



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Reports submitted by States parties under article
9 of the Convention**

**Second and third periodic reports of States parties due in
2011**

Montenegro* **

[27 September 2012]

* This document contains the second and third periodic reports of Montenegro, due on 3 June 2011, submitted in one document. For the initial periodic report and the summary records of the meetings at which the Committee considered this report, see documents CERD/C/MNE/1 and CERD/C/SR.1924, 1925, 1930 and 1931.

** In accordance with the information transmitted to the States parties regarding the processing of their reports, the present document has not been edited.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. General legal and political framework in relation to the elimination of discrimination	1–35	3
A. Introduction.....	1–18	3
B. Asylum.....	19–23	6
C. Gender equality	24–35	7
II. Protection from discrimination and system of measures for its suppression.....	36–85	10
Article 2	36–62	10
Article 3	63	16
Article 4	64–85	16
III. Respect of special rights and freedoms in function of the elimination of Discrimination	86–309	21
Article 5	86–309	21
IV. Legal protection and control of constitutionality and legality	310–315	60
Article 6	310–315	60

I. General legal and political framework in relation to the elimination of discrimination¹

A. Introduction

1. In relation to the structural data provided in the initial report² should be noted that there are signs of changes in the ethnic structure what can be confirmed only after the announcement of official data from the Census conducted in Montenegro in April 2011. It is unrealistic to assess the extent to which there is a difference from the previous Census held in 2003, but this conclusion arises from the data on the increase in total population of Montenegro.³ Likewise, the demographic structure has been estimated according to the official survey within the framework of creation of "Database of RAE population in Montenegro,"⁴ which was conducted by a Statistical Office of Montenegro (MONSTAT) in 2008. The project was done in cooperation with Roma non-governmental organizations, the Council of Roma in Montenegro and other institutions that were in position to provide data on demographic, educational, ethnic and cultural, economic and other characteristics of this population.

2. The constitutional framework for the implementation of human rights stayed in whole unchanged, whereas it should be noted that Montenegro is the State whose Constitution stipulates the primacy of international law (concluded, ratified and published international agreements) over the national legislation, that is, the provisions of these agreements are applied directly when an issue is regulated differently by the national legislation (art. 9 of the Constitution). The Constitution also stipulates that the rights and freedoms shall be exercised on the basis of the Constitution and ratified international agreements. Article 118 of the Constitution of Montenegro stipulates that national courts shall rule on the basis of the Constitution, laws and ratified and published international agreements.

3. The Law on the Constitutional Court of Montenegro (art. 44) stipulates that if in a proceeding pending before a national court has been raised an issue of compatibility of a law with the Constitution and ratified and published international agreements or an issue of compatibility of some other regulation with the Constitution and law, the national court shall stay the proceeding and initiate proceeding for review of constitutionality or legality of such legal act before the Constitutional Court. However, bearing in mind the provision of the Constitution on the direct application of international agreements, this norm applies

¹ The data in this report are related to the period after the month of January 2009, when the Government at the request of the Rapporteur submitted additional information regarding the clarification of the initial report from October 2007.

² The Committee on the Elimination of Racial Discrimination considered the initial report of Montenegro (CERD/C/MNE/1), at its 1924th and 1925th meetings (CERD/C/SR.1924 and 1925) held on 2 and 3 March 2009 and at its 1930th and 1931st meetings (CERD/C/SR.1930 and 1931), held on 5 and 6 March 2009, after what it adopted the concluding observations in relation to the submitted report.

³ According to the Census from 2003 the total number of inhabitants was 620,145, while according to the first data from the Census from 2011 this number amounted to 625,266 inhabitants.

⁴ According to this survey, RAE population in Montenegro account to 9,934 inhabitants (7,110 Roma, 2,498 Egyptians, 109 Ashkali and 48 Muslims). Of this number, 3,979 persons have Montenegrin citizenship, 115 persons have Montenegrin and citizenship of another state, 2,817 possess the citizenship of another state, and 2,553 are stateless. In the procedure for acquisition of Montenegrin citizenship was 192 persons and for 298 persons there were no data.

only in so-called boundary cases, that is, when the court does not have enough elements or is not convinced about the scope and content of the protected right in case of direct application of international law. In such cases the Constitutional Court of Montenegro shall initiate the proceeding for assessment of conformity of domestic regulation with the international agreement.

4. Guaranteed human rights and freedoms may be limited only by the law to the extent permitted by the Constitution and international legal standards, in the volume necessary to, in an open and free democratic society, satisfy the purpose for which the limitation has been allowed. Limitations cannot be introduced for purposes other than those for which they were prescribed. During the state of war or emergency may be limited the exercise of certain rights and freedoms, however only to the extent necessary to achieve the purpose of limitation. Limitations cannot be imposed based on sex, nationality, race, religion, language, ethnic or social origin, political or other opinion, property status or any other personal characteristic.

5. According to article 25 of the Constitution, cannot be limited the rights to: life; legal remedy and legal assistance; personal dignity and respect; fair and public trial and the principle of legality; the presumption of innocence; right to defence; compensation of damages for unlawful or arbitrary deprivation of the liberty and ungrounded conviction; freedom of thought, conscience and religion; marriage. The bans that cannot be suspended are: provoking or inciting hatred or intolerance; discrimination; retrial and conviction for the same offence; forced assimilation. Measures of limitations can be imposed for no longer than duration of the state of war or emergency.

6. In addition to previous commitments and concluded agreements, in this reporting period, the State of Montenegro has ratified a number of international agreements that have direct or indirect effect on the elimination of discrimination. From the agreements pertaining to the United Nations should be noted that Montenegro, on 24 September 2009, signed (still considering the possibility of ratification) the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Regarding the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which has not been ratified yet, the authorities envisaged the ratification process to finish during 2012.

7. In addition, the series of agreements under the auspices of the Council of Europe were concluded and they are concerning the exercise and protection of fundamental human rights and freedoms with legally binding effect in domestic legal order, including anti-discriminatory clauses contained in the texts of these agreements.⁵

⁵ European Social Charter (revised), entered into force on 1 May 2010 (Section E):

- European Convention on Nationality (1 October 2010), article 5
- The Convention on Cybercrime and the Additional Protocol to the Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems (1 July 2010)
- Council of Europe Convention on the avoidance of statelessness in relation to State succession (1 August 2010), article 4
- European Convention on the Non-Application of Statutory Limitations for crimes against humanity and war crimes (7 March, 2011)
- European Convention on the Compensation of Victims of Violent Crimes (1 July 2010)

8. The European Commission Opinion on Montenegro's application for membership in the European Union from 9 November 2010 [COM (2010) 670] emphasizes that "Montenegro's legal and policy framework regulating human rights and the respect for and protection of minorities is largely in place and broadly corresponds to European and international standards. The institutional framework is largely adequate."

9. According to this document, human rights are generally respected, although there is a need to further strengthen the anti-discrimination policy regarding the effectiveness, through established anti-discrimination legal framework.

10. In Montenegro is quite widespread the network of institutional forms of protection of human rights and freedoms, the basis of which is the institution of the Protector of Human Rights and Freedoms. In addition to this, great number of other institutions affecting the degree of elimination of discrimination in society is engaged in the protection of human rights and freedoms (such as the Agency for Electronic Media, the Agency for Personal Data Protection, the Council for Civic Control of the Work of Police in Montenegro and the like).

11. In relation to the protection of the rights of ethnic minorities in Montenegro should be noted the establishment of three important institutional mechanism, that is, the establishment of councils of all minority communities, the establishment of the Fund for Minorities through which is performed financing of the projects of importance for the protection of minority rights, and the establishment of the Centre for Preservation and Development of Culture of Minorities. These mechanisms are legal categories and are forming the part of the corpus of minority rights which is more closely regulated by the Law on Minority Rights and Freedoms. This framework Law has been partially amended after the decision of the Constitutional Court of Montenegro which repealed provisions of articles 23 and 24, which referred to the political representation of minorities on central and local level (in the Parliament and the assemblies of local self-governments), in accordance with the principle of affirmative action.

12. Since the Committee's recommendation contained in paragraph 10 of the concluding observations, requires that Montenegro harmonize national legislation with the current Constitution (especially the Law on Minority Rights and Freedoms), it should be noted that the essence of the Constitutional Court decision refer exactly to the fact that the substance of the provisions of articles 23 and 24 of the Law on Minority Rights and Freedoms was considered an infringement of the right on free and democratic elections and violation of the concept of equality in the enjoyment of this right guaranteed by the international law and the national Constitution. For this reason, this matter is conceived as part of the electoral legislation and in that framework currently is ongoing the search for the solution for the electoral model, which is entirely entrusted to the Parliament of Montenegro and its working bodies who have been trying for long to find an appropriate legal model that would suit qualified parliamentary majority (2/3 of MPs). So far was not found the appropriate model of legislation that would suit all parliamentary parties and the required majority in the national Parliament.

13. The Law on Amendments to the Law on Minority Rights and Freedoms was adopted on 9 December 2010, at the fifth session of the second regular sitting in 2010. This act contains provision which states that the authentic representation of minorities in the Parliament and the assemblies of local self-government, where minorities make a significant proportion of the population, will be ensured through the application of the principles of affirmative action, in accordance with the electoral legislation.

14. The main changes relate to the harmonization of terminology of this Law with the Constitution of Montenegro. Also, these amendments define more precisely the composition of the councils, as well as the method of electing members of the councils of

minorities. It is defined the supervision over the legality of work of the councils and the obligation of the councils to, at least once a year, submit the report on their activities and financial operations to the Ministry and the competent working body of the Parliament. In the part regulating the allocation of assets from the Fund for Minorities, these changes leave the right to distribute assets for the protection, promotion and development of minority rights to the management bodies of the Fund, based on its sole discretion, following a few basic criteria.

15. Other provisions of the Law on Minority Rights and Freedoms are fully valid and entirely bind addressees, that is, authorize holders of the right to use legal institutes in the exercise of the rights under this Law.

16. During the last few years in Montenegro was recorded continuously good cooperation of state authorities and civil sector, resulting in a significant participation of non-governmental and academic organizations in development of strategic state documents (e.g. the Strategy on Minority Policy in Montenegro, during which preparation was emphasized the participation and experience of the coalition of non-governmental organizations in Montenegro, as a basis for designing measures). Also, in practically all the bodies for the implementation of these documents there are the representatives of civil society, and in education component of the implementation of these strategies they are actively participating (the Public Administration Reform Strategy, the Judicial Reform Strategy, the Reform of Education of Police Officers, etc.).

17. The recommendation contained in paragraph 8 of the Committee's concluding observations on the initial report concerned the establishment of adequate statistics, records and data, based on which, in the current reporting period, the situation in different areas of importance for the elimination of racial discrimination with particular emphasis on educational, social, economic and employment characteristics, could be monitored.

18. The basis for establishment of statistical data indicating the position of different ethnic groups in Montenegro is the Census of 2011. In the collection of statistical data enumerators were required to notify all persons who were entered in the list, about the right to express their nationality freely and by self belief, as well as to give no answer on the offered question on nationality if they wish so. Based on the offered content of other questions, listed persons were giving the answers about their mother tongue, housing situation, educational profile, employment and other matters of importance for their status and social life in Montenegro. Since the processing of the census materials is still in the course, it is expected in the next few months to obtain answers to many questions indicated by the above recommendation.

B. Asylum

19. In 2010, nine persons applied for asylum to Montenegrin authorities. They were eight adults and one minor with escort, of which seven were men and two women. Four requests were denied, and for five applications the process is ongoing. To the State Asylum Appeals Commission was submitted one appeal against the decision rejecting the application for asylum and it was rejected as unfounded. From the previous reporting period were transferred five cases and for them were brought conclusions on suspension of the procedure. The obligation of the State Asylum Office is to in the process of implementation of the Law on Asylum constantly review the need for continuation of the protection of persons under the protection in Montenegro. Given that one person had the status of refugee in Montenegro recognized, the activities were carried out and the decision on termination of protection was delivered. The above decision was appealed, and the case was forwarded to the second instance body - the State Asylum Appeals Commission. The State Commission dismissed the appeal as unfounded and upheld the first instance decision.

20. Also, in accordance to the activities of constant review of the need for continuation of the protection of persons under the protection in Montenegro, was found that in case of one person the circumstances that caused the provision of protection have not been changed, therefore that person retained the right to extra protection in Montenegro. In order to protect the rights and interests of displaced persons, employees of the Office were carrying out the procedures for reviewing the status and decision making procedures for this category. Thus, in this reporting period, 245 decisions on the termination/cancellation of the status of displaced person were issued, of which 224 because of the regulation of Montenegrin citizenship, 6 because of movement to third countries and 15 due to return to the country of origin.

21. During this period, following the procedures undertaken to establish the relevant facts (by examining the cases, records, hearing the parties, as well as by providing evidence), the Asylum Office has issued 1,998 certificates on the status of displaced persons, from which 1,415 served for the regulation of the status of a foreigner with permanent residence, 195 for regulation of the Montenegrin citizenship and 388 for regulation of other rights.

22. To asylum seekers, in the future, the Institute for the Care of Refugees will provide accommodation in the Reception Centre for Asylum Seekers whose construction is in progress. The Centre is designed as a complex of three buildings on the construction plot of the area of 3,275 m² and of capacity to accommodate 65 persons. It is expected the Reception Centre for Asylum Seekers to be operational by late 2011. For the moment to these persons the accommodation is provided in rented premises paid by the Institute.

23. Finally, it should be noted that the State of Montenegro has in full extent expressed its attitude by easing tensions in the region in the most difficult moments by subordinating the interests of its own security to the risks associated with the reception and accommodation of refugees, insisting on reconciliation in the region, maintaining internal multi-ethnic harmony and stability in post-conflict situation and conflict in Southeast Europe and the Western Balkans. Also, the State of Montenegro was avoiding all conflicts to the full extent by using the policy of tolerance, even when they were obviously directed on its internal destabilization. Unfortunately, capacity of the foreign policy of Montenegro, as sometimes even the whole international community, is not sufficient to prevent the events in the environment, or their spill-over to Montenegrin political reality. Montenegro does not have territorial and political claims or outstanding issues with neighbours, and therefore can not be a destabilizing factor. In the opposite direction often there are attempts of formal and informal circles to denigrate and deny the fundamental values of Montenegrin society and State. The only response to such attempts can be that what characterizes the current policy of tolerance, peaceful overcoming of conflicts and maintenance of good neighbourly relations, in accordance with the recommendation contained in paragraph 20 of the Committee's concluding observations on the initial report.

C. Gender equality

24. The Constitution of Montenegro stipulates that the State shall guarantee the equality of women and men and shall develop the policy of equal opportunities (art. 18). To this relates the constitutional principle of the prohibition of direct and indirect discrimination on any ground.

25. The Law on Gender Equality was adopted on 27 July 2007. This Law is the first anti-discrimination law in Montenegro, and the most important mechanism for the elimination of discrimination based on sex and the establishment of gender equality. The Law establishes the government authority in charge of activities related to gender equality, as the most important institutional mechanism for gender equality in Montenegro, and that

is the Ministry for Human and Minority Rights. The Law also prescribes effective mechanisms for achieving gender equality. The implementation of the Law on Gender Equality is the responsibility of all authorities, both on state and local level, and of all other subjects that perform public powers, and includes the activities of normative nature, planning, as well as concrete measures and activities. According to the Law on Gender Equality, bodies of state administration appointed employees who will perform the duties of coordinators of activities related to gender equality issues within their competence, and participate in implementation of the Action Plan for the Achievement of Gender Equality.

26. A number of strategic documents adopted by the Government include the component of gender equality: the National Program for Integration of Montenegro into the EU, the National Strategy of Sustainable Development, the National Strategy for Employment and Human Resource Development, the Strategy for Preserving and Improvement of Reproductive Health, the National HIV/AIDS Strategy, the National Youth Action Plan, the Individual Partnership Action Plan with NATO, the Action Plan for the Local Self-Government Reform, the Action Plan for the Fight Against Trafficking in Human Beings.

27. Within the programme of the vocational training for civil servants and state employees, which is implemented by the Human Resources Management Authority of Montenegro, one of the contents is the introduction of gender equality principle in the practice and actual application of the Law on Gender Equality, and also there was signed a special Memorandum on Training of Civil Servants and State Employees between the Ministry and the Human Resources Management Authority. The Government's mechanism for gender equality has signed a Memorandum of Understanding with ten municipalities in Montenegro in order to carry out the activities on the implementation of gender equality at local level (Niksic, Bijelo Polje, Pljevlja, Berane, Cetinje, Kotor, Budva, Bar, Herceg Novi and Ulcinj).

28. In order to increase women's participation in politics and their empowerment was held a large number of educational events for women and men - members of political parties. Education was initially conducted in partnership between the Gender Equality Office and women's non-governmental organizations, under the projects "Women can do it I, II and III" and "Roma Women Can Do It". Since 2004 the Gender Equality Office, in cooperation with the Konrad Adenauer Foundation and Eduardo Frei Foundation, has been implementing a project which target group were women and men from political parties. The implementation of these activities is continued by the Gender Equality Department.

29. On the last parliamentary elections, out of 498,825 registered voters (80.44 per cent of the total population), 250,165 i.e. 50.15 per cent were women. The number of MPs in the new convocation of the Parliament stayed unchanged, that is, from 81 MPs, nine are women, what makes 11 per cent. At the level of local self-government the data also shows a low percentage of women in the decision-making positions. From a total of 21 municipalities, only in one a woman is performing the function of the president of the municipality, and two women are on the position of vice president of the municipality. In four municipalities women are on the position of the president of the assembly. The function of main administrator is occupied by women in two municipalities, while the position of manager is covered by woman in one municipality.

30. In judiciary is present a significant number of women. On the functions of the Supreme State Prosecutor and the President of the Supreme Court are women. In the head of the Judicial Council is a woman, while of nine members three are women. The Prosecutorial Council has 10 members, of which four are women.

31. With the goal to better introduce the labour inspectors and inspectors for safety at work to the basic principles of gender equality, domestic and international legislation in this

area, especially their application in practice, the Gender Equality Department, in September 2009, organized two seminars for labour inspectors and inspectors for safety at work. The seminars also discussed the sexual harassment and mobbing.

32. The University of Montenegro for several years is implementing the project, in collaboration with the University of Oslo, which refers to the introduction of gender studies in the curricula. Through the project, on the Faculty of Philosophy, was organized a series of workshops and seminars as well as research projects whose main goal was better understanding and dissemination of knowledge about gender relations, among university professors and students in the Western Balkans. At the University "Mediterranean" in 2009 and 2010 was held the school "Gender Studies", organized by the Office for Gender Equality in cooperation with the UNDP Office in Podgorica. The private university UDG has also started implementing the Women's Studies at the postgraduate master's studies. NGO "Anima" from 2002 implements the programme "Women's Studies" in order to develop self-consciousness of women and feminist theory, as well as encourage active participation of women in public life.

33. The Institute for textbooks publishing and teaching aids of Montenegro is realizing a new generation of textbooks, and in the textbooks that are made for nine-year elementary school is taken into account the gender-sensitive language. In order to combat gender stereotypes in the curricula, the Bureau for Educational Services has hired an expert commission which was working in this field. Civic education is introduced as a new, mandatory subject for sixth and seventh grade. This subject comprises the issue of gender equality and domestic violence. Also in the Lyceum high schools as a compulsory subject is taught civic education from the first to the fourth grade. In school year 2006/2007, about 1,000 students opted for civic education, in 19 of 23 Lyceum high schools.

