please provide an update regarding the ratification of the Protocol amending the European Social charter.**

When it comes to social, economic and cultural rights in Europe, one of the central international-legal mechanisms for the protection is the Protocol amending the European Social Charter.

Becoming a member of the Council of Europe in May 2007, Montenegro has undertaken the obligation of ratification of this instrument.

The Action Plan for Cooperation of Montenegro and the European Council, the Protocol amending the European Social Charter is an instrument designed for the verification in the Parliament of Montenegro, with a term of 2008-2010.

The Law on the Protocol amending the European Social Charter was adopted by the Parliament of Montenegro at its fifth Session of the Second regular session on 10<sup>th</sup> December 2009. The Law was published in the Official Gazette of Montenegro 6/2009-International treaties.

We have also received a notice from Mr. Regis Brillas, from the Directorate for Human Rights and Legal Affairs of the Council of Europe, that Montenegro has deposited instruments on ratification in March 2010 at the Secretary General of the Council of Europe.

The Charter for Montenegro shall enter into force the first day of the month, after a period of one month from the date of deposit of instrument of ratification.

**73. (Ref to Q. 101): Please provide explanation on the reasons of the discrepancies between official statistics on Roma and the UNHCR statistics (statistics by UNHCR, NGOs and others – instead of officially 2601 estimate up to 20.000 – 30.000 Roma, including refugees from Kosovo).**

The last Population Census, households and dwellings, was held in the period from 1-15 November 2003. This Census, in accordance with international recommendations and the Law on Census, has included in permanent population Montenegrin citizens whose stay abroad is shorter

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then a year, as well as foreign citizens who are working or staying as family members in Montenegro more than a year.

Information on the national composition of the population in the Census 2003 were collected on the basis of a free declaration of population and, accordingly, 2.601 persons came out as Roma regarding their nationality, and 225 persons as Egyptians. Roma language, as mother tongue, use 2.602 persons in Montenegro.

During the conducting the Census, on the territory of Montenegro a large number of refugees and internally displaced persons resided. Among the internally displaced persons from Kosovo, a large number was also a member of the Roma population, and these persons have not been included in the Census. Thus, in this period, UNHCR and NGOs **were assessing** that 20.000-30.000 domicile and internally displaced Roma live in Montenegro.

The Statistical Office of Montenegro - MONSTAT, in order to implement the Strategy for Improvement of RAE Population Status in Montenegro 2008-2012, conducted research for the purpose of the creation of database of RAE population in Montenegro. The research was conducted from 20<sup>th</sup> to 29<sup>th</sup> October 2008, on the whole territory of Montenegro, and in cooperation with the Roma Council in Montenegro and the NGO Coalition "Roma Circle".

For the purpose of collecting data, 50 points were set in the Roma settlements and another 21 points within the municipal Statistical Offices. Interviewers at each point were representatives of the Roma Council, the NGO Coalition "Roma Circle" and the Statistical Office – MONSTAT. Monitoring of the research and control of interviewers were conducted by the controllers and supervisors of the Roma Council, the NGO Coalition "Roma Circle" and the Statistical Office – MONSTAT (in total 13).

The Expert team of the MONSTAT has processed the data collected which were finalized in the publication "Database of the RAE population in Montenegro" - May 2009. This survey covers all persons who have voluntarily provided information for themselves and members of their families and households. The survey also included the persons who do not currently live in Montenegro, but members of their households have reported them and gave information on them. Thus, the survey included 11.001 persons, out of which 9.934 persons were present in Montenegro, and 1.067 persons were located abroad. Since out of 9.934 persons, 5.649 are domicile RAE population, and 4285 are internally displaced persons.

In the session held on 19 June 2008, the Government adopted the Information on Activities on Implementation of the Strategy for Permanent Solution of the Status of Refugees and Internally Displaced Persons in Montenegro 2005-2008. On the same session, the Government adopted the Conclusions entrusting the Refugee Care and Support Office with the obligation to organise, in cooperation with the

Ministry of Interior and Public Administration, re-registration of internally displaced persons from Kosovo residing in Montenegro to whom the status had been recognised by the Commissariat for Displaced Persons of the Government of the Republic of Montenegro.