34. With regard to equality between women and men in the labour and employment, data from the Employment Agency indicate that the participation of women in the total number of unemployed persons is around 45 per cent. If we look at the qualification structure of unemployed women, it is apparent that women with high school education level are dominant - IV level of qualification about 39 per cent, III level of qualification about 24 per cent and 16 per cent of women have no qualifications. Basic characteristics of the situation and present trends in employment of women in Montenegro, in recent years, are as follows: the participation of women in the total number of unemployed persons is constantly decreasing: 45.64 per cent on 31 December 2006, 44.52 per cent on 31 December 2007, 44.89 per cent on 31 December 2008, and 44.69 per cent on 15 March 2009. Such trend of participation of women was stimulated by the substantial increase of their employment in certain sectors which, generally, employ more female workers (trade, catering and tourism, etc.). In addition, women who are registered as unemployed are more active in searching the employment and accept offered jobs and preparation programmes implemented by the Employment Agency of Montenegro (vocational training, requalification, additional qualification). One of the programmes the Employment Agency of Montenegro is implementing within active employment policy is the programme of self-employment. It is evident that more and more women's businesses are recording significant success and not only in small business, but also in areas that until recently were considered atypical for women entrepreneurs, such as IT, engineering, construction and many others. The Employment Agency wants to motivate women who are on the way or are about to go the way of entrepreneurship and in that manner ensure themselves a job and professional development. Thus, as a special incentive measure of employment, the interest rate is structured to 3 per cent per annum for financing projects whose holders are women, and for projects to be implemented in the northern municipalities. For other projects, the interest rate per year is 4 per cent.

35. Within the Program "State support and assistance to small and medium enterprises for 2008 and 2009" ended on 5 November 2009, the Directorate for Development of Small and Medium Size Enterprises in cooperation with commercial banks approved for credit lines "Start Up" and "Encouraging Entrepreneurship", the total of 88 projects. For credit line "Encouraging Start-up Business - Start Up" is approved the total of 30 projects. Of these, on 10 projects the founders and directors are women, and in remaining 20, founders and directors are men. For credit line "Encouraging Entrepreneurship" is approved the total of 58 projects, of which in 8 projects directors are women, and in remaining 50 are men.

II. Protection from discrimination and system of measures for its suppression

Article 2

36. The basis of legal protection from discrimination in Montenegro consists of the constitutional guarantees on primacy over national legislation and direct application of international legal norms. This way, the Convention on the Elimination of All Forms of Racial Discrimination, as legally binding instrument is incorporated in the Montenegrin legal framework and forms part of its substantive law. In addition to the judicial protection in which are exercised human rights and freedoms in Montenegro, based on that instrument is possible to ask for protection before the Constitutional Court, which decides on constitutional complaints filed after exhausting all permitted and effective remedies of national law.

37. The Constitution in article 6 guarantees the inviolability of human rights and freedoms, prohibition of incitement to hatred (art. 7), the prohibition of discrimination - direct and indirect - on any grounds (art. 8). In accordance with the recommendation contained in paragraph 9 of the Committee's concluding observations on initial report, the new Law on Prohibition of Discrimination sets out more precise definitions of discrimination. Also, this framework law has provided missing legal framework for the existing constitutional guarantees from articles 8 and 17 of the Constitution of Montenegro, which prescribe that any direct and indirect discrimination on any ground is prohibited and that everyone is equal before the law regardless of any specificity or personal characteristics.

38. The principles of this framework Law point on the definition of discrimination, that is, the definition of direct and indirect discrimination and incitement to discrimination, as its special form (article 3 of the Law on Prohibition of Discrimination):

“Discrimination is any unjustified legal or physical, direct or indirect distinction or unequal treatment, or non-treatment of a person or a group of persons in comparison to other persons, as well as exclusion, restriction or giving preference to a person in comparison to other persons, based on sex, race, colour of skin, national affiliation, social or ethnic origin, affiliation to minority nation or minority national community, language, confession, political or other opinion, sexual orientation, health conditions, disability, age, material status, membership in a group or assumed membership in a group, as well as other personal characteristics.

Direct discrimination exists if a person or a group of persons, in the same or similar situation in respect to other person or group of persons, is brought or have been brought into unfavourable position by any act, action, failure to act on any of the grounds referred to in paragraph 1 of this Article.

Indirect discrimination exists if an apparently neutral provision, criterion or practice is bringing or can bring a person or a group of persons into unfavourable position in respect to other person or group of persons, on any of the grounds referred to in paragraph 1 of this Article, except in the cases when that provision, criterion or practice is objectively and reasonably justified by a legitimate goal and achievable with the means appropriate and necessary to use for achieving that goal, or when they are acceptable and proportionate in relation to the goal to be achieved.

The incitement to discriminate certain person or a group of persons on any of the grounds referred to in paragraph 1 of this Article shall be deemed to be discrimination.”

39. In addition to these definitions, the Law recognizes a number of principles contained also in international standards, such as provisions on protection of persons who provide information or testify about the occurrence of discrimination (protection from victimization); the principle of affirmative action in the form of special measures, directed on providing conditions for realization of national, gender and overall equality and protection of persons being in unequal position based on any of the grounds, which may be imposed by state bodies, bodies of the state administration, bodies of the units of local self-government, public enterprises and other legal persons performing public powers, as well as other natural and legal persons, the principle by which the consent of the person to be discriminated against does not relieve of the responsibility the person who discriminates or encourages the exercise of discrimination and the principle of general application of the Law on all natural and legal persons who come under the jurisdiction of the State of Montenegro.

40. An absolute novelty in the Montenegrin legislation is a system of judicial protection, which is prescribed by this Law through the institute of conduction of a proceeding in which the victim of discrimination by filing and action may require the following:

- (1) Establishment of the fact that the respondent has acted discriminatory towards the plaintiff;
- (2) Prohibition of exercising the activity that bears potential treat of discrimination, i.e. Prohibition of repetition of discrimination activity;
- (3) Compensation of damage, in accordance with the law;
- (4) In case discrimination is performed by the way of media, publication in the media of the judgement establishing discrimination, on the expenses of respondent.

41. The institutional framework of protection from discrimination is the institution of the Protector of Human Rights and Freedoms in Montenegro, which can be addressed by lodging a complaint by anyone who considers to be discriminated by an act, action or failure to act of an authority and other legal and natural persons. Also, the complaint may be filed by organizations or individuals who deal with human rights, with the consent of discriminated person or group of persons. Acting upon these complaints is conducted in accordance with the regulations governing the operation of the Protector of Human Rights and Freedoms.

42. In addition, the competent inspection authorities, as part of the state administration, have the right and obligation to act in relation to reported cases of discrimination in area of labour and employment, workplace safety, health care, education, construction, transport, tourism and other areas when they perform the inspection activities in these areas, in accordance with the specific law.

43. The Law contains also a number of misdemeanour sanctions for sanctioning refusal to provide public services, imposition of conditions for provision of service that are not imposed on other persons or groups of persons, or wilful violation or delay in providing

services, although the person or group of persons requested and qualify for the timely provision of service before the other person; preventing, restricting or hindering the use of access to facilities and areas in public use to persons with reduced mobility and persons with disabilities; filing a complaint without the written consent of discriminated person or group of persons; nonexistence of specific records of all reported cases of discrimination, or untimely delivery of data from that records; not keeping separate records on complaints filed in relation to discrimination or failure to deliver, or untimely delivery of data from the records to the Protector of Human Rights and Freedoms. For these misdemeanours is provided a fine for the legal person and natural person working in the legal person in the amount of twenty times the minimum wage in Montenegro (about 1,100 EUR).

44. According to article 33, paragraph 3 of the Law on Prohibition of Discrimination, the Ministry of Human and Minority Rights has drafted the Rulebook on the content and manner of keeping records of all cases of reported discrimination. Rulebook prescribes the detailed content and manner of keeping records on cases involving discrimination in the courts, inspection bodies and misdemeanour authorities. These bodies are required to submit the data from the records to the Protector of Human Rights and Freedoms.

45. The Constitution guarantees the use of official language and script, including languages of ethnic groups defined by the Constitution (art. 13).⁶ The Constitution also prescribes a number of procedural guarantees that are in function of protection of dignity, freedom and security of a person and protection of physical and legal integrity of a person, and essentially are representing a set of internationally recognized legal standards that protect human rights and freedoms. The Constitution guarantees the right to privacy and in particular the protection of personal data, as well as the right of asylum to a person who reasonably fears of persecution because of his race, language, religion or affiliation to a nation or group or because of political opinion (article 44 of the Constitution). A foreigner cannot be expelled from Montenegro, where, due to his race, religion, language or nationality, is threatened with death sentence, torture, inhuman degradation, persecution or serious violation of rights which are guaranteed by the Constitution of Montenegro. A foreigner may be expelled from Montenegro solely on the basis of a decision of competent body in legally based proceeding.

46. In the third chapter of Part II of the Constitution of Montenegro are guaranteed freedoms of thought, conscience and religion, freedom of expression, prohibition of censorship, freedom of information, assembly and association and the right to address international organizations in order to protect rights and freedoms guaranteed by the Constitution.

47. In respect of the guaranteed rights the Constitution prescribes limitation of dissemination of information and ideas through the mass media only if necessary, inter alia, to prevent propagation of war or incitement to violence or criminal acts; to prevent the propagation of racial, ethnic and religious hatred or discrimination. Similarly, article 55 the Constitution prohibits the operation of political and other organizations aimed at violent overthrow of the constitutional order, violation of territorial integrity of Montenegro, violation of guaranteed freedoms and rights, inciting national, racial, religious and other hatred and intolerance.

48. In a separate chapter the Constitution provides the guarantees for: enjoying the protection of minority rights through the protection of identity related to the expression, preservation, development and public demonstration of national, ethnic, cultural and

⁶ In addition to the Montenegrin language as an official language in the country, the Constitution guarantees the official use of Serbian, Bosnian, Albanian and Croatian language.

religious specificity; choosing, using and publically displaying national symbols and celebrating national holidays; using proper language and script in private, public and official use; education in proper language in public institutions and curricula that include history and culture of minority peoples and other minority ethnic groups; the right to conduct proceedings in the language of minorities and other minority ethnic communities before the bodies of local self-government, state and judicial bodies, in the areas with significant share in the population; the right to establish educational, cultural and religious associations with the financial support of the State; the right to write and use in official documents the name and surname in their own language and script; the right to, in the areas with significant share in the population, write in the language of minority nations and other minority ethnic groups, traditional local names, names of the streets and settlements, as well as topographic names; authentic representation in the Parliament and assemblies of the units of local self-governments where they are making significant proportion of the population, according to the principle of affirmative action; proportional representation in public services, bodies of state authorities and local self-government; information in their own language; establish and maintain contacts with citizens and associations outside of Montenegro with whom they share their national and ethnic origin, cultural and historical heritage as well as religious beliefs; establish councils for the protection and promotion of special rights.

49. Article 80 of the Montenegrin Constitution prohibits forced assimilation of minorities and other minority ethnic communities and the State is obligated to protect persons belonging to minorities and other minority ethnic communities from all forms of forced assimilation.

50. The Constitution defines the institution of the Protector of Human Rights and Freedoms of Montenegro as an independent and autonomous body which is taking measures to protect human rights and freedoms. The Protector of Human Rights and Freedoms functions based on the Constitution, the law and ratified international agreements, respecting also the principles of justice and fairness.

51. According to the data from the report on the work of the Protector of Human Rights and Freedoms in Montenegro, in 2010 were resolved 15 complaints which related to the prohibition of discrimination. From the day of entry into force of the Law on Prohibition of Discrimination (14 August 2010), the Protector has received seven complaints referring to discrimination based on nationality and language. Four cases were related to discrimination based on nationality, and three on discrimination based on language. The procedure was completed in six cases and in one case the proceeding was still in progress in the end of 2010. In two cases the Protector submitted the initiative to the Parliament of Montenegro for adoption of the Law on Use of Official Language and Script, that is Use of Language and Script in Official Use, which would comprehensively regulate this area and provide more effective protection in cases on which complaints related.

52. According to the recommendations contained in paragraph 13 of the Committee's concluding observations on the initial report, measures are undertaken to increase budgetary expenditures for financing the institution of the Protector of Human Rights and Freedoms in order to ensure the normative and substantive regulation of this institution. Namely, by the Law on Budget for 2011, funding for the work of the office of the Protector has been increased for about 31 per cent. Premises of the institution of the Protector have been moved to a new location in the very centre of the city, with equipment and offices that are fully innovated. The legislative framework is currently under amending process⁷ and will be amended with the provisions that will enable more efficient and successful acting of

⁷ The Proposal of the Law is in the Parliamentary procedure.

the Protector on the complaints related to the prohibition of discrimination and the prohibition of torture. This later power stems from the recent decisions of state authorities to entrust the institution of the Protector with the mandate to form a network of institutions, which will be in function of protection against torture in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁸. Also, the institution of the Protector is enabled to complete human resources potential by appointment of one more deputy and employing four employees.

53. The State of Montenegro encourages the work with different categories of state employees who in practice are applying powers of the importance for the suppression of all forms of discrimination. These activities are part of comprehensive strategies and education at all levels. For this purpose continuous trainings and ad hoc forms of specializations are provided, where participants learn about international standards and practice of international bodies which are supervising the implementation of international agreements, what is particularly emphasized in the Committee's recommendation contained in paragraph 11 of the concluding observations.

54. The Ministry of Human and Minority Rights, in cooperation with the OSCE Mission to Montenegro in early May 2011, began, in accordance with the special Program, training for employees in the judiciary, police, inspection bodies and other institutions that come into contact with cases of discrimination. Training includes several multi-day workshops, that is, thematic trainings on different topics, allowing participants to round up their knowledge on anti-discrimination and implementation of the Law on Prohibition of Discrimination.

55. Also, the Ministry of Human and Minority Rights is currently conducting a broad anti-discrimination campaign. The visual identity of the campaign is made so to include three basic promotional message and three signs as follows:

- No one has to be in the margin (discrimination against persons with disabilities)
- Pushed into the background (discrimination based on gender identity)
- Not everything is black and white (discrimination based on sexual orientation)

56. The campaign began on 27 May 2011 with the publication of advertisements in all three daily newspapers and will run until the end of June, when it comes to newspaper ads. The ads are made in colour in size of a half of the newspaper page (separately for all three forms of discrimination) and published on days of biggest sale for each newspaper, on Fridays in "Pobjeda", Saturdays in "Vijesti" and Mondays in "Dan". Network of billboards and city lights are covering the whole territory of Montenegro, especially most frequent roads and locations. The total number of placed billboards and city lights is 64. Broadcasting of television spots and radio jingles will start on 15 June and will last until 15 July, and will include all television stations that have coverage throughout the territory of Montenegro (RTCG, TV IN, TV Vijesti, TV Elmag and TV MBC), as well as radio stations that have coverage throughout the territory of Montenegro (Radio Crne Gore, Antena M, Atlas). The entire campaign is made also in Albanian language, for the territory where the Albanian population constitutes majority or a significant number of inhabitants. Also, the campaign will continue in the future with new promotional messages.

57. Within the Public Administration Reform Strategy, the Human Resources Management Authority performs continuous training of civil servants and state employees. For this purpose, in addition to hiring local and foreign experts and teachers, is published

⁸ Montenegro ratified this Protocol in March 2009.

teaching material in the form of special publication on institutional role and substantive and legal ground for performance of the national Ombudsman (Protector)⁹. During the lectures, to the state employees are presented all relevant international legal standards in the area of human rights law.

58. Judicial Training Centre of Montenegro is also doing continuous education in judiciary bodies. During 2010 were organized several seminars in order to introduce judges and prosecutors with international legal standards, and in two occasions were organized expert meetings aiming at detailed information of the participants about the content and objectives of the implementation of the new Law on Protection from Discrimination. During the continuous implementation of initial training for candidates for judges, they get closely informed about the system of human rights and freedoms, about the content of all international treaties and practices of the supervisory authorities, particularly the European Court of Human Rights.

59. As a part of the training programme for employees of the Police Directorate and during the education of cadets, at the Police Academy is conducted education in the area of human rights and freedoms in form of a separate subject. In addition, through the special education programme attendants are informed about the basic principles of EU law, including also fundamental rights and freedoms contained in the principles of that legal system.

60. In considering and preparing legislation in Montenegro is quite developed the practice of cooperation with civil society representatives, during which are considered issues relating to adoption and implementation of laws on a thorough and professional manner. From such discussions emerged a number of initiatives to modify existing or bring new legislation, including the Law on Prohibition of Discrimination. In this case the experience of other countries, the recommendations of international bodies (general recommendations of the Committee for the Elimination of Racial Discrimination, and recommendation No. 7 of the European Commission against Racism and Intolerance and EU anti-discrimination directives) were used. In monitoring implementation of laws by state authorities and civil society, is likely to create the possibility for legislative intervention in the event of some anomaly in the stage of implementation, given that some of the existing solutions are not possible to verify until the full implementation and in particular until court proceedings start to function in a greater extent as the most effective form of protection.

61. The current Strategy on Minority Policy¹⁰ adopted at the end of 2008, includes several priority areas of action on which is based the future legislative intervention of the state and its goals, some of which are already achieved:

- (1) Authentic political representation (electoral legislation);
- (2) Representation in state bodies and bodies of local self-government (regulations on state and local administration, including legislation on state employees and employees of the local self-government);
- (3) Procedural rights of members of minorities (use of own language and script in the proceedings before the court and other authorities in areas with significant minority participation in total population);

⁹ S. Bjeković, B. Lakočević: the Protector of Human Rights and Freedoms (Ombudsman), Podgorica, 2007.

¹⁰ Strategy is designed for a period of 10 years.

- (4) Special features of identity (use of national symbols and celebration of national holidays);
- (5) Issuance of official documents (registration in own language and script);
- (6) Features of culture (support of rights with financial assistance of the State);
- (7) Education (as broader and internationally recognized standard) and schooling in minority languages (institutional approach and content of educational curricula);
- (8) Information (within the national public broadcasting services and media);
- (9) Establishing contacts outside of Montenegro (with citizens and associations to which minorities have common national and ethnic origin, cultural and historical heritage and religious beliefs);
- (10) Institutionally organized bodies with a goal of direct or indirect protection of minority rights.

62. With the same document are designed measures of legal, social, economic, cultural and other nature to prevent discrimination against ethnic groups, especially:

- General prohibition of discrimination
- Normative and technical prerequisites for the fulfilment of guarantees related to the use of language and script
- The development of preschool, primary and secondary education
- Access to higher education by applying the principles of affirmative action
- Affirmation of the cultural heritage of minorities in Montenegro
- Development of information system
- Adequate representation of minorities in public services
- Creation and development of economic policy focused on areas where in larger number are living persons belonging to minorities.

Article 3

63. New Law on Prohibition of Discrimination establishes special forms and areas of discrimination, including the concept of segregation in article 9, which is defined as any separation of a person or a group of persons on any ground referred to article 3, paragraph 1 of this Law, provided that there is no objective and reasonable justification for such treatment. On this phenomenon, according to the Law, are obliged to react competent inspection authorities in the State, the Protector of Human Rights and Freedoms¹¹, and the Law leaves the possibility to the national courts to decide on segregation, as well as its consequences (caused damage), on the request of discriminated person.

Article 4

64. In the legal system of Montenegro discrimination is incriminated by the criminal legislation. Relevant criminal legal protection is provided in the Criminal Code of

¹¹ The complaint to the Protector can be submitted also by organizations or individuals who deal with the protection of human rights, with the consent of discriminated person or a group of persons.

Montenegro in the Title fifteen (XV) – criminal offences against freedoms and rights of individuals and citizens.

65. The criminal offence – infringement of the right to use of language and alphabet – is provided in article 158 of the Criminal Code and is the special form of violation of equality concerning the denial or restriction of right to a citizen to during exercising of his rights or in occasion of addressing authorities or organizations use his own language or script, in breach of the regulations on the use of language and script of the peoples or members of minority national communities living in Montenegro. This criminal offence is punishable by a fine or an imprisonment sentence for a term not exceeding one year. By article 159 of the Criminal Code is defined the criminal offence - infringement of equality. Infringement of freedom of movement and residence is criminalized in article 163 of the Criminal Code of Montenegro.

66. Infringement of the right to expression of national or ethnic affiliation or culture is punishable under article 160. For this criminal offense is prescribed a fine or an imprisonment sentence for a term not exceeding one year. If this criminal offence is committed by an official in performing duty, he'll be sentenced to an imprisonment sentence for a term not exceeding three years. The criminal offence of infringement of freedom of worship or confession and performance of religious rites from article 161 of the Criminal Code envisages a fine or an imprisonment sentence for a term not exceeding two years. If the criminal offence is committed by an official in performing duty, he'll be sentenced to an imprisonment sentence for a term not exceeding three years.

67. In Title XVII of the Criminal Code are prescribed criminal offences against honour and reputation, and by article 199 is sanctioned public exposure to mockery of nation, national and ethnic groups living in Montenegro and is prescribed a fine of three to ten thousand euros.

68. In Title twenty (XX) of the Criminal Code by articles 224-232 are prescribed criminal offences against labour rights. Thus, article 225 prescribes the criminal offence - infringement of equality in employment; article 231 of the Criminal Code prescribes the criminal offence - infringement of the rights pertinent to temporary unemployment and article 269 of the Criminal Code - violation of equality in the conduct of business activities.

69. Specified criminal offences are prosecuted ex officio by the competent State Prosecutor. In all these cases during the criminal proceeding a potential victim of discrimination has a status of injured party, that is, a person which personal or property right is threatened or harmed by commitment of a criminal offence. The injured party is entitled to report the criminal offence to the competent State Prosecutor. The right to submit criminal charge to the competent State Prosecutor is established by article 256 of the Criminal Procedure Code ("Official Gazette of Montenegro", No. 57/2009 and 49/2010). If the criminal charge is filed with the court, the police authority or State Prosecutor lacking jurisdiction, they shall receive the information and immediately forward it to the State Prosecutor having jurisdiction.

70. Article 370 of the Criminal Code prescribes the criminal offence of causing national, racial or religious hatred laying down that anyone who publicly invites to violence or hatred toward a group or member of a group defined on the basis of race, skin colour, religion, origin, national or ethnic affiliation, shall be punished by an imprisonment sentence for a term of six months to five years. The same sentence shall also be imposed on anyone who publicly approves, renounces the existence or significantly reduces the gravity of the criminal offences of genocide, crimes against humanity and war crimes committed against a group or member of a group determined on the basis of race, skin colour, religion, origin, national or ethnic affiliation, in the manner which can lead to violence or cause hatred against a group of persons or a member of such group, if those criminal offences have been

determined by a final and enforceable judgement of a court in Montenegro or of the international criminal tribunal. If this criminal offence is committed by coercion, ill-treatment, endangering of safety, exposure to mockery of national, ethnic or religious symbols, by damaging other person's goods, by desecration of monuments, memorials or tombs, the offender shall be punished by an imprisonment sentence for a term of one to eight years. Anyone who commits mentioned criminal offence by abusing his/her position or if these acts result in riots, violence or other severe consequences for the joint life of nations, national minorities or ethnical groups living in Montenegro, shall be punished by an imprisonment sentence for a term of one to eight years and an imprisonment sentence for a term of two to ten years respectively.

71. Finally, the Title XXXV of the Criminal Code provides for the criminal offences of genocide, crimes against humanity, war crime against civilians, the organization and instigation to commit genocide and war crimes, destruction of cultural or historical monuments or other cultural assets or religious structures or institutions or facilities intended for science, art, education or humanitarian purposes and also criminal offence of failure to take measures to prevent criminal offences against humanity and other rights protected under international law.

72. Article 443 of the Criminal Code defines a criminal offence of racial and other discrimination, which refers to persons who on grounds of a difference in race, colour of skin, national affiliation, ethnic origin or some other personal characteristic violates fundamental human rights and freedoms guaranteed by the generally recognized rules of international law and international agreements ratified by Montenegro. For this criminal offence is prescribed an imprisonment sentence for a term of six months to five years. The same sentence shall also be imposed on persons who persecute organizations or individuals for their efforts to ensure equality of people. A person, who spreads ideas about the superiority of one race over the other one or promotes racial hatred or incites to racial discrimination, shall be punished an imprisonment sentence for a term of three months to three years.

73. Article 62 of the Criminal Procedure Code prescribes that the injured party as the prosecutor (subsidiary prosecutor) shall have the same rights as a State Prosecutor, except for authorizations which by law belong exclusively to the State Prosecutor as the holder of the sovereignty of government, that is, state authority.

74. According to the sources from the Police Directorate during 2008/2009, police authorities have registered seven criminal offence of inciting national, racial and religious hatred, of which 4 have not been solved, while the others are processed. In 2010, was registered and processed only one criminal offence of inciting national, racial and religious hatred.

75. The Parliament of Montenegro, at its session from 27 July 2009 passed the Law on Cooperation with the International Criminal Court, which sets up the basis for cooperation of state authorities of Montenegro with the International Criminal Court and performance of other duties in accordance with the Rome Statute of the International Criminal Court, as well as other issues related to prosecution of offenders of criminal offences prescribed in article 5 of the Statute, that is, criminal offence against humanity and other goods protected by international law relating to violations of international humanitarian law from the Criminal Code of Montenegro.

76. The Law on Public Peace and Order in article 17 prescribes that anyone who in public place violates the racial, ethnic or religious feelings of citizens or public morals by speaking, inscription, sign or otherwise, shall be sanctioned with the fine of three up to twenty times the minimum wage in the Republic or an imprisonment sentence for a term up to 60 days. A legal person which produces or distributes the sign, drawing or other object of

infringing racial, national or religious feelings of citizens or public morals, shall be punished with fine from fifty to three hundred times the minimum wage in the Republic, and responsible natural person in that legal person shall be punished with the fine from three up to twenty times the minimum wage in the Republic.

77. According to the data from the Police Directorate in the period of 2008-2010 were registered 21 misdemeanours related to the abuse of national feelings, as compared to the general trend of misdemeanour criminality is only 0.32 per cent. At the same time according to the estimates of the Police Directorate in public gatherings, there were no serious violations of public peace and order.¹²

78. Article 4, paragraph 1, item 5 of the Law on the Prevention of Violence and Misbehaviour at Sports Events prescribes that the misbehaviour, inter alia, is shouting slogans and singing songs that contain abusive content which call upon or encourage physical conflict, ethnic, racial, religious and other hatred or intolerance. Such behaviour authorizes state authorities to take preventive measures (e.g. prohibit visiting sports events) and repressive measures against offenders.

79. In the period from 1 January 2009 to 5 May 2011 were conducted following proceedings:

- Before the Basic Court in Pljevlja was conducted the proceeding for the criminal offence infringement of equality under article 159 of the Criminal Code which ended by acquitted judgement of 13 October 2010, which is not final.
- Before the Higher Court in Podgorica were conducted three criminal proceedings for the criminal offence of causing national, racial and religious hatred from article 370 of the Criminal Code. In first case, was delivered final judgement by which the defendant was found guilty and punished by an imprisonment sentence for a term of seven months, in second case was delivered judgement by which the defendant was found guilty and punished for the criminal offence of causing national, racial and religious hatred from article 370 of the Criminal Code by an imprisonment sentence for a term of four months, whereas in the same case the second defendant was acquitted. The case files for this case now are to be found in the Appellate Court of Montenegro because of delivering decision on appeal. In the third case is ongoing the criminal proceeding against the defendant for the criminal offence of causing national, racial and religious hatred from article 370 of the Criminal Code.
- The High Court in Podgorica in the second instance in June 2011 confirmed the acquittal judgement for members of the special unit who participated in Operation "Eagle Flight", where they were accused for use of exceeded official powers during the search of premises belonging to the defendants and members of their families and allegedly committed the criminal offence of abuse.
- The Appellate Court in the specified period, received in work three cases in which defendants were charged with committing the criminal offence of causing national, racial and religious hatred from article 370 the Criminal Code. In one case the proceeding was terminated due to death of the defendant, and in other two cases the first instance decisions were upheld.
- The Higher Court in Podgorica in May 2010 sentenced six members of the former JNA (Yugoslav National Army) accused of war crimes against prisoners and

¹² Article 31, paragraph 1, item 5 of the Law on Public Gatherings stipulates that the organizer of a gathering shall be fined if does not ensure peace and order at public gatherings, which includes respect for the prohibition from Article 17 of the Law on Public Peace and Order.

civilians in the Dubrovnik area in the camp Morinj to an imprisonment sentence, but the Appellate Court quashed that judgement and remanded the case for retrial, for which the proceeding is underway.

- In the Higher Court in Bijelo Polje on 31 December 2010 was delivered first instance judgement acquitting seven defendants for crimes against civilians in Bukovica in early nineties of past century. The case files were submitted to the Appellate Court (6 May 2011) for deciding on appeals against first instance judgement filed by the prosecution and attorneys of injured party.
- Special Chamber of the Higher Court in Podgorica in late March 2011, by the first instance judgement acquitted of charges for unlawful transfer, that is, deportation of Muslims (citizens of Bosnia and Herzegovina) and their surrender to the authorities of Republic of Srpska in May 1992, nine members of the Ministry of Internal Affairs of the Government of Montenegro, for the lack of evidence.
- Before the Higher Court in Bijelo Polje, in the course is the proceeding against eight persons in the case "Kaluderski laz" for the war crimes against civilians under article 142 paragraph 1 of the Criminal Code of Federative Republic of Yugoslavia. For all accused persons was ordered detention on 1 August 2008, and all except one accused were deprived of the liberty.

80. The specified procedures and data on the course of the process in later stages of the proceedings (upon appeal) are given within the framework of the recommendation contained in paragraph 19 of the Committee's concluding observations.

81. The Council for Civil Control over the Police Work has acted in a number of cases (about 90) upon reporting of alleged abuses of police authority. In some of these procedures the applicants highly stressed the elements of ethnic affiliation, that is, discriminatory treatment, what required special attention in the processing of cases. As stated in the report of this body for the period 2005-2008, this body has found violations of citizens rights in the following cases: the case upon complaints of two Roma from Ulcinj from 2006 (F.S., R.S.); than in police action "Eagle Flight" against a number of citizens of Albanian nationality that took place in 2006; than in the case of Kosovo citizens M.I., L.S., A.N. and E.N. from 2007/08; and in the case of citizens Z.V., Z.V. and N.P. from Berane for the event from 2007. In all these cases police officers were prosecuted depending on the degree of responsibility - disciplinary or criminally.

82. During 2009/2010 the Council received several more cases, of which two distinguish, and of these one on which imply the conclusions of the Committee in its recommendation contained in paragraph 18 of the concluding observations regarding the initial report. According to the findings of the Council in one of these cases are involved offenders who were caught in flagrante (on site) in stealing parts from freight car and were held by citizens until arrival of the police. According to the collected information there was no evidence on injuries of these individuals that would indicate the responsibility of citizens who retained them, and the conditions of alleged victims of torture (wet and muddy clothes) was the result of weather conditions in the incriminated night (rain). Since there were no substantial or circumstantial evidence about the alleged torture, the Council did not have the conditions to initiate any procedure.

83. In the second case there were indications of abuse of police powers toward one of three alleged victims (A.S., K.S. and L.J.S.), what is clearly stated in the findings of the Council through the description of the cause of origination of injuries of one person of Roma nationality. The problem was reflected in the fact that these persons previously fight among themselves (what was not disputed) and that they attacked a police patrol (which was also found in subsequent proceeding), as well as that the complaint was filed to the Council only after criminal charges was filed against them. In addition, the minutes of the

interrogation made in the police and personally signed in the presence of attorney of the accused were unambiguous and excluded any unauthorized use of force by the police. The same conclusion was deducted after receiving information from the attorney to which the Council addressed to by the request give the statement in relation to the circumstances of this case.

84. Despite all this, the Council has sent the recommendation to the Police Directorate and asked for special attention and sensitization of police officers in a situation when they apply their powers on the members of the Roma population as particularly vulnerable group in the society.

85. In this way is provided information indicating the existence of institutional mechanisms of control and the possibility of effective protection of citizens' rights with regard to possible discrimination, in accordance with the mentioned recommendation contained in paragraph 18.

III. Respect of special rights and freedoms in function of the elimination of discrimination

Article 5

Access to court and equality before the court

86. By the Constitution of Montenegro is prohibited any direct or indirect discrimination on any ground, which also applies to the prohibition from discrimination in access to courts.

87. The Constitution also guarantees to everyone the right on equal protection of the rights and freedoms. All are equal before the law regardless of any specifics or personal characteristics. Everyone has the right to address international institutions for the protection of their rights and freedoms guaranteed by the Constitution. Equal access of domestic and foreign legal and natural persons to courts implies also the equality of rights on legal assistance that the Constitution guarantees to everyone.

88. Montenegro is signatory party to a number of multilateral and bilateral agreements both with countries of the European Union and with other countries, regulating the issue of the free access to courts such as the European Convention on Human Rights and Fundamental Freedoms, the European Convention on Mutual Assistance in Criminal Matters from 1959, with Additional Protocol, the Hague Convention on Civil Procedure from 1905 and 1954 and the Hague Convention on International Access to Justice from 1980, the International Covenant on Civil and Political Rights from 1966, the Universal Declaration of Human Rights from 1948, bilateral agreements on legal assistance in civil and criminal matters with the Czech Republic and Slovakia from 1964, Algeria from 1982, Bosnia and Herzegovina from 2011, Croatia from 2011, Serbia from 2009, Iraq from 1986, Cyprus from 1984, Macedonia from 2004, Mongolia from 1981, Poland from 1962, Russia from 1962, Austria from 1954, Belgium from 1971, Bulgaria from 1956, Greece from 1959, Hungary from 1982, Rumania from 1960, Italy from 1960, Turkey from 1934 and the United Kingdom from 1936 as well as special agreements on facilitating the implementation of the Hague Convention on Civil Procedure from 1954 concluded with France in 1969 and Sweden in 1990.

89. The Law on Courts, ("Official Gazette of Montenegro", No. 52/08) in article 5 provides that everyone has the right to address the court in order to exercise their rights. All are equal before the court.

90. The Law on Civil Procedure (“Official Gazette of the Republic of Montenegro”, No. 22/2004 and 76/2006), also stipulates equality of the parties and obligates the court to give each party an opportunity to present his/her arguments on the claims and statements of the adverse party. The party in the proceeding may be any natural or legal person. If the procedure is not conducted in the language of the party or other participants in the procedure, at their request they shall be provided interpretation to their language or language that they can understand and translation of all pleadings and written evidence, as well as interpretation of what is being said at the hearing.

91. By the law is prescribed that the parties and other participants in the procedure shall be instructed about their right to follow up the procedure before the court in their own language with assistance of interpreter. Parties and other participants in the proceeding who do not understand or speak the language which is in official use in the court are entitled to use their own language or the language they understand.

92. The Criminal Procedure Code (“Official Gazette of Montenegro”, No. 57/2009 and 49/2010), in article 7, paragraph 2 prescribes that in courts having jurisdiction over the territory in which members of minority nations and other minority ethnic communities constitute a substantial part of population, their respective language shall also be in official use in criminal proceedings, in compliance with law.

93. Article 8, paragraph 2 of the same Code establishes the right of the parties, witnesses and other persons participating in the proceedings to use their own language or the language they understand in the proceedings. If proceedings are not conducted in a language those persons understand, interpretation of statements and translation of documents and other written evidence shall be provided. Article 9 paragraph 4 of this Law establishes the obligation of the court to, in the case the language of a minority is also in official use in the court, deliver documents in that language to persons belonging to the respective national minority if they have used that language in the course of the proceedings. Those persons may request the documents to be delivered to them in the language on which the proceeding was conducted.

94. Article 6 of the Law on Civil Procedure provides that the court shall give each party an opportunity to present his/her arguments on the claims and statements of the adverse party in the procedure conducted in the language which is in official use in the court. Parties and other participants in the proceeding that do not understand or speak the language which is in the official use in court are entitled to use their own language or the language they understand. The party that does not have a qualified representative (a lawyer or a person who passed the bar examination) and therefore does not exercise the right provided under this Law because of not being aware of it shall be informed by the court about the civil actions it is entitled to undertake (article 12 of the Law).

95. Parties and other participants in proceedings have the right to, in occasion of participation at the hearings and while taking other procedural actions before the court, use their own language or the language they understand. If the procedure is not conducted in the language of the party or other participants in the procedure, at their request they shall be provided interpretation to their language or language that they can understand and translation of all pleadings and written evidence, as well as interpretation of what is being said at the hearing.

96. The parties and other participants in the procedure shall be instructed about their right to follow up the procedure before the court in their own language with assistance of interpreter. It shall be noted in the record that they have been instructed thereon, together with the statements of the parties or participants. Interpretation is provided by interpreters.

97. Article 100 of the Law prescribes that the summons, decisions and other court documents shall be delivered to the parties and other participants in the procedure in the

language which is in official use in the court. If any of the languages of national minorities is in official use in the court, the court shall deliver court writs in that language to those parties and participants in the procedure that belong to that national minority and use that language in the procedure.

98. Parties and other participants in the procedure shall submit complaints, appeals and other pleadings to the court in the language that is in official use in the court. Parties and other participants in the procedure may also submit their pleadings to the court in language of national minorities which is not in official use in the court if that is in conformity with the Law. Costs of translation into the language of national minorities arising from the application of the provisions of Constitution and this Law on the right of national minorities to use their own language shall be charged to the court funds

99. The Parliament of Montenegro adopted the *Law on Free Legal Aid* at the session held on 6 April 2011. Free legal aid includes the provision of necessary funds for the expenses in proceedings before the courts, as well as exemption from payment of the costs of court proceedings. The Law sets the conditions for exercising the right to free legal aid, forms of free legal aid, persons authorized to provide aid and the procedure for approval of free legal aid and other issues of importance for the exercise of this right. The application of this Law has been postponed until 1 January 2012 in which period should be adopted bylaws and create a technical and personnel requirements for the operation of the services, as well as the provision of funds in the Budget for 2012 for the financial sustainability of free legal aid.