The process of re-registration of internally displaced persons from Kosovo residing in Montenegro started on 14 September 2009, and it was completed on 14 November 2009.

In that period, 10,951 persons were re-registered. After the expiry of the mentioned period (on 14 November 2009), additional 12 persons detained in the Institution for Enforcement of Criminal Sanctions (in Spuz) were re-registered, as well as 5 other persons meeting the requirements, thus making a total of 10,996 reregistered persons.

During the re-registration, 196 persons submitted applications for re-registration to the Office. After checking in the Office's electronic database, re-registration was approved to 24 persons meeting the necessary requirements.

After checking in the Office's database, it was established that out of the total number of filed applications (196), 172 persons do not meet requirements for re-registration. These persons have been informed in written form that they do not meet conditions for re-registration and those

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notifications have been sent to their addresses (personal delivery with a receipt). Twenty three (23) out of 172 persons have filed a complaint to the Ministry of Labour and Social Welfare.

Complaints have been forwarded to the Coordination Committee for monitoring of the implementation of the Action Plan for Resolving the Status of Displaced Persons from Former Yugoslav Republics and Internally

Displaced Persons from Kosovo residing in Montenegro, after which the Committee will submit the complaints to the Asylum Office of the Ministry of Interior and Public Administration for the further procedure.

During the period from 14 November 2009 to 14 February 2010, 36 persons have submitted applications to the Refugee Care and Support Office for approval of the re-registration on the grounds of Article 105a item 3 of the Law on Amendments to the Law on Foreigners, stipulating that "internally displaced person who has not applied for registration due to medical reasons, which is proved by the medical documentation from a public health institution, shall be allowed to re-apply within three months as of the expiry of the deadline referred to in paragraph 2".

The comprehensive information on the completed re-registration, made by the Refugee Care and Support

Office and approved by the Ministry of Interior and Public Administration, has been submitted to the Ministry of Labour and Social Welfare. This Ministry has forwarded it to the Government of Montenegro for consideration and adoption.

**Note:** Active database on internally displaced persons from Kosovo residing in Montenegro is being updated on daily basis due to changes caused by: birth, death, return to the country of origin, departure to third countries, acquisition of citizenship, etc.

As for the number of displaced persons from Kosovo who are members of RAE population, re-registration process was conducted in late 2009 and statistics are given in the **Annex**.

#### **74. (Ref to Q. 102):**

**- Please provide further details on Strategies and tools for minority protection and on concrete implementation measures, resources etc.**

The basic strategic document for the protection and promotion of minority rights is the Strategy for Minority Policy. The Strategy represents a set of concrete measures and activities in the next ten years in regard to legal, political, economic, social, cultural, informational, and educational and every other character, as well as responsible bodies and timelines, all with the aim of improving the overall status of minorities and their better integration into social trends.

Defined measures for the implementation of the Strategy for Minority Policy are as follows:

#### **a) The prohibition of discrimination**

- To bring the systematic anti-discriminatory regulations, in accordance with international standards and constitutional norms on the prohibition of discrimination; this measure is among the highest priorities that are the obligation of the Government and the Parliament of Montenegro;
- To harmonize existing legislation and adopt new laws, in order to harmonize national legislation with international standards (this is a long-term goal for which priorities are set in accordance with the dynamics of the accession to integrative process);
- In this context, in accordance with the objectives and priorities of the foreign policy of Montenegro, shall consider the possibility and necessity of concluding bilateral agreements

with neighbouring countries in order to effectively and efficiently, mutually protect minorities and their members.