100. The concept of the Law is based on the model of the free legal aid at court. Specifically, the Law prescribes the establishment of service for free legal aid in all basic courts in Montenegro, which will assess whether a person is entitled to the free legal aid. This estimate depends on the financial conditions required by the Law. The Law provides for the following forms of free legal aid: legal advice, drafting of documents and representation in court. Legal advice may also be provided by the service for free legal aid, whereas for the other forms of aid is required engagement of an attorney. By entrusting all forms of free legal aid to attorneys is meant to attain quality provision of free legal aid.

101. The realization and use of the right to free legal aid in accordance with this Law must be provided without discrimination based on citizenship, ethnic origin, race, colour, language, religious or political beliefs, gender affiliation, sexual orientation, health status, disability or other personal characteristics. The right to free legal aid under conditions stipulated by this Law can be realized by: Montenegrin citizen, person without citizenship (stateless) lawfully residing in Montenegro and a person seeking asylum in Montenegro, a foreigner with a permanent residence or approved temporary residence, as well as other person in accordance with the rules of international law binding Montenegro. On the right to a free legal aid is entitled a person who: is beneficiary of financial support of the family or other right from social welfare, in accordance with the law governing social and child welfare; child without parental care; victim of domestic violence; or a person in poor financial conditions.

The right to security of person and the protection provided by the State, from abuse from its bodies or any other private person, institution or group

102. About these obligations of the State see notifications under article 4 of the Convention of this report related to the conduct of the police and bodies authorized for control of the police authorities.

Political rights, participation in elections, participation in public affairs

103. Political representation of minority communities in Montenegro is an issue that is related to the adoption of new electoral legislation. This process for a long time is followed by a number of controversies and accusations of political actors from the opposition and ruling parties with respect to the reasons for failure to pass one law that represents an essential component of the future development and Euro-Atlantic integration in which Montenegro is participating.

104. In the last parliamentary elections held on 29 March 2009, out of 81 seats, the joint list of the Democratic Party of Socialists, the Social-Democratic Party, the Bosniak Party and the Croatian Civic Initiative won 48 seats, the Socialist People's Party 16 seats, the New Serbian Democracy 8 seats, the Movement for Change 5 seats and the Democratic Union of Albanians, the New Democratic Force "Forca", the Albanian List and the Albanian Coalition won one seat by party. The largest number of parties in the Parliament of Montenegro is of civic orientation, and there are also national political parties. According to the data of the Ministry of Human and Minority Rights, on the basis of the personal declaration of MPs in occasion of the constitution of the councils of minorities, in this sitting of the Parliament of Montenegro, the representation of minority nations and other minority national groups is as follows:

No.	Nationality of MPs	Number of seats	Participation in the total number of seats (81)	Participation in population
1.	Bosniaks - total	11	13,58%	7,77%
	SDP	5		
	DPS	3		
	BS	3		
2.	Albanians - total	6	7,41%	5,03%
	DPS	2		
	UDSH	1		
	FORCA	1		
	Lidhja Demokratike në Mal të Zi	1		
	Albanian Coalition Perspective	1		
3.	Muslims total	1	1,23%	3,97%
	DPS	1		
4.	Croats total	1	1,23%	1,10%
	HGI	1		
Total		19	23,46%	17,87%

105. In the Government of Montenegro which was elected on 10 June 2009, from 21 members of the Government, three were members of minority nations (14.28 per cent). Also in the new Government of Montenegro, constituted in December 2010, out of 18 members of Government, three are members of the minority nations (16.66 per cent). The Minister of Labour and Social Welfare is Muslim by the national affiliation, the Minister of Human and Minority Rights is Albanian, and Minister without portfolio is Bosniak.

106. The Ministry of Human and Minority Rights, in cooperation with the Human Resources Management Authority of the Government of Montenegro prepared a questionnaire for collection of data on ethnic affiliation in order to obtain statistical data on

ethnic structure of employees in state administration bodies and bodies of local self-government in Montenegro, and in order to implement the constitutional guarantees on adequate representation of minorities in these bodies. In addition to the questionnaire, a Guide was made for its completion. Also, a directory of state administration bodies, bodies of local self-government and judicial institutions was made, and the questionnaire was distributed to 143 addresses. With the goal of quality and accurate data processing, a special computer programme was developed. Data from all completed questionnaires (13.900) were entered into this programme and soon will be publicly announced.

107. Pursuant to the recommendation of the Administrative Board, the Public Institution Police Academy from Danilovgrad conducted an additional campaign, before enrolling the last two generations of students (third and fourth), in areas inhabited by members of minority groups in Montenegro. That way was wanted further strengthening of the requirement for enrolment of a larger number of candidates from minority populations, their inclusion in the system of security forces at the level of the State and the provision of the principle of adequate representation of minorities within the bodies of the police.

108. The above examples are given in order to consider the recommendation contained in paragraph 14 of the Committee's concluding observations on the initial report.

Freedom of movement, choice of residence, leaving the country and returning to the country

109. By the *Law on Foreigners* ("Official Gazette of Montenegro", No. 82/08, 72/09) are regulated conditions of entry of foreigners in the territory of Montenegro, that is, the movement and stay of foreigners in Montenegro. This Law does not apply to:

- (1) Persons who have applied for asylum (asylum seekers);
- (2) Persons to whom is recognized the status of refugee in Montenegro, unless otherwise provided by this Law;
- (3) Persons who enjoy privileges and immunities under international law.

110. On the stateless persons apply the provisions of ratified and published international agreements and generally accepted rules of international law, when this is more favourable for them. A foreigner may enter in Montenegro and stay in its territory with valid travel document containing visa or residence permit, unless this Law or an international agreement provides otherwise. Without a valid travel documents, Montenegro is obliged to allow the entry to foreigners on the basis of international agreements, should humanitarian and other reasons require that. A foreigner shall be subject to restriction or prohibition of movement on certain area in Montenegro if reasons of public order and national security require that.

111. Entry to Montenegro will not be allowed to a foreigner if:

- (1) He does not possess travel documents, visa or residence permit;
- (2) He does not possess sufficient resources for his maintenance during the time of his residence in Montenegro and for his return to the country he came from or for travel to a third country;
- (3) He is in transit, and is not meeting the conditions for entry into a third country;
- (4) In force is the protective measure of expulsion or security measures of deportation;
- (5) He does not possess the certificate on vaccination, and is coming from the area where there is an epidemic of infectious disease;

- (6) The reasons of national security and public order require that;
- (7) There is a reasonable doubt that during his stay he will commit criminal offence which is prosecuted ex officio;
- (8) He is evidenced in specific records as an international offender;
- (9) There are grounds for suspicion that his stay will not be used for the intended purpose.

112. Refusal of entry shall be registered in foreigner's passport.

113. Residence of foreigners, under this Law, is: (1) residence up to 90 days, (2) temporary residence, and (3) permanent residence. A residence up to 90 days is considered to be the residence of a foreigner without visa, with visa or border pass, unless otherwise provided by this Law or international agreement.

114. Temporary residence for foreigners in Montenegro may be granted for study or training, for employment and working under the conditions established by law and for family reunification. To foreigner in Montenegro, who was granted 90 days residence and to foreigner who was granted temporary residence in Montenegro, the competent authority shall cancel the residence if: (1) there are reasons for which the entry in the territory of Montenegro is not allowed, (2) finds a job and works without a valid work or business permit, or contrary to this Law, (3) reside contrary to the intention for which his permit was issued; (4) endanger public order or other values protected by law.

115. When deciding on cancellation of the residence of a foreigner the following reasons are particularly taken into account: (1) length of stay, (2) personal, family, economic and other circumstances, (3) the period within which a foreigner must leave Montenegro, provided that this period may not exceed 30 days, (4) the period for which may not re-enter to Montenegro. Cancellation of residence and the prohibition of entry are entered in the passport.

116. *The Law on Amendments to the Law on Foreigners* ("Official Gazette of the Republic of Montenegro", No. 72/09), article 105a, gives the opportunity to displaced persons from former Yugoslav republics and internally displaced persons from Kosovo residing in Montenegro, which currently are in 10,525 in Montenegro, to file a request for approval of permanent residence in Montenegro within two years from the date of entry into force of this Law.

117. In order to make easier to displaced and internally displaced persons to access the status of a foreigner with permanent residence, the provisions of article 8 of the *Law on the Improvement of the Business Environment* ("Official Gazette of the Republic of Montenegro", No. 40/2010), stipulate the reduction of the amount of administrative fees for issuing identity card for foreigners, for temporary stay of three months, for temporary residence for over three months, for extension of temporary residence and for permanent residence, as well as issuing of working permit for foreigners, namely: personal working permit, employment permit and permit for work. For all of the listed documents, administrative fees amount to 10.00 euros.

118. *The Decree on exercising the rights of displaced persons from former Yugoslav republics and internally displaced persons from Kosovo residing in Montenegro* ("Official Gazette of the Republic of Montenegro", No. 45/2010) prescribes that such persons, until the acquisition of the status of foreigners with permanent residence, in accordance with the Law on Foreigners, shall exercise their rights in the same extent the citizens of Montenegro are exercising their rights in the field of: labour and employment, unless a special law as a condition stipulates Montenegrin citizenship; education; social and child welfare; health care and health insurance; and pension and disability insurance. In order to exercise these

rights, the status of displaced person from former Yugoslav republics is provable by certificate from the Ministry of Internal Affairs and Public Administration - Asylum Office, and of internally displaced person from Kosovo by certificate of the Institute for the Care of Refugees.

The Action plan for resolving the status of displaced persons from former Yugoslav republics and internally displaced persons from Kosovo residing in Montenegro

119. The activities with the goal to address the issues of displaced and internally displaced persons in Montenegro are carried out in accordance with the Action Plan to address the status of displaced persons from former Yugoslav republics and internally displaced persons from Kosovo, adopted by the Government of Montenegro, on 29 October 2009, as well as in accordance with the Action Plan for monitoring the implementation of the recommendations from the European Commission's Opinion (9. Action Plan for permanent solving of the issues of internally displaced persons residing in camps Konik I and II), adopted by the Government of Montenegro, on 17 February 2010.

120. The Action Plan provides for two ways of permanent solving of the status of displaced and internally displaced persons, as follows:

- Integration - through access to the status of a foreigner with permanent residence
- Through the use of the right to voluntary return

121. Experts hired by the EU Delegation in Montenegro in cooperation with representatives of relevant institutions of Montenegro and in cooperation with international organizations (UNHCR, UNDP, UNICEF) drew up the "Study on durable solutions for displaced and internally displaced persons and residents of Konik camp in Montenegro and preparation for IPA 2011".

122. The draft components for the National IPA 2011 "Durable solutions for Camps Konik I and II" have also been prepared: construction of 90 residential units; construction of the multipurpose centre; voluntary return; employment, education, social issues and technical assistance. The value of this project, which will be financed by the EU, is about 2.5 million euros. Under the terms of the EU, co-financing by our Government should be at 20 per cent of this amount. The modalities of co-financing will be subject to future agreement with the EU Delegation.

123. In accordance with planned IPA project, in the part of the exercise of right to housing, in order to close the Camp Konik, what is considered to be one of the problems that require priority and urgency in addressing, the Capital City of Podgorica has determined to develop a unique plan for the zone A and part of zone B of the total area of 130,000m², so to create legal conditions for rational urban quality solution, in accordance with prescribed norms. Envisaged deadline for developing of the relevant planning document is the fourth quarter of 2011, bearing in mind that the Law on Spatial Development and Construction of Structures is in amending process with what is planned the possibility of amending the GUP (General Urban Plan), what is necessary for the implementation of this proposal. As part of what has been mentioned, the Capital City will undertake the obligation concerning the utility preparation of the given area.

124. According to the activities envisaged by the Action Plan for monitoring the implementation of the recommendations from the European Commission's Opinion, the Commission was established for the determination, on the basis of individual interviews, of accurate data on the number of internally displaced persons in camps Konik I and II, wishing to return to their country of origin. The Commission consisting of 12 members (two servants, each from the Ministry of Internal Affairs, the Institute for the Care of Refugees, the Ministry of Labour and Social Welfare, the Red Cross of Montenegro, the

Capital City of Podgorica and UNHCR), performed these activities in the period from 24 January 2011 to 10 February 2011, about what is made the report according to which for the return to Kosovo declared 16 families with 83 members.

125. As one of the activities specified in the Action Plan is envisaged the establishment of precise data on internally displaced persons who do not possess the documents in order to regulate the new status, on internally displaced persons who are not registered in Identification (Birth) Registers, as well as persons who do not have the status of internally displaced persons.

126. A Working Group of representatives from relevant departments of state administration has been established with the mandate to establish accurate data on internally displaced persons residing in camps Konik I and II and do not possess documents (in order to regulate the new status) as well as internally displaced persons who are not registered in the Identification (Birth) Registers. This Working Group completed its work and is currently drafting a report. After this will be determined the direct modalities of assistance to internally displaced persons in obtaining documents in the countries of origin needed for obtaining the status of a foreigner with permanent residence in Montenegro. Also, in a letter sent to the Minister of Internal Affairs of the Republic of Kosovo, it was suggested to as soon as possible start the negotiations on concluding the Agreement between the Government of Montenegro and the Government of the Republic of Kosovo on the Subsequent Registration of Internally Displaced Persons from Kosovo Residing in Montenegro in Identification (Birth) Registers and the Register of Citizens of the Republic of Kosovo.

127. In addition, the Working Group was formed for the organization of information campaigns on the importance of applying for the status of a foreigner with permanent residence or temporary residence, who, in cooperation with UNHCR and OSCE, defined various modalities of information of these persons (round tables, media presentations, etc.). The broadcasting of a television spot that appears on all TV stations in Montenegro is ongoing. A leaflet was also prepared in Montenegrin, Albanian and Roma language, which contains detailed information on the possibilities of obtaining the status of a foreigner with permanent residence in Montenegro. Also, on site visits have started in order to inform displaced persons of the importance of regulating the status in Montenegro.

128. Underway as well are the activities implemented by the Working Group, composed of the representatives of the Ministry of Labour and Social Welfare, Ministry of Internal Affairs, Institute for the Care of Refugees, UNHCR, OSCE and NGO "Libertas", which starts working on 27 February 2011, with the mandate to establish accurate data on displaced and internally displaced persons who are located in 16 unofficial collective centres in Montenegro - a total of 1,554 persons. The goal is to define priority projects which, under the Sarajevo Declaration - Belgrade's initiative, are going to be presented at the Donors Conference, organized by UNHCR and other international partners.

129. The conceptual solution from the Study and the results from mentioned researches will serve as the basis for the development of a comprehensive and sustainable strategy for permanent solution of these issues, what does not diminish the efforts undertaken by the State in the implementation of the recommendations contained in paragraph 15 of the Committee's concluding observations, including the ratification of the Convention on the Avoidance of Statelessness in Relation to State Succession.

130. The return to the country of origin is an important part of the strategy implemented by the Institute for the Care of Refugees, together with other institutions of Montenegro and Kosovo. According to the records of the Institute for the Care of Refugees of the Government of Montenegro, in the period since 2005 until the filing of this report, the total of 2,679 persons used the right on voluntary return.

131. The reason for such a small number of interested persons for the return is the reluctance of some municipalities in Kosovo to provide, despite the promises, conditions for sustainable return of those persons (allocation of sites for construction of houses, access to personal documents, etc.).

Property rights and their limitations in Montenegro

132. The Constitution of Montenegro, in its Chapter 4, defines economic, social and cultural rights and freedoms. In article 58 of the Constitution is stipulated that "Property rights shall be guaranteed. No one shall be deprived of or restricted in property rights, unless when so required by the public interest, with rightful compensation".

133. Property rights and other right in rem (real rights), possession (usufruct) over the movable and immovable objects, the method of acquisition, transfer, protection of property rights and the termination of these rights are regulated by the Law on Property Relations ("Official Gazette of Montenegro", No. 19/09). The property right may be limited in accordance to the law. No one shall be deprived of property rights, except as required by the public interest established by the law or based on the law, with the compensation that can not be less than fair. Limitation of the property right on movable property for securing a claim is in effect toward third persons if it is registered in the appropriate public register, or if the third person know or could have known about its existence. Pursuant to article 21 of this Law a public good is an object which, according to its intended use, under the same conditions, can be used by everyone (natural resources and goods in general use).

134. Pursuant to this law, the owner can protect his/her violated right by means of a complaint. The Law on Property Relations regulates the complaint for the recovery of objects, *Actio Publiciana* and the complaint for disturbing possession.

135. Complaint for the recovery of objects, by means of which the owner of an object may request from the holder the recovery of an individual object. The owner of the object must prove the right of property over the object the recovery of which he/she seeks, as well as that the object is in the factual possession of the defendant (usufruct). An unconscientious usufruct is obliged to pay the compensation for the utilization of the object, whilst a conscientious usufruct is not obliged to pay the compensation for the utilization of the object. The right to lodge a complaint for the recovery of objects does not fall under the statute of limitations, unlike the right of the owner to request from the unconscientious usufruct the handover of harvested fruits and the compensation in the amount of the fruits he/she has spent, alienated, failed to harvest or destroyed, within three years as of the day of the object handover.

136. *Actio Publiciana*, by means of which the person who acquired an individually specified object according to a legal basis and in a legal manner, and who did not now and could not have known that he/she did not become the owner, is entitled to request its recovery even from a conscientious usufruct who got into the possession of the same without a legal ground and or on the basis of a weaker legal ground. The person, whose usufruct is eligible for the acquisition of the property right by means of extraordinary positive prescription, is entitled to request the recovery of object from the person who does not have the same usufruct over that object. When two persons have got equal usufruct for the acquisition of the property right by means of positive prescription, stronger legal basis is on the side of the person who acquired the object by means of an encumbrance rather than on the one who acquired the object without an encumbrance. In case the legal bases of these persons are of equal strength, the person who is in the possession of the object has got the precedence. In relation to the conditions under which a conscientious usufruct may request the recovery of an object and the recovery of its fruits, as well as the conditions under which the usufruct may request the compensation of expenses incurred in relation

to the maintenance of the object, are applied *mutatis mutandis* the provisions on the complaint of the owner for the recovery of objects;

137. Complaint for disturbing possession, may be lodged to the court by the owner or possessor (usufruct) of an object in case a third party unjustifiably disturbs the owner or possessor in another way and not by taking away of the objects, thus the owner, or possessor may by means of a complaint request for this disturbance to end. The conscientiousness of the possessor and the legality of the usufruct are presupposed. The defendant is obliged to prove the existence of some right of his/her by the exercising of which he/she disturbs the owner of the object. The registration in the public register (real estate cadastre) is the proof of the existence of certain right of the defendant on the immovable object. When damage is caused by the disturbance of exercising the ownership right, the owner is entitled to request damage compensation according to the general rules on damage compensation. The right to lodge a complaint for disturbing possession does not fall under the statute of limitations.

138. The Law on Property Relations envisages the protection of co-property and joint property as well. In practice, regular courts are competent for adjudication in disputes over property rights and other rights in rem, whilst for the disputes over property rights and other rights in rem over immovable objects, in the disputes for the disturbance of possession on immovable objects, as well as in the disputes from immovable object lease relations, is solely competent the court in the territory of which immovable objects are located. In case immovable objects are located in the territories of several courts, all such courts are competent.

139. The protection of property provides also criminal legislation of Montenegro. The Criminal Code of Montenegro in the Title XXII, articles 239 to 257, prescribes a number of criminal offences against property.

140. Property rights can be restricted and deprived of in the public interest based on the decision of the competent body on the existence of public interest for the deprivation of or restriction of property rights in favour of certain person and also if happened to be prescribed that that type of thing can not be owned. In accordance with the Law on Expropriation ("Official Gazette of the Republic of Montenegro", No. 55/00 and "Official Gazette of Montenegro", No. 21/08), property right is restricted when public interest so requires, with fair compensation.

141. Public interest for the expropriation of immovable objects is determined by law. Expropriation can be full, when there is a change of owner over the expropriated immovable objects and incomplete, when it is possible to establish servitude over the immovable objects and lease of the land for a definite period of time.

142. The procedure of expropriation of immovable objects for which has been established the public interest is conducted by the competent public administration body. The proposal for expropriation may be submitted by the beneficiary of the expropriation after the public interest for expropriation of immovable objects has been established in accordance with the law. The proposal for expropriation of immovable objects must contain the name and siege the beneficiary of the expropriation, immovable objects proposed to be expropriated and the location of the immovable objects, the data on the owner of the immovable objects which are proposed for expropriation as well as the purpose because of which expropriation is proposed.

143. After the expropriation procedure has been conducted the competent public administration body, as a first instance body, passes the decision on expropriation, against which the dissatisfied party may lodge the appeal to the second instance body, i.e. the Ministry of Finance. The expenses of the expropriation procedure are borne by the beneficiary of the expropriation. On the basis of the proposal for expropriation the

competent public administration body registers ex-officio into the cadastre of immovable objects the notification on expropriation. On the day of coming into effect of the decision on expropriation, the beneficiary of the expropriation acquires the right to take the possession of the expropriated immovable objects. Until the decision on expropriation becomes effective the beneficiary of the expropriation may renounce the proposal for expropriation. In case of a dispute, property relations between the beneficiary of the expropriation and the owner of immovable objects are resolved by a regular court.

144. Also, property rights may be restricted for the purpose of the protection of environment, defence, or the security of the State, protection of human and animal health, in case it concerns historical, cultural or other goods for which, due to their importance, has been prescribed a specific manner of exercising property authorities.

Freedom of thought, conscience and religion

145. Montenegrin Constitution guarantees to everyone the right to freedom of thought, conscience and religion, as well as the right to change the religion or belief (art. 46). Also, to everyone is guaranteed the freedom to, individually or collectively with others, publicly or privately, express the religion or belief by prayer, preaches, customs or rites. No one is obliged to declare proper religious and other beliefs.

146. Montenegro is defined as a secular State where religious communities are separated from the State. To the religious communities operating on the territory of Montenegro, the Constitution guarantees equality and freedom in exercising religious rituals and religious affairs (art. 14). The State can not interfere in the internal organization and the organization of religious affairs, but this work is left in the jurisdiction and on responsibility of the religious communities, i.e. religious communities independently regulate proper organization and operations. In Montenegro there is no state religion.

147. The exercise of religious rights is regulated separately in the Law on the Legal Status of Religious Communities (“Official Gazette of Montenegro”, No. 9/77 and 26/77) and by the Law on Celebration of Religious Holidays (“Official Gazette of the Republic of Montenegro”, No. 56/93). According to the Law on the Legal Status of Religious Communities, the establishment of religious institutions and organizations, that is, religious communities, is free, provided their establishment or termination of work, to be reported to the administrative authority, competent for internal affairs in the territory of the local self-government, where the siege of the newly established or closed religious community is. The Law expressly prohibits the abuse of religious communities and their institutions as well as religious activities or religious feelings in political purposes. Also, prevention or interference with the exercise of religious rites and religious activities, or expression of religious feelings has been prohibited by Law. For disregard of these and other provisions of the Law penalty measures are envisaged. In view of the guaranteed freedom of religion, is also prohibited forced membership in a religious community, as well as constrain for participation in religious rites.

148. Religious ceremonies can be performed in churches, temples, official premises, cemeteries, private homes and so on without the approval of competent authorities, but for the performance of religious ceremonies out of these places is required the approval of the competent authority.

149. Persons who are placed in medical, social or similar institution have the possibility to confess their religion, within the limits of the house rules of respective institution. At their own request, such persons may be visited by the sacred person in order to perform religious rites. Also, to persons serving a legal sentence is guaranteed the right to conduct religious life.

150. As part of their work, religious communities have the right to establish religious schools and dormitories for students of those schools. These schools are apart from the educational system of Montenegro, because they are directly managed by religious communities, they determine the programme and lesson plans by themselves, as well as choose teaching staff for its implementation. Each religious community uses this right and opportunity, and organizes religious instruction in its facilities. Also, to religious communities is left the possibility to, within the scope of its activities, publish and distribute religious press. On this type of activity apply general rules on information and publishing activities. Religious communities are using this right, so there are internal printed media of all religious communities in Montenegro.

151. Free expression of religious beliefs is also provided by the legal solutions enabling the believers to be absent from work for the time of their biggest holidays. The Law on Celebration of Religious Holidays provides the right on paid leave for celebration of religious holidays. To Orthodox believers paid leave belong for Christmas Eve, Christmas (two days), Good Friday, Easter (second day) and patron saint, to Roman Catholics for Christmas Eve, Christmas (two days), Good Friday, Easter Sunday (second day) and All Saints; to Muslims for Ramadan Eid (three days) and Qurban Eid (three days) and to Jews for the Passover (two days) and Yom Kippur (two days). This Law prescribes also misdemeanour liability sanctioned with a fine for the responsible person in the enterprise, institution or other legal entity, state body and for an entrepreneur who do not provide paid leave for the employee during the celebration of religious holidays.

152. State assistance to religious communities is being realized through participation in contributions for pension, social and health insurance of priests (50 per cent of such costs), and in the largest extent in investments in sacred facilities, especially in the protection of those facilities that have the character of cultural monuments. The State is financially supporting the spiritual events and cultural activities of religious communities. Religious communities dispose of their property and can collect donations for religious purposes, with which they dispose on their own.

153. Freedom to express religious beliefs may be restricted only if that is necessary to protect life and health of people, public peace and order, as well as other rights guaranteed by the Constitution (art. 46).

154. During the proclaimed state of war or emergency the exercise of certain human rights and freedoms may be limited, to the necessary extent. This temporary restriction can not be introduced on the basis of sex, nationality, race, religion, language, ethnic or social origin, political or other beliefs, property status or any other personal characteristics. The right to freedom of thought, conscience and religion is one of the rights which, in this situation, cannot be limited (art. 25).

155. Article 48 of the Constitution of Montenegro guarantees that everyone has the right to objection to conscience and that no one is obliged to fulfil, contrary to its own religion or conviction, a military or other service involving the use of arms.

156. Article 177 of the Law on Army of Montenegro stipulates that to a person, who because of own religion and conviction is not willing to participate in the performance of military service involving the use of arms, shall be allowed objection to conscience. All Montenegrin citizens are subject to military service during state of emergency or war. In peace time the military conscripts can be called for training on a voluntary basis to acquire necessary knowledge to perform duties in the war, for a period not exceeding 15 days during the calendar year. The Ministry announces ads for training and decides on the manner of its performance. Thus, a person who puts forward the objection to conscience is allowed to perform military service not involving the use of arms.

Freedom of expression and right to information

157. Exercise of rights in the area of information is guaranteed by the Constitution of Montenegro. Everyone has the right to freedom of expression by speech, writing, picture or in some other manner. The right to freedom of expression may be limited only by the right of others to dignity, reputation and honour and if it threatens public morality or the security of Montenegro (art. 47). The Constitution guarantees freedom of press and other forms of public information, such as the right to, without approval, establish newspapers and other public media, by registration with the competent authority. The Constitution guarantees the right to a response and the right to a correction of any untrue, incomplete or incorrectly conveyed information that violates a person's right or interest and the right to compensation of damage caused by the publication of untruthful data or information (art. 49). In Montenegro, there is no censorship. The Constitution provides that the competent court may prevent the dissemination of information and ideas through the public media if required so to prevent invitation to forcible destruction of order defined by the Constitution; preservation of territorial integrity of Montenegro; prevention of propagating war or incitement to violence or performance of criminal offences; prevention of propagating racial, national and religious hatred or discrimination (art. 50). Under the Constitution everyone has the right to access information held by state authorities and organizations exercising public authority which may be limited if this is in the interest of: the protection of life; public health; morality and privacy; carrying of criminal proceedings; security and defence of Montenegro; foreign, monetary and economic policy (art. 51).

158. Constitutional rights to freedom of expression in Montenegro are regulated by media legislation, harmonized with international standards in the area of media, in which framework are the following laws:

- Law on Media ("Official Gazette of the Republic of Montenegro", No. 51/02 and 62/02)
- Law on Electronic Media ("Official Gazette of Montenegro", No. 46/10)
- Law on Public Broadcasting Services of Montenegro ("Official Gazette of Montenegro", No. 79/08)
- Law on Ratification of the European Convention on Transfrontier Television ("Official Gazette of Montenegro", No. 01/08)

159. This legal framework, whose provisions are setting standards in the field of audio visual commercial communications and programmes contents in terms of the Law on Media, recognizes the role and importance of media, especially electronic ones, in the prevention and fight against intolerance and discrimination. This contribution is specifically recognized by the development of cultural understanding between different social groups in order to prevent hate speech and the promotion of tolerance and understanding.

160. The Law on Media is the framework media law governing the establishment of media, mandatory publication of information, rights and obligations of the information, the right to correction and reply, the State's obligation to ensure and guarantee the freedom of information on the level of the standards contained in international documents on human rights and freedoms (UN, OSCE, Council of Europe, EU). The provisions of article 1 of this Law provides that this Law should be interpreted and applied in accordance with the principles of the European Convention on Human Rights and Fundamental Freedoms with the use of case law of the European Court of Human Rights, that the media are free, and prohibits censorship. This Law guarantees the right of establishment and smooth operation of the media based on: freedom of expression, freedom of research, collection, dissemination and publication of information, free access to all sources of information, protection of personality and human dignity and the free flow of information. The Law

prescribes that the State shall provide the part of financial assets for the exercise of the rights of citizens guaranteed by the Constitution and law, to information without discrimination, on the basis of programme contents that are important for the development of science and education, development of culture and information of persons with impaired hearing and vision. In order to exercise these rights, Montenegro directs financial assets for programme contents in Albanian and languages of other national and ethnic groups (art. 3). The Law on Media prohibits publishing of information and opinions in the media that incite discrimination, hatred or violence against persons or groups of persons because of their belonging or not belonging to a certain race, religion, nation, ethnic group, sex or sexual orientation (art. 23 of the Law on Media).

161. In Chapter III of the Law on Media - Distribution of Media (arts. 10 to 17) is prescribed that the competent court, upon the proposal of the State Prosecutor, may prohibit the distribution of published programme content of the media which calls for incitement of national, racial or religious intolerance or hatred.

162. In case of violation of the freedom of information guaranteed by the Constitution and law, the Law on Media has provided for court protection (art. 4).

163. *The Law on Electronic Media*¹³ regulates the rights, duties and responsibilities of legal and natural persons engaged in the production and delivery of audio visual media services (AVM services), competencies, status and sources of financing of the Agency for Electronic Media, promotion of media pluralism and other issues of significance for area of provision of AVM services, in accordance with international conventions and standards (art. 1). Pursuant to article 2 of this Law, defining relations in the audio visual media services is based on the principles of: freedom, professionalism and independence; prohibition of all forms of censorship; balanced development of public and commercial AVM services providers; free and equal access to all AVM services; development of competition and pluralism; application of international standards; objectivity, prohibition of discrimination and transparency. Montenegro, in accordance with article 5 of the Law, provides for freedom of reception and retransmission of AVM services from member countries of the European Union and other European countries party to the European Convention on Transfrontier Television, and in some cases may restrict the freedom of reception and retransmission, in accordance with international agreements and this Law, as an example if the AVM service on demand threatens fight against incitement to hatred based on race, sex, religion or nationality (art. 6).

164. Agency for Electronic Media is an independent regulatory authority for the area of AVM services which exercises public powers in accordance with this Law; the Agency acts in the public interest; the Agency is an independent legal entity and is functionally independent of any state body and from all legal and natural persons who perform the activity of producing and broadcasting of radio and television programmes or providing other AVM services; founder of the Agency is the State; the founder's rights on behalf of the State performs the Council of the Agency, in accordance to the law (art. 9). The Law in a clear and transparent way regulates conditions, processes and procedure for issuing broadcasting permits, on the principles of transparency and publicity of the work of the regulatory authority for electronic media.

165. Issuing of broadcasting permits, manner of financing of the regulatory body as well as the procedure for appointing members of the Council of Agency for Electronic Media

¹³ By the adoption of the Law on Electronic Media is continued with harmonization of media legislation with European standards, with what was repealed the Law on Broadcasting from 2002.

are the issues which, in accordance with this Law, provide for the institutional, political and financial independence of regulatory body in area of broadcasting.

166. Article 48 of this Law stipulates that shall not be allowed, by the mean of the AVM service, encouraging or spreading of hatred or discrimination based on race, ethnicity, colour, sex, language, religion, political or other belief, national or social origin, property status, trade union membership, education, social status, marital or family status, age, health status, disability, genetic heritage, gender identity or sexual orientation.

167. Article 55 stipulates the obligation of broadcasters to contribute to the respect for and promotion of human rights and fundamental freedoms, democratic values, institutions and pluralism of ideas. Public broadcasters are obliged (art. 74) to produce and broadcast radio and/or television programmes with which will ensure the exercise of the rights and interests of citizens and other entities in the area of information and are related to programmes intended for different segments of society, without discrimination, especially taking into account specific society groups such as children and youth, members of minority people and other minority national communities, persons with disability, social and health vulnerable persons, etc.

168. According to article 76, from the Budget of Montenegro, that is, from the budget of the local self-government is provided partial funding for the exercise of the rights of citizens, guaranteed by the Constitution and law, to information, without discrimination, on the basis of programme contents that are important for: the right to public information and notification of the citizens of Montenegro, exercising the rights of members of minority nations in Montenegro and members of other minority national communities and Montenegrin communities abroad; exercising human and political rights of citizens and improving of the legal and social State and civil society; preservation of Montenegrin national and cultural identity and cultural and ethnic identity of minority people and other minority national communities; informing persons with impaired hearing and eyesight.

169. In order to exercise these rights, from the Budget of Montenegro, that is, from the budget of the local self-government is provided partial funding for programme contents in Albanian and Roma language. Article 85 prescribes that is prohibited, by means of commercial audio visual communication, inter alia, violation of human dignity and promotion of discrimination based on sex, race, national origin, religion or belief, disability, age or sexual orientation; article 136 prescribes that the part of the revenues from games of chance in the amount and manner which is determined by the specific law that regulates the activities in games of chance, will go for the support of media pluralism, production of programmes of commercial broadcasters and preservation of diversity of electronic media in Montenegro. These funds will be used to stimulate the production of programmes, of commercial broadcasters, in the public interest, which are especially important for: members of minority nations and other minority national groups in Montenegro; promotion of prevention and anticipation of all forms of discrimination, encouraging and promoting social integration of persons with disabilities; encouraging providers of AVM services to gradually make available their services to persons with impaired hearing or vision; encouragement and promotion of realization and protection of human rights; encouraging development of awareness on gender equality.

170. The *Law on Public Broadcasting Services of Montenegro*¹⁴ is regulating the rights and obligations of national public broadcasting services in the media system of Montenegro. According to this law, the public broadcasting service is designed to with its

¹⁴ By delivering The Law on Public Broadcasting Services of Montenegro is continued with harmonization of media legislation with European standards, with what was repealed the Law on Broadcasting Services "Radio of Montenegro" and "Television of Montenegro" from 2002.

programme content, by applying standards of professional ethics and quality, without discrimination, meet and disseminate the interest of the public on the national and local levels through informational, cultural, educational, sports and entertainment programmes, paying particular attention to children and youth, minority nations and other minority national groups, persons with disabilities, socially vulnerable and other specific groups, thus achieving the promotion and respect of human rights and freedoms, the promotion of pluralism of society and social ideas, promotion of the culture of public dialogue, as well as respect for linguistic diversity. In this way it contributes to the free formation of opinion, with the existence of editorial independence in terms of determining programming schedules, concept of production and broadcasting, editing and broadcasting of information on current events and organizing performance of activities (art.. 9).

171. Since that editorial independence (art. 13) implies the independence of journalists who are preparing the programme contents, by the Law on Public Broadcasting Services is guaranteed the independence of journalists of RTCG in work and actions in the public interest, as well as their protection from liability for the views and opinions which are expressed in accordance with professional standards and programme rules (art. 14). Public broadcasting services are operating in the interest of the citizens / public, and are responsible solely to the public (art. 12).

172. The Law on Public Broadcasting Services of Montenegro stipulates that the Budget of Montenegro is providing the part of the funds for production and broadcast of special programme contents of interest for: development of science and education, culture, information for people with impaired hearing and vision, as well as for the same contents in Albanian and languages of other minority national communities. The law stipulates that the funds provided by the State shall only be used for the production of mentioned programme contents (art. 17).

173. This Law provides for the possibility of establishing a regional radio and TV studios with a special obligation to produce and broadcast regional and programmes in languages of members of minority nations and national communities in that area (art. 8).

174. By the Law on Ratification of the Convention on Transfrontier Television, Montenegro has adopted such legal framework that broadens the field of freedom of expression in accordance with article 10 of the European Convention on Human Rights and Freedoms.

175. Montenegro adopted the Law on Free Access to Information what contributes to higher quality implementation of media laws, and thus the affirmation of freedom of expression. The Law on Free Access to Information (Official Gazette No. 68/05) regulates the manner and procedure for exercising the rights of citizens to seek, receive and use information held by the public authorities. Access to information held by public authorities is free and the right of access to information can be exercised by domestic and foreign natural and legal persons without discrimination. This Law guarantees the right of access to information on the level of the principles and standards contained in international documents on human rights and freedoms. The Law is based on the principles of freedom of information, equal conditions for exercising the rights, openness and transparency of work of public authorities and emergency of procedures. Article 3 of the Law provides that the publication of information held by public authorities is in public interest.

176. In the Montenegrin legal system, for violations of the honour and reputation, have been envisaged both criminal and civil liability, which are subject of the jurisdiction of courts in criminal or civil proceedings, as well as the institute of the public announcement of the judgement for criminal offences against honour and reputation.