#### **b) Use of language and alphabet**

- Legal regulation on use of language and alphabet on the local, regional and state level; this includes the harmonization of procedural and material legislation, in accordance with mentioned international legal standards; the use of language and alphabet by the minorities in accordance with the relevant constitutional guarantees; in this context, the conditions for exercising of these laws, which include organizational, functional and control mechanisms, will be provided. The proposed measures also foresee providing of technical and administrative conditions;
- The use of language in the celebration of homonyms and official signs in areas where minorities live in large number will be especially precisely;
- The obligation of the State is to provide for the translation of basic legal and political documents including the translation of international documents concerning human and minority rights to the language of minorities, primarily in Albanian language.

#### **c) Education**

- In the capital, and in places where members of the Albanian people are the majority, optional teaching of the Albanian language in the primary and secondary schools should be provided;
- To continuously train school personnel who teach language, culture, history and tradition of minorities;
- To provide for legal and other measures which will allow the full participation of parents in choosing a curriculum's teaching and educational contents, in accordance with the tradition;
- To provide for continuous cooperation with the States - home countries of the minorities from Montenegro in order to exchange students and teaching staff;
- The affirmation of the principle of civic education, as well as humanitarian values in the spirit of tradition, culture and history of minorities in teaching and educational contents;
- To provide for participation of competent representatives of minorities in the work of relevant institutions that define and adopt the teaching-scientific and educational curricula;
- To provide for participation of representatives of pupils from the minority population in the bodies of pupil's participation (eg. Pupils Parliament);
- The Annual plan and program of these activities is established by the line Ministry in charge of the field of education, in cooperation with the Ministry for Human and Minority Rights;
- The establishment of more mild criteria for the rationalization of the rural school network in areas where minorities live;
- To provide for quality education of minorities in terms of learning the official language in Montenegro.
- The wider profanation and advanced training of secondary education in the areas where minorities represent the majority, in order to secure the preservation of traditional occupations of minorities;
- To continuously provide for education and scholarships of staff for undergraduate, postgraduate and PhD levels; the State University should consider the possibility to undertakes special measures for the purpose of enrolment of few students in these courses each academic year;

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- To provide for education and scholarship of staff of minority representatives to participate in political and administrative affairs of the state; this implies the obligation of the Faculty of Law, the Faculty of Political Science and the Faculty of Economics of the University of Montenegro to annually designate/create prerequisites for the achievement of minority enrolment quotas;
- The affirmation, in other words to create favourable conditions for admission of a certain number of associates (and possibly teachers) from the minority population in a cooperative contractual relationship at the State University;
- To accelerate and simplify the process of nostrification of University degrees from the region;
- To institutionalize the cooperation with state higher education institutions from the region aimed to exchange students, professors, researchers, organization and preparation of joint projects in this context; the Annual plan and program for the realization of this activity brings the University of Montenegro in cooperation with two in line ministries;
- To set aside means from the budget of the University of Montenegro for scientific-research projects related to history, culture, language and tradition of minorities.

#### **d) Culture**

- The preservation of cultural heritage, cultural and historical monuments, the traditions of minorities, will be provided by the legislative and other measures, which should be preceded by a listing and registration of cultural heritage monuments, as well as the entire heritage of the state of Montenegro,
- To conduct concrete measures aimed at conservation and preservation of monuments (holy objects, artworks, relics, folklore, music, etc) which belong to a minority culture,
- The measures aimed at categorization of minority culture monuments (a significant percentage for funding these activities should be set aside from the Fund for Minorities);
- To provide for presence of continuous and adequate availability of these cultural contents to all citizens, especially through the media, and particularly those whose founder is the State,
- The measures listed in the field of culture should be conducted by the Ministry competent for culture in cooperation with the Ministry of Human and Minority Rights and the Institute for the Protection of Cultural Monuments, with the involvement of NGOs and international organizations, and with special emphasis on the cooperation with UNESCO;
- To encourage and support amateurism of minorities in cultural creativity, especially in the field of music and folklore;
- To provide for financial support for the publication of periodicals, with special emphasis on minority literature,
- The establishment of prizes for the best pupils' assignments in minority languages (written assignments, poems, short stories, essays, anecdotes, etc);