177. In relation to the criminal legal aspect of responsibility for the violation of honour and reputation, under the Criminal Code from 2003, has been performed codification of

criminal law matters with significant changes compared to the previous resolutions which, among other things, refer to the defamation and insult, that is, the corpus of criminal offences against honour and reputation.¹⁵ For these crimes is now prescribed as a sanction only a fine - as the main and only sanction instead of the former imprisonment sentence. As the matter of fact, the expertise of the Council of Europe, which is an integral part of the procedure of making all laws of the Ministry of Justice, includes a comparative legal aspect that indicates that the crimes of insult and defamation are common criminal offences in criminal laws of Europe and are not in conflict with the case-law of the European Court of Human Rights, or article 10 of the European Convention on Human Rights and Fundamental Freedoms. Research conducted by the Media Division of Council of Europe Directorate General of Human Rights in 2003, shows that only two countries in Europe (United Kingdom of Great Britain and Northern Ireland and Bosnia and Herzegovina) out of forty countries where the research was conducted, in their criminal legislation do not contain crimes against honour and reputation. So, by not laying down a prison sentence for criminal offences against honour and reputation for Montenegro is a significant step forward. Criminal offences against honour and reputation are prosecuted by private action, unlike the previous laws under which these acts were prosecuted *ex officio*.

178. By the Law on Amendments to the Criminal Code, which was adopted by the Parliament of Montenegro on 22 June 2011, are deleted criminal offences insult (art. 195) and defamation (art. 196), so that they do not longer exist as a criminal offences. Satisfaction for such behaviour will be pursued exclusively before the court in civil proceedings and shall be subject matter of civil cases only.

179. In the general part of the Criminal Code is provided that in occasion of the conviction for a criminal offence committed through the media where the publication of the judgement would contribute to eliminate or reduce this danger, the court may decide to on the expense of the convicted person, publish such judgement as a whole or partially through the same media or in another appropriate manner. The law may determine mandatory publication of the judgement. In this case, the court will decide through which media will publish the judgement and whether the judgement is going to be published as a whole or partially. Publication of judgement can be made not later than thirty days as of the day the judgement becomes final. Preventing publication of responses and corrections, in a separate section of the Criminal Code is stipulated to be the criminal offence.

180. In relation to civil legal protection and non-pecuniary damage, the Law on Obligations provides, *inter alia*, that the emotional pain suffered because of the violation of dignity, honour, freedom or personal rights, the court will, if it finds that the circumstances of the case and in particular the strength of pains and their duration justify that, award just compensation, regardless of pecuniary damages as well as in its absence.

Freedom of assembly and association

181. Freedom of assembly and association of citizens in Montenegro is guaranteed by the Constitution and fall under the corpus of political rights and freedoms. The Constitution of Montenegro guarantees freedom of political, trade-union and other association and action, without approval, with registration to the competent authority.

182. Article 52 of the Montenegrin Constitution guarantees the freedom of peaceful assembly without approval, with prior registration to the competent authority. Constitutionally guaranteed freedom of peaceful assembly is provided by the Law on

¹⁵ Offences: insult, defamation, spreading information about private and family life, injury to reputation of nations, national minorities and other ethnic groups.

Public Assembly (“Official Gazette of the Republic of Montenegro”, No. 31/05) which in accordance to the Criteria of the Human Dimension of the OSCE from Copenhagen, including the recommendations from Warsaw 2001, affirms the right to freedom of public assembly.

183. Public assembly may be held with prior registration, which at least five days before the time scheduled for it, shall be submitted to the regional unit of the Police Directorate in the public assembly venue. Registration for holding a public assembly, in addition to information about the goal, programme, time and place of holding it, also shall contain information on the organizer or his representative, the personal information on the manager of the assembly, the number of monitors and estimated number of participants.

184. Registration for public assembly shall be submitted by the organizer. The organizer of the assembly may be a legal or natural person. If a public assembly is organized by a group of citizens or more legal persons, their obligation as organizers to define a common representative, has been established.

185. The Law on the Prevention of Violence and Misbehaviour at Sports Events (“Official Gazette of the Republic of Montenegro”, No. 27/07) prescribes the measures which shall be taken to ensure the safety of spectators, competitors and other participants in sports events and create conditions to prevent, suppress and punish misbehaviour, riots and violence before, during and after sports events, as well as the obligations of organizers and authorizations of competent authorities in implementing these measures. Preventive, but also repressive measures conducted by the public authorities and organizers in order to prevent and combat violence at sporting events as a form of public assembly, especially on high risk events, are fully harmonized with the European Convention on Spectator Violence and Misbehaviour at Sports Events.

186. Montenegrin Criminal Code in article 181 provides for legal protection from prevention and obstruction of peaceful assembly. Anyone who, by use of force, threat, deception or in other manner prevents or obstructs a public gathering organized in compliance with law, shall be sentenced to a fine or imprisonment not exceeding one year (para. 1). Qualified form of this criminal offence (para. 2) exists when the offence is committed by a person in official capacity. A person in official capacity who by use of force, threat, deception or in other manner prevents or obstructs a public gathering organized in compliance with law, that person shall be sentenced to imprisonment not exceeding three years. Normative preconditions for the exercise of these freedoms were achieved by passing the Law on Political Parties (“Official Gazette of the Republic of Montenegro”, No. 21/04), the Law on Non-Governmental Organisations (“Official Gazette of the Republic of Montenegro”, No. 27/99, 30/02, 11/07), the Labour Law (“Official Gazette of Montenegro”, No. 49/08 and 26/09), as well by the adoption of bylaws for their elaboration.

187. The form of association of citizens within the political parties (i.e. terms and conditions: establishment, organization, registration, merger and dissolution of political parties), is regulated by the Law on Political Parties. In accordance with the provisions of this Law, a political party is an organization of freely and voluntary associated citizens for achievement of political goals by democratic and peaceful means. Political parties have the status of legal persons; they act publicly and by the territorial principle. A party can be established by at least 200 citizens with voting right in Montenegro, who voluntarily sign a declaration on the establishment of the party. Register of political parties is a public book and is kept by the Ministry of Internal Affairs and Public Administration. Registration of political parties is carried out by the system of application, with which it is necessary to supply: the decision on establishment of the party, the party statute and programme of the party.

188. As regards non-governmental organizations, the Law on Non-Governmental Organisations affirms the liberal concept of establishment and registration of non-governmental associations and non-governmental foundations in a way that the association may be established by at least five persons with permanent residence, temporary residence or siege in Montenegro, and foundation by at least one person, regardless of his permanent residence, temporary residence or siege. Registration with the state administration bodies in charge of keeping and maintaining the registry on non-governmental organizations (for domestic non-governmental organizations the Ministry of Internal Affairs and Public Administration), is performed based on the application for registration together with submission of general documents of the organization: the statute and the act on establishment.

189. Foreign non-governmental organizations, in terms of this Law are non-governmental organizations with the siege in abroad, and they can also operate on the territory of Montenegro, if they enter their representative office in the register kept by the Ministry of Justice.

190. In accordance with current regulations governing various aspects of relations between the Government and NGOs with the goal of further democratization, promotion and protection of human rights and fundamental freedoms, by respecting the principles of pluralism and freedom of association, the Government of Montenegro, on 18 May 2006, adopted the document "Grounds of Cooperation between the Government of the Republic of Montenegro and Non-Governmental Organisations", which sets the following objectives: building of democratic, open society and mutual cooperation in the development of European integration processes; development of mutual cooperation, safeguarding the independence and improving the transparency and the importance of the role of NGOs; creating partnership between NGOs and state institutions; implementation and further development of interaction and complementarity, with the goal of more efficient social development; creating a variety of institutional mechanisms for the improvement and further development of cooperation and mutual communication; improving the working conditions of non-governmental organizations, and the principles of cooperation: partnership, transparency, responsibility, mutual information and independence of non-governmental organizations. Adoption of the document was preceded by the discussion where representatives of a number of NGOs and international organizations operating in Montenegro took part.

191. On the basis of this document the Government of Montenegro, in the first quarter of 2007, established the Office for Cooperation with NGOs and in May 2007, formed the Inter-Agency Working Group for preparation of the draft Strategy on Cooperation between the Government of Montenegro and NGOs. Ministries and other state bodies appointed contact persons for the cooperation with NGOs (now there are 42 contact persons altogether in ministries, directorates, agencies, offices, etc). All this resulted in the adoption of the "Strategy for Cooperation between the Government of Montenegro and the Non-Governmental Organisations", in 2009, as well as the Action Plan for implementation of the Strategy for the period 2009-2011, on the session of the Government of 22 January 2009.

192. In addition to the Constitution which by principle guarantees freedom of trade union association, the Labour Law ("Official Gazette of Montenegro", No. 49/08 and 26/09), as a specific law, regulates more precisely this area. To the employees is guaranteed the freedom of trade union organization and action, without prior approval. The trade union organization is obliged to be registered in the register kept by the competent body of state administration. In order to additionally ensure the right to this kind of association and full freedom of trade union practice, is prescribed that a representative of trade union organization and a representative of employees, during trade union activities and six months after cessation of trade union activities, can not be held responsible in connection

with his trade union activities, declared as employed whose work is no longer needed, assigned to another position with the same or another employer in connection with his trade union activities or otherwise placed in disadvantage position. Also, an employer can not put in more or less favourable position the representative of trade union organization or representative of employees because of the membership in trade union or his trade union activities.

193. The right of employees to freedom of trade union association and action, without prior approval, with obligation of registration with the competent authority is guaranteed by the Constitution of Montenegro.

194. According to article 155 of the Labour Law, a trade union organization shall be entered in the Register of trade union organizations kept by the Ministry of Labour and Social Welfare. The procedure of registration, change of the registration and removal from the register is prescribed by the Ministry of Labour and Social Welfare. The Decree on registration of trade union organizations, prescribes the manner of registration of trade union organizations in the register of trade union organizations, content and manner of keeping the register and removal from the register. Registration in the Register of trade union organizations is performed based on the application, to which is attached: the Decision on the establishment, statute and programme goals of the trade union organization. The trade union organizations acquire status of legal person as of the day of entering in the Register of trade union organizations.

195. According to article 5 of the *Decree on the registration of trade union organisations*, the Register of trade union organizations contains lines in which are recorded the following information: number of entry, name of trade union organization, the date of registration, the address of the siege of the trade union organization, the area in which the trade union organization is going to operate, the name of the person authorized for representation of the trade union organization, the number and date of certificate on registration of the trade union organizations, the reason for removal from the register of trade union organizations and notes.

196. The trade union organizations are obliged, under the mentioned Decree, to inform the Ministry of Labour and Social Welfare on all changes of the facts that are recorded in the Register of trade union organizations within 15 days as of the day the change occurred.

197. In May 2010, the Parliament of Montenegro adopted the *Law on the Representativeness of Trade Unions* ("Official Gazette of Montenegro", No. 26/10) which entered into force on 15 May 2010. Pursuant to this Law, already next month following the adoption was formed the Committee for determination of the representativeness of trade unions at the level of Montenegro and at branch level, which consists of two representatives of the Ministry of Labour and Social Welfare, two representatives of the Confederation of Trade Unions of Montenegro, two representatives of Union of Free Trade Unions of Montenegro (representatives of representative trade unions) and two representatives of the Union of Employers of Montenegro (representatives of representative associations of employers of Montenegro). The Committee submitted to the Minister of Labour and Social Welfare, on the basis of filed applications and attached documentation, proposals for determining representativeness, based on which the Minister issued decisions on the established trade union representativeness at national level for the two national trade unions and 18 trade unions at branch level.

The right to work, unemployment insurance, labour rights

198. The *Law on Employment and Achievement of the Rights from Unemployment Insurance* ("Official Gazette of Montenegro", No. 14/10), is effective from 23 March 2010. The main goal of the Law is harmonization of legislation with the principles of employment

policy from the Treaty on European Union, with EU Council Decision on Guidelines for the employment policy and with Employment Strategy of the European Union.

199. The principles on which is based the exercise of rights arising from unemployment are freedom of the choice of profession and work position; prohibition of discrimination; gender equality; affirmative action directed toward more difficult to employ persons; impartiality of the employee recruitment; employment operations free of charge.

200. The *Law on Employment and Work of Foreigners* ("Official Gazette of Montenegro", No. 22/08) has been applied from 1 January 2009. The law stipulates that a foreigner may be employed, that is, may work in Montenegro, provided that possess a work permit, permanent residence or temporary residence, concluded employment contract, that is, civil law contract and that the obliged person for reporting the work has reported the work of a foreigner in accordance with the law.

201. The Law, among other things, stipulates that its provisions do not apply to refugees, to which that status is determined by the *Law on Asylum* ("Official Gazette of Montenegro", No. 45/06) and meet one of the following conditions: a minimum of three years of residence in Montenegro; married to a Montenegrin citizen; and have one child with Montenegrin citizenship. Refugees who do not meet these requirements, as well as persons granted subsidiary protection in accordance with the *Law on Asylum*, are entitled to free access to the labour market, provided that the Employment Agency issue the personal work permit. With the personal work permit these persons have the rights arising from labour and from unemployment, equal to the rights of Montenegrin citizens.

202. The new *Labour Law* ("Official Gazette of Montenegro", No. 49/08), has been effective from 23 August 2008 and it has provided the application of ratified Conventions and recommendations of the International Labour Organization and other European Union acquis.

203. The main objectives to be achieved by application of the new Labour Law, in terms of more flexible relations between employers and employees, but in the same time not to endanger the protection of employees, are the following: application of the relevant regulations of the European Union; specification of the provisions of the Law to ensure consistent application of ratified ILO conventions and recommendations; promotion of social dialogue through the promotion of collective bargaining (arts. 147 to 153); information and notification of employees on all matters relevant to their wealth and social status (art. 158); a balance in ensuring the rights and interests of employees in one hand and employers on the other hand; prohibition of discrimination (direct and indirect of employees and persons who seek the employment - articles 5 to 10); specification of the principle of equal pay for men and women (art. 15, para. 2); the right of employees to a defence in the event of termination of the work contract (art. 143), etc.

204. The Labour Law contains a number of provisions concerning the prohibition of discrimination. Thus, in article 5 stipulates the prohibition of discrimination, direct and indirect, in relation to persons seeking employment as well as employees, with respect to sex, origin, language, race, colour, age, pregnancy, health condition or disability, nationality, marital status, family responsibilities, sexual orientation, political or other opinion, social origin, property status, membership in political and trade union organizations or other personal characteristic.

205. Pursuant to article 6 of this Law, direct discrimination is any action caused on some of the grounds referred to in article 5 of this Law with which a person seeking employment as well as an employee is placed at a disadvantage compared to other persons in the same or similar situation. Indirect discrimination, according to this Law, exist when certain provision, criterion or practice puts or would put at a disadvantage compared to others, a

person seeking employment as well as an employee, because of certain characteristics, status, affiliation or beliefs.

206. Discrimination from the articles 5 and 6 of this Law is prohibited in relation to:

- (1) Conditions of employment and selection of candidates for a particular job;
- (2) Conditions of work and all employment rights;
- (3) Education, qualification and specialization;
- (4) Career advancement;
- (5) Termination of employment contract.

207. The provisions of the employment contract defining discrimination on any ground mentioned in articles 5 and 6 of this Law are invalid.

208. The Law does not consider to be discrimination a distinction, exclusion or preference in relation to certain work position when the nature of such work position is such or the work is performed in such conditions that the characteristics associated with some of the grounds referred to in articles 5 and 6 of this Law represent the real and decisive condition of job performance and that the purpose which it seeks to achieve is justified.

209. The provisions of law, collective agreement and employment contract, relating to special protection and assistance to certain categories of employees, especially those on protection of persons with disabilities, women during pregnancy and maternity leave and leave for child care or special care for the child, as well as provisions relating to the special rights of parents, adoptive parents, guardians and foster parents, are not considered to be discrimination.

210. In the above cases of discrimination, a person seeking employment, as well as an employee, may initiate proceeding before the competent court and seek compensation of damages in accordance with the law.

211. The right of employees to freedom of trade union association and activities, without the approval, with registration to the competent authority, is guaranteed by the Constitution of Montenegro. According to the mentioned constitutional provision, The Labour Law prescribed that employees have the right to on free choice, without prior approval, establish their own trade union organizations and to join them, under the conditions specified in the statute and rules of those organizations. Joining of employees to a trade union organization is on a voluntary basis.

212. The term "more difficult to employ persons" in terms of the *Law on Employment and Achievement of the Rights from Unemployment Insurance* implies an unemployed person who, for various disorders (health problems, lack of or inadequate education, socio-demographic characteristics, etc.) is not competitive in the labour market and thus is more difficult for him to find an employment. These are unemployed persons who in order to be included in the work need additional support and special professional treatment. The status of more difficult to employ person, the Employment Agency of Montenegro establishes by screening, i.e. by aligning according to the level of employability, or to the type of required professional treatment in order to, as quickly as possible, remove obstacles and problems they have.

213. The category of more difficult to employ persons includes: persons with disabilities, members of the Roma, Ashkali and Egyptian population (RAE), persons declared to be techno-economic surplus (redundant labour), persons older than 50, persons with no education or those who abandon education before the time (drop out), chronically ill, persons with psychical difficulties, persons with mental disabilities, unemployed for long

time, addicted to psychoactive substances (drug addicts, alcohol addicts), persons in the post-penal treatment, victims of criminal offences, single parents, persons with multiple difficulties.

214. In accordance with the Law on Employment and Achievement of the Rights from Unemployment Insurance, the Active Policy of employment is defined as a set of plans, programmes and measures aimed at increasing employment, i.e., reducing unemployment. The active policy is established by a National Strategy of Employment and Human Resource Development defining strategic priorities and goals of employment policy for at least four years. The Strategy is brought by the Government of Montenegro.

215. By the National Strategy of Employment and Human Resources Development for the period 2007-2011 are defined the goals for that period, in accordance with the guidelines of the European Union's employment policy. One of the guidelines is related to the elimination of all forms of discrimination in the labour market and creating equal opportunities for all, as well as promoting the integration of more difficult to employ groups into the labour market. One of the goals of the Strategy is to develop special programmes and specialized contractors to work with more difficult to employ groups, which include members of RAE population, as well as increase their employment rate. Key measures and activities foreseen in the Strategy, aimed at members of ethnic minorities, are public works and education and qualification programmes.

216. Implementation of measures under the National Strategy is specified by national action plans for employment, where as key measures in the field of inclusion of RAE population in society are defined: development of measures to detect and eliminate discrimination in employment, raising awareness of this category of more difficult to employ people about the need for their economic and social activities, continuation of previous projects that are intended for this category of unemployed.