#### **e) Information**

- For the purpose of individual public radio-broadcast service of the State Radio and TV (RTCG), regional radio and television studios, with special obligations of production and broadcasting of regional programs and programs in minority languages, may be established;

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- The co-funding by the state and local governments to radio and TV program contents in minority languages, which are important for the development of science, culture and information;
- To ensure the application of special legal norms on establishing the working bodies within the governance structure of the public service;
- To institutionalize participation of minority representatives in the bodies which set the program content in the public service;
- The retransmission on public service of appropriate radio and television programs from the neighbour countries;
- The possibility of introducing a separate channel in the public service dedicated to minorities;
- To provide for daily representation of minority contents in the minority language in print media in which the founder is the State;
- In accordance with available resources of the Fund for Minorities, to for co-funding of the program content devoted to minorities.

#### **f) Political participation and representation in State bodies**

- Complete legal regulation of electoral legislation in order to apply the constitutional provisions on the political representation of minorities on the basis of the principle of affirmative action;
- To stimulate the establishment and operating of the Council of Minorities; these activities include special measures for strengthening of this process - the state needs to exercise the control of legality, and minority communities has the exclusive right to organize and work at the political level in order to preserve the identity and improvement of the rights;
- To undertake factual activities aimed at appropriate representation of minorities in the executive and judicial authorities; this implies a long-term activities aimed at education and training of a certain number of personnel among members of minorities with the financial support of the state regarding this aim; the Commission for the implementation of the Strategy will take care of this permanent task during its lifetime, and after that; the expertise and preferentiality will be taken into account in these activities, as well as ethnic representation in the context of overall reform of the public administration;
- To implement these measures, it is necessary to establish a system of personnel records with special emphasis on the minority aspect of personnel records, in accordance with the standards of protection of personal data, with which the records are put into operation of the purposes for which they were established;
- To consistently implement the Law on Local Self-Government and the principle of decentralization, particularly in the economic and financial terms in order to ensure a high level of financial independence and sustainability of local authorities, in accordance with the standards of the Council of Europe;
- In particular, the attention must be paid to the appropriate representation of minorities in the organizational structure of specific institutions such as police, National Security Agency and the Army of Montenegro; this principle should be applied in a manner that achieves the representation on the entire territory of Montenegro, not only in the areas where the minority presents majority population;
- To establish a system of periodic reporting to the responsible authority designated, in order to monitor implementation of the Strategy;

**g) Development and economic policy**

- To develop plan documents which promote regional development and employment, especially in the areas inhabited by minority populations, particularly in the northern part of Montenegro;
- To stimulate economic activities that contribute to the development of underdeveloped regions in which mostly minority people live.
- To establish special protective mechanisms of social policy on a regional principle, with special emphasis on the situation of vulnerable groups (children, women, elderly, and persons with special needs);
- To decentralize social policy (Social Welfare System);
- To develop infrastructure is a priority (roads, energy, etc.);
- To stimulate loans to the projects of local and regional importance;

Besides the resources allocated for regular activities of the state bodies, for implementation of planned activities under the Strategy for Minority Policy, special funds are not determined. For the purpose of financial support to all activities in the field of promotion of minority rights, the Fund for Minorities is established. In 2008, the Fund for Minorities handled with an amount of EUR 425.125,00; in 2009 with EUR 975.704,76, and the planned funds for 2010 amounted to EUR 993.169,64.

**- Please provide an update regarding the draft amendments to the Law on minority rights and freedoms**

The Constitutional Law for the enforcement of the Constitution of Montenegro is adopted on 19<sup>th</sup> October, and declared on 22<sup>nd</sup> October 2007 – it was adopted and proclaimed in the same time with the Constitution and entered into force on the day of its adoption. In its three provisions, the Constitutional Law defines deadlines for harmonization of laws with the Constitution. Among others, pursuant to the Article 8 of this Law, it is provided that within the three months from the date of entry into force of the Constitutional Law, the Law on Minority Rights and Freedoms will be harmonized with the Constitution. Due to extensive legislative activities of the Parliament on the harmonization of legislation with the Constitution, and with the EU legislation, for a smaller number of laws referred to the Articles 7 and 8 of the Law, the deadlines for compliance were very short and unrealistic, so the Parliament, in order to act legally and legitimately, conducted two amendments of the Constitutional Law and these terms has shifted, by defining them more realistic and appropriate to the conditions and needs in the process of harmonization and set the deadline of two years.

One of the laws that were needed to be harmonized with the Constitution is the Law on Minority Rights and Freedoms. **The Government of Montenegro adopted the Draft Law on Amendments to the Law on Minority Rights and Freedoms on 5<sup>th</sup> November 2009.** Besides the harmonization of other provisions of the Law on Minority Rights and Freedoms with the Constitution, the most important is the shaping of norms relating to the constitutional right to an authentic representation of minorities in the Parliament of Montenegro and the assemblies of local self-government. This is all the more so, if takes into account the fact that the Constitutional Court declared as unconstitutional two provisions of the Law on Minority Rights and Freedoms that have defined the principle of affirmative action in the participation of minorities in the Montenegrin Parliament and the assemblies of local self-governments. With regard to the ongoing work on harmonization of the electoral legislation with the Constitution that will define this issue, the Draft Law on Amendments to the Law on Minority Rights and Freedoms contains a provision which stipulates that an authentic representation of minorities in the Montenegrin Parliament and parliaments of the local self-governments in which minorities make up a significant proportion of

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the population, will be provided with the application of the principle of affirmative action, in accordance with the electoral legislation.

Basic amendments are related to terminological harmonization of this Law with the Constitution of Montenegro. Also, these amendments define more precisely the composition of the Council, as well as the method for selecting members of the Council of Minorities. The supervision of the legality of work and of obligations of the Council is defined, so that on its activities and financial operations they submit, at least annually, the report to the competent ministry. In regard with the allocation of funding from the Fund for Minorities, these amendments left the right to the management organs of the Fund to allocate the funds for the protection, promotion and development of minority rights, on the basis of their decision, respecting a few basic criteria.

This Law was discussed at the Parliamentary working bodies and at the Plenary Session of the 9<sup>th</sup> March 2010. Pursuant to the Article 91 paragraph 4 of the Constitution ("In the first round with 2/3 majority, and in the second round, which can take place no earlier than after three months, with the majority of all minorities, the Parliament shall decide on the laws that regulate the manner of exercise of acquired minority rights and the use of Army units in the international forces."), the Draft Law on Amendments to the Law on Minority Rights and Freedoms did not receive required majority, so it should be waited for its adoption for the anticipated term of three months.

**- Please provide information regarding the problem of guaranteeing authentic representation of minorities in the Parliament and local assemblies – what are the current efforts following the failure of the parliamentary group to find a solution on authentic representation**

The Parliamentary working group, which task was to draft the Law on Election of Councillors and Delegates, has completed the draft text of this Law. One of the most important issues was the question of implementation of constitutional guarantees on authentic representation of minorities and other minority ethnic communities in the Parliament of Montenegro and the assemblies of local self-governments. At its Session of 11<sup>th</sup> March 2010, the Parliament of Montenegro adopted the conclusions regarding the Draft Law on Election of Councillors and Delegates and this text is forwarded to the Venice Commission for professional expertise. After obtaining the opinion, this Law will be subject to consideration of the Parliament.

The text of the Draft Law on Election of Councillors and Delegates is submitted as an Annex to the response to additional question number 4 (Political criteria, the area of Democracy and the Rule of Law).

**- Please provide information regarding the measures taken to ensure implementation of the constitutional provision on proportionate representation in public administration.**

**Human Resources Administration**, in line with the Article 118 of the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08) keeps the **Central Human Resources Record** on civil servants and state employees which, *inter alia*, contains the personal data (name and surname, **nationality and mother tongue**, address and unique birth number and other). In that way, the Law provides for the **obligation** of keeping the human resources record which contains the data on minority aspect of employees. Even though this obligation is stipulated by the Law, the update of this record in state and local bodies is not yet performed.