217. With the goal to increase employment of all unemployed persons, including more difficult to employ persons, and in the same time to respect the provisions of the National Strategy for Employment and Human Resources 2007-2011, the national action plans for employment, as well as laws and other acts that are in line with the implementation of the recommendation contained in paragraph 17 of the Committee's concluding observations on the initial report, which refers to facilitation of access to employment of RAE population, the Employment Agency has been implementing a series of measures of active employment policy. The measures which are continuously implemented are:

(1) Information about the possibilities and conditions of employment, implemented by the Employment Agency through the informative talks, interviews and informative-motivational seminars (workshops), for which is enabled, because it is about shorter programmes, each lasting two or three days. Informative talks are aimed at quality information of unemployed persons on rights and obligations laid down by the Law and other acts. The aim of the interviews is to identify needs and constraints of the unemployed person and with individual employment plan are selected activities in searching employment and participating in programmes of active employment policy. By informative-motivational seminars (workshops), unemployed persons get motivated for more active approach to employment, for learning skills on how to search for an employment, setting goals and making employment plans which are realistic and consistent with their abilities and skills. Analyses show that these seminars have very stimulating effect on unemployed persons to actively seek employment and also encourage their active participation in active employment policy programmes;

(2) Vocational orientation is offering assistance to an unemployed person to more objectively analyze, plan and realize his professional career;

(3) Funding salaries for trainees (persons on their first employment);

(4) Support to self-employment is the financial and professional assistance achievable by an unemployed person who establishes a form of business organization;

(5) Education and Qualification of Adults refers to activities, which to a person seeking employment offers opportunity, to through these programmes gain the qualification for the first occupation (I and II level of vocational qualification), innovate knowledge within the same occupation and level of education (additional qualification), acquires another occupation of the same or lower level of education (requalification) and acquire key skills (computer science, foreign languages, etc);

(6) Public work is work that is being organized with the goal of employment for a limited period of time, for the preservation and improvement of working skills, particularly of more difficult to employ persons, as well as achievement of a particular public interest (social welfare, education, environmental protection, utility and other services). Public work is being organized at state and local level;

(7) Employment subsidies for more difficult to employ persons who get employed for indefinite time;

(8) Vocational rehabilitation of more difficult to employ persons is being implemented with the goal to help such persons to in an appropriate way become able to work, keep employment and advance in it;

(9) Awarding scholarships to unemployed persons in accordance with the needs on the labour market (scarce occupations);

(10) Preparation for seasonal employment is the inclusion of unemployed persons in seasonal work in tourism, catering industry, agriculture, forestry, construction and other seasonal activities.

218. By applying modern work technology with the unemployed persons, the Employment Agency, in the process of screening, identified the two most vulnerable categories of persons more difficult to employ in terms of employability and employment, including: persons with disabilities and RAE population. As for the RAE population barriers in employment are: lack of education and educational opportunities, lack of personal documents, severe economic and social situation because of which they are not able to accept more lasting trainings, discrimination and rejection by the non-Roma population and employers, living in unsafe and non-standardized dwellings, the lack of guarantees in the form of real estate and loan guarantors for obtaining funds; etc.

219. The Employment Agency of Montenegro, does not keep the records of unemployed persons by ethnic affiliation, nevertheless, because of the needs for the project Decade of Roma Inclusion, the application was changed, with what is made possible the search of the records on that basis, whereby the declaration of the unemployed persons on ethnic affiliation is not obligatory, but exclusively voluntary. On 14 April 2011 in the records of the Employment Agency were 1,079 persons who declared as members of RAE population, of which women account for 48.84 per cent. The share of this population in the total unemployed population on the same day was 3.31 per cent.

220. Out of the total number of unemployed Roma and Egyptians recorded in the records of the Employment Agency, only 7.5 per cent belongs to active job seekers, what means that they appear for registration in due course and want to participate in measures of active employment policy. Most members of the RAE population get recorded for reasons of social and health insurance, and not out of conviction that they could receive an offer for employment. This mood is caused by the fact that most Roma belong to the category of unqualified and low qualified workers (over 90 per cent), which category is, as the matter of fact, most numerous in the records and waits for the job for a longest period of time. For this reason the offer of employment for those persons is extremely limited.

221. Employment counsellors in Employment Bureaus are working hard to, through various forms of drawing attention, motivate members of the RAE population to register in the records of the Employment Bureaus and take part in the measures and programmes of active employment policy, what can help them to raise the level of their employability and with the inclusion in the legal flows of the labour market. In this sense, they are visiting Roma settlements, hold discussions, cooperate with the local community and Roma NGOs, inform and draw attention of the Roma population through the media, explaining the importance of registration in the register of unemployed persons.

222. Individually or as a partner in the project, the Employment Agency, in the past period carried out numerous activities related to increasing the employability and employment of RAE population:

- The Project "Roma are visible in the labour market"
- The Project "Second Chance"
- The project "Reducing vulnerability of domicile RAE Population"
- Participation in education and qualification of adults
- Participation in public works (local and state)
- Participation in literacy programmes
- The Project "Creating equal access to jobs for the RAE population"

223. Annually, on average about 100 unemployed persons of Roma and Egyptian population get covered by programmes of active employment policy, what primarily refers to involvement in education and qualification programmes, i.e. in this case, training for simple subsidiary occupations of a lower level of education, participation in public works, both state and local, and seasonal jobs.

224. The project "Roma are visible in the labour market" from 2006 and 2007 was the research organized as a state public work, and referred to the questioning of able to work members of the RAE population on their educational status, interest in registration with the Employment Bureau, their motivation and potential for involvement in programmes of active employment policy, as well as collection of data about their personal documents. The research was conducted by 27 interviewers, of which 25 were of Roma nationality (15 per cent women) who were employed in the course of the research.

225. The reason for starting this kind of research, as estimated by all partners on the Project, was the lack of records on members of the RAE population, what was the biggest problem in the organization and implementation of the Decade. The research showed that 60 per cent of persons who participated in the research were interested to register in the Employment Agency register, at what point the percentage of registered persons was 23 per cent. According to this research, the highest unemployment rate is in the age between 15 and 24 (59 per cent) and among persons over 55 (58 per cent). About 60 per cent of domicile Roma have never worked, and the share of unemployed women was 61 per cent.

226. The programme was implemented in the period of two months and resulted in better information on the measures of active employment policy and the importance of recording in the register, of about 3000 members of RAE population and in increase of the number of persons from RAE population, which have successfully registered with the Employment Agency. Summarized results of the mentioned research represented the first database on the number of Roma who are capable of working, from which was carried out the selection of candidates for projects that followed the aforementioned research.

227. The project "Second Chance" represents the programme of integration of adults, through literacy and vocational trainings of 61 persons of Roma and Egyptian nationality

from Podgorica and Niksic, of age 15 to 40 (40 per cent women), for a period of 18 months. Attendants have successfully completed functional literacy programme and passed the final exams, after what they continued with vocational training for occupations from the area of construction, catering and personal services. Most of these candidates received a basic knowledge of computer science and passed a driving exam for category B.

228. The project is jointly implemented by the Roma Scholarship Foundation, the Employment Agency of Montenegro, the Centre for Vocational Education and the German international organizations for education of adults "DVV International." This project is funded by the European Union through the European Agency for Reconstruction.

229. The project "Second Chance" was implemented as a public work related to:

- Participation in the identification of project participants among the Roma community, who belong to the target group
- Participation in the organization and implementation of periodic seminars and project evaluation
- Training of persons involved in public work
- Regular monitoring of teaching and vocational qualification process

230. Participants were mostly illiterate or had completed less than three years of primary school. Among them there were people who were deported from EU countries. Persons who regularly attended the programme had a monthly motivational scholarship and the possibility of free-of-charge training to obtain driver's license, as well as course of computers (acquisition of basic computer literacy). The implementation of the Project started on 1 March 2007, by providing training for 12 assistants from Roma population who have completed third and fourth level of qualification.

231. Functional literacy programme, through the fund of 320 classes, in addition to basic mathematical and language literacy, included also elementary education for parenthood and family with basic health care, environmental protection, education for life in the society and functional skills for daily life and functioning in contemporary society. As training providers, were engaged licensed organizers of education for adults - primary school "Marko Miljanov", the Centre for Education and Training in Podgorica, the primary school "Radoje Čizmović" and the Workers University from Niksic. The final assessment of linguistic and mathematical literacy were jointly implemented by the Examination Centre of Montenegro, the Bureau for Education Services and the Centre for Vocational Education.

232. Project results are summarized below:

- In the implementation of this public work were engaged 12 assistants from Roma population who had completed III and IV level of qualification
- Capacity of staff and partners for work with marginalized and more difficult to employ groups is increased
- Five new occupational standards and training programmes for them were created and adopted
- Total of 61 persons from RAE population have completed training for subsidiary occupations from the area of construction, catering and personal services
- Most persons who have successfully completed functional literacy gained basic knowledge in computer science
- Total of 61 persons attended driving training for obtaining license for B category or some other categories, and all the costs for obtaining the licences were paid

- 11 programme participants employed in the utilities sector in Podgorica
- 10 participants employed in catering, construction, education and maintenance
- 8 persons are providing services in their own community

233. The project "Reducing vulnerability of domicile RAE population" was implemented by the Employment Agency in cooperation and with support of UNDP, for a period of 27 months. The project is an attempt of improvement of professional qualifications of the Roma and created chances for their better success in the labour market.

234. Project objectives are:

- Improving the capacity of the Employment Agency, i.e. Employment Bureaus (the improvement of institutional capacity and raising the level of knowledge of employees with the goal to improve the quality of services provided to the category of more difficult to employ persons)
- Improving services in the field of employment through organizing and conducting trainings for the resident RAE population
- Support to development of entrepreneurial initiatives, through identifying potential beneficiaries of grants for starting their own business activity by pre-established criteria and implementation of business ideas through assignment of the grant

235. For the performance of project activities, three Montenegrin municipalities have been selected, Bar, Berane and Niksic, taking into account regional representation. Target group of the Project included members of RAE population who were registered in the records of the Employment Bureaus in municipalities where the project was implemented, and who met the criteria defined by the Project.

236. Within the goal, aimed at raising the institutional capacities of the Employment Agency, in October 2007, the Working group for monitoring the implementation of the Project was established. In each of the three Employment Bureaus, the local coordinator has been conducting activities defined by the Project, which were related to motivation and selection of members of RAE population, who could participate in training programmes, than drawing attention and making contact with local partners, giving assistance in employment of persons who have undergone the training, monitoring and reporting on implementation of the Project.

237. With the aim of improving the capacity of institutions working with RAE population, several seminars were held in municipalities where the project has been carried out. The seminars included representatives from the Employment Bureaus, Centres for Social Work and representatives of the RAE population from the local NGOs. The seminars provided lectures on the specifics of the RAE population, previous experiences in working with that population, relationship of the relevant institutions working with RAE population, exchange of experiences, information and methods of work, as well as presentation of the main goals of the "Strategy for the Improvement of the Position of RAE Population in Montenegro 2008-2012".

238. In the period October 2007 - December 2009, training was carried out for 75 members of the RAE population. Upon completion of the training, seven people have found employment with contractors. Out of the total number of participants, 39 or 52 per cent were women (under the project was planned the participation of women to be 30 per cent to 40 per cent). From various aspects is positive that the participation of women exceeded 50 per cent of the total number of candidates. In the context of discrimination and of belonging to the category of more difficult to employ person, Roma women are doubly discriminated category of unemployed persons. On the one hand illiteracy, low level of education, very low employment rate, and on the other traditionalist Roma heritage. The problem of the

negative traditionalist legacy of the Roma is not enough opposed by Roma leaders and persons of authority themselves.

239. In general, the response of Roma women to participate in offered measures of active employment policy is very weak. Causes for that are different, from early marriage, great authority of husbands, lack of time for training due to the large number of children, illiteracy. Fathers often do not allow their daughters to be educated and trained.

240. In finding employment for persons who completed some form of vocational training, other than the existence of discrimination by employers, there are limitations in terms of the Roma tradition, where parents do not allow the employment of Roma women.

241. Taking this into account, by the implementation of the activities in this Project was made a great progress in terms of equal participation of Roma women in activities related to increasing employability.

242. Bearing in mind the needs of the labour market, as well as skills and interests of the members of the RAE population, in 2008 by the Project was funded development of standards and training programmes for five professions: assistant chimney, car-washer, tire repairman, laundry lady and assistant of car-varnisher. The project provided finances for six grants (one in the Municipality of Bar, three in the Municipality of Niksic and two in the Municipality of Berane). The users were given basic knowledge about entrepreneurship and business and were introduced to all barriers and benefits of private business. By the implementation of these ideas was envisaged the opening of 12 job places. Grants were given for the following Project ideas: locksmith shop, hairdresser salon (two), workshop for making Roma traditional costumes, car-refrigerator repair service, service for repair and maintenance of motor vehicles.

243. Although after receiving funds the users had registered the activity and employ the required number of persons, out of the total number of users, currently two of them have duly registered business, have employed required number of persons and, in accordance with market demands, are more or less successfully carrying out their activities. Success rate is around 30 per cent. Among the successful Roma entrepreneurs is the craftsmen from Bar (which used the funds to enhance his tinsmith workshop, procure the necessary equipment, train two persons for work and hire them), as well as women's cooperative "Rukatnice" from Niksic, where the beneficiary of the grant used the funds for opening of a hairdresser salon, which operates as a part of this cooperative.

244. Although the control of use of means was carried out regularly by the Commission of the Employment Agency, as well as by the project coordinator from Employment Agency and UNDP, the percentage of success is not higher, due to lack of protection mechanisms (grant is irreversible), as well as, presumably, high taxes, in terms of tax and contributions, which must be set aside for carrying out economic activities, whereby most users are not able to regularly set down these obligations.

245. The most important project results can be summarized as follows:

- 75 people completed some of the offered trainings (52 per cent participation of women)
- The number of trained persons constitutes 16.5 per cent of registered members of RAE population in the records of three target municipalities
- The number of domicile Roma who are registered, rose by 77.4 per cent, looking at the period from 1 October 2007 to 31 December 2009
- 107 persons (of which 26 per cent women) or a total of 23.5 per cent registered in the target municipalities were employed in some way in the mentioned period (through public works, seasonal employment, the project activities - grants)

- Created and adopted five occupational standards and training programmes for occupations that will be competitive in the labour market and meet the needs of the RAE population
- Provided funding (grants) for six business ideas in the three target municipalities. Success rate is 30 per cent

246. These data give the full overview of the activities related to the recommendation contained in paragraph 17 of the Committee's concluding observations as well as those given below in relation to the right to education.

Education and qualification of adults

247. Education and qualification for adults is one of the measures of active employment policy that includes programmes of education and qualification for the first occupation, requalification, additional qualification, innovation of knowledge within the same occupation and level of education, acquiring of key skills. Education and qualification in accordance with the Law on Employment and Achievement of the Rights from Unemployment Insurance can be performed for the needs of employer and the labour market.

248. In order to harmonize offer and demand in the labour market, based on specific requirements of employers and monitoring of labour market needs, the Employment Agency organizes various forms of education and qualification for adults. Objectives of the realization are: reducing unemployment and increasing employability of job seekers by improving the quality of offer, meeting current needs, requirements and conditions of work, as well as alleviation of difference between offer and demand in the labour market.

249. Members of the RAE population are mainly involved in qualification for the acquisition of the first occupation, training of lower-level qualifications, after functional literacy (these are subsidiary jobs such as assistant mechanic, hairdresser's assistant, sewing assistant, assistant cooks, assistant waiter, assistant ceramic setter, tire repairman, mechanic, etc.). After completing the qualification they acquire professional qualification for the first occupation, and thereby increase their employability and become more competitive in the labour market.

250. With the inclusion of members of RAE population in education and qualification programmes, the biggest problem is the level of literacy in the sense that a large number of participants is not able to follow the training programmes provided. The problem is sometimes even the language barrier, which can partly be overcome by hiring assistants, mostly with the help and support of the Roma NGO sector. A number of unemployed members of RAE population is employed in the "gray" economy, and have no incentive or time to devote to the inclusion in qualification programmes, which last two to three months. Also, users of financial assistance they are afraid of losing the right to benefits they have. The problem is the lack of licensed providers for performance of certain training programmes.

251. Through several projects in the past, the development of training programmes and occupational standards is financed, which could include a greater number of RAE population (assistant of car-varnisher, assistant chimney, laundry lady, assistant tire repairman, cleaning man/lady, utility hygiene).

Public works

252. Public works are one of the most successful programmes of active employment policy. These are local or state employment programmes, organized for the implementation of programmes of social protection, educational, cultural programmes, programmes for

environmental protection, utility and other programmes, based on socially useful, non-profit work. Public works programmes encourage opening of new work places and increase of employment potential, the level of knowledge and skills of the unemployed persons and in the same time are helping the development of local self-governments. In 2010 the Employment Agency has implemented 132 public works, in which were engaged 1,631 unemployed persons, including a large number of persons from RAE population.

253. In cooperation with ministries, international and nongovernmental organizations were implemented five state public works, in duration of one month to one year, for 454 persons registered with the Employment Agency. In cooperation with municipalities, public institutions and non-governmental sector were implemented 127 local public works, which involved 1,177 persons. The works have been performed for a period of one to twelve months. During the state work all participants were employed and have all the rights arising from employment. Currently (the first quarter of 2011) in the implementation is one state public work ("Keep it Clean"), in which out of the total number of persons engaged about 10 per cent are members of RAE population.

The programme of basic functional literacy of Roma and Egyptians

254. The official programme of functional literacy of the population, adopted by the Government, was put into operation in 2007 through the project "Second Chance", which was jointly implemented by the Employment Agency of Montenegro, Centre for Vocational Education, the Roma Scholarship Foundation and the German international organizations for adult education DVV International. Roma Scholarship Foundation continuously implements programmes of education for adult Roma and Egyptian in which, among others, their partner is also the Employment Agency of Montenegro. Two segments of the programme - a basic functional literacy and vocational qualification are recognized as a viable way out from the social exclusion and poverty.

256. After one year pause, the programme of functional literacy of adult Roma was launched in 2009, through the project "Integration of Minority Groups in the South-Eastern Balkans", which is being jointly implemented by the Italian organization COSV ("Comitato di Coordinamento delle Organizzazioni per il Servizio Volontario"), the Employment Agency of Montenegro, Centre for Education and the Roma Scholarship Foundation, in cooperation with primary school "Bozidar Vukovic Podgoričanin", from 2009 to 2012. A key activity of the project has been functional literacy and vocational training of a group of 40 Roma (men and women) from Podgorica, who were illiterate, with no school or had completed less than three years of primary school, of age from 15 to 35. This Project had for the aim the increase of the possibilities for more permanent and more quality employment and achievement of the effects of social inclusion.

257. The project "Integration and support of minority groups in the south-eastern Balkans" was aimed at improving inclusion of RAE population in the area of the South-East Balkans. The project was being conducted simultaneously in three countries of the region: Montenegro, Macedonia and Kosovo.

258. Upon completion of three years of primary school, participants acquire elementary language and mathematical literacy, what enables them to continue vocational qualification through the programmes of active employment policy of the Employment Agency. Under the functional literacy are intended linguistic and mathematical literacy and social skills and knowledge necessary for living in modern society. In 2009, 18 persons have finished the programme and have successfully passed the exam. In 2010, 21 persons have finished the programme and 14 passed the exam successfully.

259. The Employment Agency, also in 2011, continues to provide support to partners for the realization of programmes of functional literacy of Roma and Egyptians from the unemployment register.

Creating equal access to work positions for the RAE population

260. Employment Agency of Montenegro, on the basis of Competition published in March 2010 by the Ministry for Human and Minority Rights of Montenegro, for the purposes of implementation of projects in accordance with the "Strategy for the Improvement of the Position of RAE population in Montenegro 2008-2012", received funding for realization of the project "Creating equal access to work positions for the RAE population". The project began with realization on 1 September 2010 and ended on 1 April 2011.

261. Project activities were related to the inclusion of unemployed persons, who are in the records of the Employment Bureau, in qualification programmes for the acquisition of first occupation, in order to increase their employability and achieve social cohesion and sustainable social development. For the reasons of ensuring social inclusion, except the members of RAE population, in training programmes was included a certain number of persons who are not members of the Roma ethnic minority.