In regard with the available **statistical data**, on the day of 31st March 2010, in the Central Human Resources Records, **41 state bodies have performed the data entry on mother tongue and national belonging**. In other words, the total number of civil servants and state employees, who declared their national belonging in the Central Human Resources Records, is only **2.090**, and the

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total number of civil servants and employees, who have declared their mother tongue, is only **860**. Total number of employees in these bodies is **3.491**. Considering the above mentioned, statistical data have not been yet completed, and therefore can not be available. The statistics may be relevant only when the Record is fully updated, which is a priority in the framework of measures for implementation of the Strategy of Minority Policy, and the obligation of the Human Resources Administration in the upcoming period.

The Human Resources Administration performs **the tasks of monitoring and implementation of measures** aimed at achieving proportional representation of minorities and other minority national communities in state bodies, thus the candidates, during the process of internal, public advertisement or public competition made by the Human Resources Administration, **may** declare their national belonging in the application, which will be considered as a relevant data on the occasion of employment and what is brand new in the system of advertising the new posts.

#### **75. (Ref to Q. 104 and 106):**

**- Please provide explanation on why there is no Roma in the Department for the Improvement and Protection of the Rights of RAE population.**

The Government of Montenegro, at its Session of 23<sup>rd</sup> April 2009, adopted the Rulebook on Internal Organization and Systematization of the Ministry for Human and Minority Rights, which organizes the work of the Ministry through its the two sectors, two independent departments, the cabinet minister and a service, as follows:

I Section for the promotion and protection of the rights of minority peoples and other minority communities

II Section for improvement and protection of human rights

III Department for Gender Equality

IV Department for the improvement and protection of the rights of RAE population

V Cabinet minister

VI Department of General Affairs and Finance

Although the Rulebook foresees 27 posts, jobs and tasks in the Ministry currently perform 12 persons (the Minister and 11 officials and employees).

Starting from 1<sup>st</sup> February 2010, within the Department for the improvement and protection of the rights of RAE population, which foresees 3 posts, one person of Roma nationality is employed (Mr. Sokolj Beganaj, trained at the Faculty of Arts in Niksic, department for pre-school education in 2009).

**- Please provide information on measures undertaken to improve RAE minority access to identity cards and to prevent their statelessness due to difficulties they face in proving citizenship.**

The Law on Citizenship (Official Gazette of Montenegro 13/08) stipulates that the Montenegrin citizenship shall be acquired by: origin, birth in the territory of Montenegro, admission and under International treaties and agreements (Article 4). The person may acquire the Montenegrin citizenship by admission if, among other things, he/she resides in Montenegro lawfully and permanently for 10 years prior to application for admission, and if a person who is married to a

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Montenegrin citizen for at least three years and lawfully and permanently residing in Montenegro for at least five years (Articles 8 and 11).

The Law on Identity Card (Official Gazette of Montenegro 12/07) stipulates that the ID card is a identification document that a person who has a Montenegrin citizenship, proves identity and citizenship and the person who is 18 years of age and who has residence in Montenegro is obliged to has the identity card (Articles 1 and 2). The Law on Travel Documents (Official Gazette of Montenegro 21/08 and 25/08) foresees that the travel document is a public document that serves Montenegrin citizen to cross the state border, in order to travel to another country and staying in it, and to return to Montenegro (Article 2).

The Law on Asylum (Official Gazette of Montenegro 45/06) in its Article 44, *inter alia*, stipulates that a person who is recognized as a refugee has the right to: residence, travel document and identity card, and more.

The Law on Foreign Nationals (Official Gazette of Montenegro 82/08 and 72/09) stipulates that the foreigners residence can be: residence to 90 days; a temporary residence - for more than 90 days, and permanent residence - which have nationals of former Yugoslav states who had registered of permanent residence in Montenegro before 3<sup>rd</sup> June 2006, and with the obligation of submitting an application for registration (articles 30 and 54). Also, the Article 105a stipulates that displaced and internally displaced persons from former Yugoslav Republics may be granted to permanent residence if they are registered. The articles 79 and 80 of this Law regulate travel documents for stateless persons (issued with a validity period of one year) and travel document for foreigners (issued to a foreigner who has no valid travel document). The Article 86 foresees the identity card for foreigners, which is issued to a foreigner who was granted of permanent residence and can be issued to a foreigner who is granted of a temporary residence and who does not have a valid travel document. Forms of passports and identity cards for foreigners are also regulated.

We have to note that displaced and internally displaced persons are citizens of the former Yugoslav Republics and that among them there are no persons without citizenship.

According to the legislation, displaced and internally displaced persons, among whom there are plenty of RAE population, if registered, may be granted of permanent residence or may acquire Montenegrin citizenship by admission with enclosing of the necessary evidences, among other things, requires proof that they legally and permanently reside in Montenegro for 10 years prior to application for admission, and for a person who is married to a Montenegrin citizen for at least three years and lawfully and permanently residing in Montenegro for at least five years. In many cases, persons have difficulties to obtain evidence or are not able to obtain them or the process takes longer. There are persons, especially of RAE population, which for a long time reside in Montenegro, and they do not have registered stay and are not registered in Montenegro, so they can not regulate the rights in Montenegro. Also, the travel documents will be issued for stateless persons and travel paper for foreigners without valid travel documents, as well as identity cards for foreigners, foreigners who were granted of permanent residence and it can be issued to a foreigner who is granted of a temporary residence.

According to the exposed, identity cards and passports are issued to citizens of Montenegro and they are the proof of Montenegrin citizenship, so a person should firstly acquire Montenegrin citizenship in order to have these documents.

**76. (Ref to Q. 105 and 106): Please provide further details in particular on de jure or de facto "stateless" people (statistics) and on measures undertaken to provide them with a legal status.**

The Law on Montenegrin Citizenship (Official Gazette of Montenegro 13/08), with the Article 14, stipulates that a person without citizenship can acquire Montenegrin citizenship by admission if he/she meets the requirements of the Article 8, paragraph 1, item 1, 3, 5, 7 and 8 of this Law, which means that it is a facilitated way of obtaining citizenship because they are not seeking a

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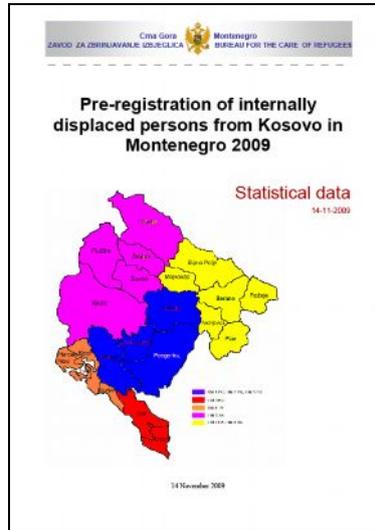
dismissal from the previous citizenship, and they do not need a proof of secured accommodation and permanent source of income, as well as the proof of knowledge of the Montenegrin language in terms that provides for basic communication.

Since the vast majority of persons who apply for Montenegrin citizenship, are persons who have registered of permanent residence in Montenegro, or they are displaced persons from former Yugoslav Republics, they possess the citizenship of some of the former Yugoslav Republics, so until now there were no cases in the practice to apply this article, or admission of stateless persons to a Montenegrin citizenship.

In the meantime from giving previous answers to the EU Questionnaire, by the proposal from the Ministry of Internal Affairs and Public Administration at the Session of the Parliament of Montenegro, held on 2<sup>nd</sup> March 2010, the Draft Law on Ratification of European Convention on Citizenship and the Draft Law on Ratification of the Council of Europe Convention on Avoidance of Statelessness in relation to State Succession, have been adopted.

## **Anex**

### **1. Pre-registration of internally displaced persons from Kosovo in Montenegro 2009**



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