262. The criteria that were set were related to equal gender representation, integration through the mixed groups of participants (Roma and non-Roma participants) and the territorial representation (Bijelo Polje, Niksic, Podgorica, Herceg Novi). By the project was foreseen the employment of at least 30 per cent participants. There were selected employers who wanted to train participants and employ them in their companies, following the successful completion of the process of qualification. The starting bases, in that occasion, were the data from the Employers Survey 2009/2010, when were received the positive responses from employers about the need for employment of RAE population on certain work positions.

263. Qualification programme included a total of 55 persons, of which 48 were members of RAE population (of whom 19 women or 39.5 per cent) who were trained in occupations of maid, hygienist, utility hygiene, ceramist and assistant worker in the orchards and vineyards. From the total number of trained persons were employed 18 of them (32 per cent). Besides employment, the positive effects of this project are also increased motivation of employers to employ members of RAE population, prevention of discrimination and creating equal access to the labour market, establishment of social partnership.

Motivation of employers for employment of RAE population

264. The Employment Agency of Montenegro pays special attention to the cooperation with employers when it comes to employment of persons of Roma and Egyptian nationality. To this end, for persons who successfully complete some of the programmes of education and qualification, the Employment Agency, to the extent possible and according to the principles of affirmative action, mediates in finding employment, seasonal works and the involvement in public works programmes.

265. One of the ways to attract employers to in a bigger extent hire the members of the RAE population is also the *Decree on subsidies for the employment of certain categories of unemployed persons*, adopted by the Government of Montenegro, at its meeting of 17 March 2011. The Decree set out subsidies for legal persons and entrepreneurs who hire certain categories of unemployed persons who are registered with the Employment Agency of Montenegro. Subsidies can be used by the employer who, among other categories, employs members of the Roma, Ashkali and Egyptians. For those persons the Employment Agency pays contributions for compulsory social insurance on incomes (contributions for

pension and disability insurance, contributions for health insurance and contributions for unemployment insurance) and contributions to Labour Fund, as well as taxes on personal income of natural persons (80 per cent of the revenue of the Budget of Montenegro). The regulation will apply from 31 December 2011.

266. Employers Survey 2009/2010, which was organized as part of regular research activities of the Employment Agency makes an important assumption for design of measures and activities of the active employment policy. Survey aims to review the current and projected employment.

267. Survey 2009/2010 included, among other things, questions about the employment of the Roma population and about the intentions of employers to hire members of this population in the future. The results show that employers in the past two years employed 605 members of the RAE population and expressed willingness to employ 1,445 in the future.

The rights from unemployment insurance

268. With unemployment insurance, in accordance with the Law on Employment and Achievement of the Rights from Unemployment Insurance, an unemployed person is entitled to financial compensation and the right to health insurance, pension and disability insurance, while exercising the right to financial compensation. An insured person will obtain the right to financial compensation whose length of insurance prior to termination of employment had lasted for 12 months continuously or intermittently over the past 18 months.

269. Currently 17 unemployed persons, members of RAE population, are entitled to financial compensation.

Employment status of displaced and internally displaced persons in Montenegro

270. An unemployed person, in terms of the Law on Employment and Achievement of the Rights from Unemployment Insurance is a person of age 15 to 65 who is Montenegrin citizen or a foreigner with a personal work permit, who is on the records of the Employment Agency, capable or partially capable of working, which has not been employed and is actively seeking employment.

271. Foreigners who may be recorded in the records of the Employment Agency are: foreigners with permanent residence, refugees whose status have been recognized in accordance with the Law on Asylum and persons granted subsidiary protection in accordance with the Law on Asylum. All these categories of foreigners may, at their own request, obtain a personal work permit, issued by the Employment Agency, in accordance with the Law on Employment and Work of Foreigners ("Official Gazette of Montenegro", No. 22/08). A foreigner who possess a personal work permit, has free access to the labour market and may be employed under the same conditions under which Montenegrin citizen may be employed, and during unemployment may be recorded in the records of the Employment Agency and exercise the rights on that basis.

272. In the "Official Gazette of Montenegro", No. 45/10, of 4 August 2010, was published the "Decree on exercising the right of displaced persons from former Yugoslav republics and internally displaced persons from Kosovo residing in Montenegro". This Decree stipulates that the displaced persons from former Yugoslav republics and internally displaced persons from Kosovo residing in Montenegro, until obtaining the status of a foreigner with permanent residence in accordance with the Law on Foreigners, exercise, in the same extent as Montenegrin citizens, the right to work and employment and rights from unemployment insurance, in accordance with the regulations from the area of labour and employment, unless a specific law as a condition stipulates Montenegrin citizenship.

273. This means that these persons, until obtaining the status of a foreigner with permanent residence, can employ and work without a work permit issued by the Employment Agency, unless the special law as a condition of employment is prescribing Montenegrin citizenship. If unemployed, these persons can be on the records of the Employment Agency and exercise the rights on that basis, according to the Law on Employment and Achievement of the Rights from Unemployment Insurance. In order to exercise these rights, the status of displaced persons from former Yugoslav republics is provable by a certificate of the Ministry of Internal Affairs – Asylum Office, and internally displaced persons from Kosovo by a certificate of the Institute for the Care of Refugees.

274. The Decree entered into force on 12 August 2010 and shall be applied until 7 January 2012.

275. According to the data from March 2011, in the records of the Employment Agency were 171 displaced and internally displaced persons, of which four members of RAE population (in question are Roma and Egyptians without occupation and qualification).

The right to housing

276. According to statistics from the Project "Database of RAE population in Montenegro", was registered 2,020 flats occupied by the Roma population¹⁶. Of that number 84 per cent of flats had electricity, 82 per cent had plumbing and water available in the flat or near the flat. Public dump was available for 61 per cent of flats. The average housing area per person was 8.3 m². Wooden structure of the flat was registered in 37 per cent of housing units, while 53 per cent were of solid material. The rest of the housing units (10 per cent) was made of other types of materials (cardboard, trailers, collective accommodation, etc.). As an owner of an object was registered 35 per cent of Roma comprised in this study, of what 34 per cent owners did not possess an official documentation to prove the ownership, while 21 per cent of listed persons of the Roma population were renting the place to live. In collective accommodation was living about 2 per cent of Roma comprised in this study, while there is no data for approximately 5 per cent of persons. Power supply had 84.06 per cent of the objects, water in the flat or near flat 82.08 per cent, while regulated drains had 51.24 per cent of flats.

Health care and social security

277. Article 18 of the Law on Health Care provides that in achieving health care citizen has the right to equality in the overall treatment when implementing health care at primary, secondary and tertiary level. The relationship between health workers and citizens when implementing health care is based on mutual respect, trust and protection of personal dignity. In the course of conducting health care, personal beliefs of citizens related to their religious, cultural, moral and other orientations must be respected (art. 20).

278. A person seeking asylum, a person to whom is recognized the status of refugee, a person who has been granted additional protection and a person who has been granted temporary protection in Montenegro, has the right to health care in accordance with the provisions of this and specific law, unless an international agreement provides otherwise.

279. By the Law on Patients' Rights is prescribed that the exercise of the rights of users of health services is performed with respect for human dignity, physical and psychological

¹⁶ Flats are kind of space, which are usual residence of one or more persons. Flat or enclosure is separate if surrounded by walls and covered with a roof so that a person or group of persons can be separated from the other person for sleeping, food preparation and dining, or protection from the foul weather and surrounding.

integrity, with protection of these rights of patients. This law applies also to foreigners who receive health care in health institutions in Montenegro, in accordance with law and concluded international agreements (art. 3). Within the patients' right to information, the Law prescribes that a health care institution has the obligation to provide an interpreter if the patient is not familiar with the official language in Montenegro or is deaf-mute (art. 11 of the Law).

280. A patient who is not satisfied with the health service has the right to lodge a complaint to the director of the health care institution or authorized person, i.e., the protector of patients' rights (art. 31 of the Law), as well as the right to compensation for damage caused by worsening of health conditions because of unprofessional and irresponsible conduct of a health worker.

281. With the reform of the health system which is fully completed at the primary health care level, are created all the conditions for registration of the RAE population, as well as refugees and displaced persons, for the exercise of the right to health care and access to health care institutions in the manner, the procedure and to the extent as for all citizens of Montenegro. Health care is provided as a transitional period until the regulation of the status of a foreigner with permanent residence, and thereafter, in accordance with the law, access to health care institutions and realization of health care, as all citizens of Montenegro.

282. Mandatory pension and disability insurance based on current funding, which is regulated by the *Law on Pension and Disability Insurance*, which is in force since 1 January 2004, comprises working active population (insurants employees, insurants of independent occupations and insurants agriculturists). This obligation means that it arises by force of law on the day when a person get employed, begins to carry out independent occupations in accordance with the law or begin to engage in agricultural activities in accordance with the law. Labour Law established that the employer has the obligation to report the employee on compulsory social insurance (health care, pension and disability insurance and unemployment insurance) on the date of commencement of work. Accordingly, the mandatory pension and disability insurance covers all those who meet the requirements prescribed by law and have established employment, or are engaged in an independent or agricultural activity, regardless of nationality, race, sex, language, religion, political or other opinion, and other personal characteristics.

283. Veteran and disability protection in Montenegro is regulated by the *Law on War Veterans and Disability Insurance*, which is effective from 1 January 2003, and includes protection of veterans, families of martyrs, war military persons with disability and peacetime military persons with disability, war civilians with disability and family members of veterans who died, military persons with disability and war civilians with disability. Users are, in terms of this Law, provided with rights in case of forced death, disability or physical impairment while performing military duties and other duties for the purposes of defence and security, then in case of forced death of person in the performance of military duties and other duties in peace to preserve the sovereignty, territory, independence and constitutional order of the State, in the event of disability or physical impairment to civilians in war and post war period from residual war materials, as well as in the case of death of the beneficiary. Beneficiaries of the veteran and disability protection are citizens of Montenegro, whose rights are acquired, exercised and used in a manner and under conditions prescribed by the law, regardless of national affiliation, race, sex, language, religion, political or other opinion or other personal characteristics.

284. Strategy for Social and Child Welfare 2008-2012, promoted the principle according which Montenegro, as a member of the United Nations and the Council of Europe, must develop reform of social protection systems taking into account the rights, norms and standards set forth in international documents: the Charter of Fundamental Rights, the

International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the European Social Charter, Additional Protocol to the European Social Charter, the Protocol Amending the European Social Charter, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on Rights of the Child (p. 6). Performance of actors in the system of social protection is done on the principle of equality and prohibition of discrimination (p. 20.).

285. Article 5 of the *Law on Social and Child Welfare* stipulates that in exercising their right to social and child welfare, citizens are equal regardless of nationality, race, sex, language, religion, social background or other personal characteristics, and that social and child welfare is realized in accordance with the Strategy of Social and Child Welfare of Montenegro.

286. The rights under this law are achievable by Montenegrin citizens with residence on the territory of Montenegro. Foreign citizens and stateless persons can exercise rights from social and child welfare stipulated in this Law, in accordance with international agreements and conventions.

287. Fundamental rights under this Law are: family cash benefit; personal disability benefit; home care and assistance allowance; placement in an institution; placement in a foster family, help for vocational rehabilitation and work qualification, health care; coverage of funeral expenses; lump-sum cash benefit. The State may provide other rights and forms of social protection in accordance with financial possibilities.

288. *The Decree on financial aid to a person seeking asylum*, to which was recognized the status of refugee and who have been granted additional protection in accordance with the Law on Asylum, realizes financial aid as a form of social protection, in accordance with this regulation.

Education and learning

289. The Constitution and adequate law in Montenegro are envisaging compulsory and free primary education for children of age seven to fifteen, regardless of gender, race, religion or other differences.

290. In Montenegro there are 21 preschool institutions, with a network of 96 educational units, within which was organized 414 educational groups. Two pre-schools institutions in five educational units carry out the programme of preschool education in the Albanian language, in Podgorica - Tuzi (1 educational unit) and in Ulcinj (4 educational units). Preschool education in Albanian language is implemented in nine educational groups and includes 222 children of age 6, i.e. age of starting primary school. The coverage of the children from RAE population is 13.81 per cent, which is twice less than the coverage of children at the state level (26.65 per cent). Data on coverage of boys and girls indicates that there is a slightly larger number of girls included - 15.02 per cent compared to the boys - 12.69 per cent. On the territory of Podgorica, in the settlement Vrela Ribnička, there is an educational unit attended only by children of the RAE population (domicile and displaced from Kosovo). There are working two teachers and two Roma assistants (trained to work with children).

291. The Strategy of early and preschool education adopted in 2010, as a guiding principle has the following: For all children in Montenegro from birth to primary school will be provided quality services for the early development and learning in order to realize their full potential and become active and productive members of society through a gradual and planned process of increasing rates of coverage of children, strengthen parenting practices, providing planes and programmes which are adapted to development, structured according to aim, which will be implemented by trained teachers and other professionals. System of early and preschool education will fulfil all the requirements so to provide

accessible, high quality, comprehensive, culturally adapted, inclusive services for all children in Montenegro, from birth to primary school, with special emphasis on the most sensitive children. Through Specific objective No. 2 it is necessary to develop a system of continuous improvement, innovation and a monitoring of quality of services of the system of early and preschool education. In order for all the children in Montenegro to achieve their full potential and become active and productive members of society it is necessary to ensure a stimulating learning environment from birth. This can be achieved through plans and programmes which are adapted to development, structured according to aim, through the process of continuous monitoring and innovation of early and preschool education. Thus elements of the culture and language of minorities and gender equality should be integrative part of the programme with what will be achieved that the child's origins become a guide for working.

292. Education is available in Albanian, at all levels, from preschool to tertiary. In areas with majority Albanian population, children and young people are provided with instruction in their mother tongue, therefore there are five primary schools with instruction in Albanian language, seven schools with instruction in both Albanian and Montenegrin language and three secondary schools with instruction in both languages. In addition, two preschool institutions in five educational units are carrying out the programme of preschool education in Albanian language in Podgorica - Tuzi (1 educational unit) and Ulcinj (four educational units). Preschool education in Albanian language is being implemented in nine educational groups and includes 222 children of age 6, i.e. age for starting primary school. According to the same document coverage of children of the RAE population is 13.81 per cent, which is twice less than the coverage of children at the state level (27 per cent).

293. All children who fulfil the conditions, regardless of their nationality or religious affiliation, are enrolling in secondary schools, under the same conditions. All are enjoying equal rights to education, so there are no discriminatory measures. Children of the Albanian ethnic community in high schools in Tuzi, Ulcinj and Plav, are taught in Albanian and Montenegrin language, and for them is provided adequate textbooks and other literature (through the production of the Institute for textbooks publishing and teaching aids of Montenegro or in cooperation with similar institutes from the region). The curriculum is identical to the general, with the difference in teaching the subject of Albanian language and literature. Education of other minorities is an integral part of the unique system. In all schools, teachers, parents and schools are jointly responsible for the formation of 20 per cent of the curriculum in cooperation with the local community. This means that more often are included contents from: literature, history, culture of minorities and other. Then, through the programme subject "Civic Education in Primary School" (taught in seventh and eighth grade), students learn about the rights and life of minorities. A similar approach is applied through the secondary school programme subject "Civic Education" and "History of religion". The programme of Studies for Teachers in Albanian language in Montenegro had begun to be implemented in Montenegro in October 2004.

294. The number of Roma children in primary education increases from year to year. In 2007/08 school year there were 1,263 of these pupils, in 2008/09 school year there were 1,461 pupils members of RAE population. Data from previous years also show that the number was constantly increasing and that there is a positive trend when it comes to primary education of RAE children. Namely, in the 2001/02 school year in primary schools were 536 pupils, members of RAE population; 2002/03 school year, 626 pupils; 2003/04 school year, 1,006 pupils; 2004/05 school year, 1,169 pupils; 2005/06 school year, 1,195 pupils; and 2006/07 school year, 1,236 pupils, members of RAE population. In 2009/10 school year, were 1,434 students and in 2010/11 school year, 1,582 pupils from RAE population. Out of this number in the Public Institution Elementary School "Bozidar Vukovic Podgoričanin" in the main school there are 447 pupils from RAE population, and

in the regional department of the Konik camp there are 263 pupils from RAE population. At the high school level of education there are 57 pupils.

295. The Ministry of Education and Sports, with support from the Commission for monitoring and implementation of the Strategy for the Improvement of the Position of RAE Population in Montenegro 2008-2012, in September of the current school year, through the Institute for textbooks publishing and teaching aids, provided textbooks for first, second and third grade of primary school for pupils from RAE population in the total value of 33,387.50 euros. The Team of the Ministry of Education and Sports for 2010/2011 school year, in cooperation with the Red Cross of Montenegro has compiled a list of children who are not in the system of education (Camp Konik 1 and 2). For 55 children the Ministry provided necessary clothing, textbooks and school supplies, amounting to 3,600.00 euros. Since the 2008/09 school year, the Ministry of Education and Sports in cooperation with the Red Cross of Montenegro undertakes activities of desegregate education of the Roma population in the Konik camp. The Ministry of Education and Sports provides free textbooks and transport to city schools for these children (monthly for this purpose is allocated on average, 1,300.00 euros).

296. Special support is provided to the Public institution Elementary School "Bozidar Vukovic Podgoričanin" in whose immediate vicinity is Konik camp (the place where are settled refugees and displaced persons from Kosovo). In the past five school years, all students from RAE population have got the textbooks. Teachers have undergone a series of seminars: Index for Inclusion - (35 teachers), Peace and Tolerance - Creative problem solving (32 teachers), Step by step, the basic (28 teachers) and advanced (26 teachers), Development of critical thinking (18 teachers); Education for social justice - Against stereotypes and prejudice (25 teachers), Active Learning (48 teachers), Innovative methods in education for integration of Roma (12 teachers), and others. Additional lectures are held regularly - I grade: 38 pupils, II grade: 24 pupils, III grade: 22 pupils, IV grade: 28 pupils, V grade: 27 pupils, VI grade: 12 pupils, VII grade: 9 pupils. As a part of the Roma Education Initiative the school has complemented the programme for first cycle (I, II and III grade) from the Montenegrin language and literature, natural and social and music culture, with the content from the Roma literature, history, tradition and music culture. It is foreseen that these topics get treated within 20 per cent of the curricula intended for cooperation with the local community.

297. The project "Student volunteering - from desegregation to quality integration of Roma pupils" is underway. The Pedagogical Centre of Montenegro and the University of Montenegro - Faculty of Philosophy, Niksic are partners in this project. The list of other participating organizations is as follows: the Coalition of NGOs "Roma Circle" and the Public Institution Elementary School "Bozidar Vukovic Podgoričanin". The direct beneficiaries of the project are Roma children from Elementary School "Bozidar Vukovic Podgoričanin". The programme aims to provide equal access to quality education and the system that would allow completion of the full cycle of primary education for all Roma children in Montenegro. The project includes the following: (1) improving pupils' academic achievements and reduce language barriers for pupils attending classes in the branch as well as the main school "Bozidar Vukovic Podgoričanin"; (2) support and help to pupils in acquiring social skills and knowledge, as well as providing support in developing a higher level of confidence and satisfaction; (3) preparation and raising pupils' readiness for all future processes of integration and socialization; (4) raising the quality of education - individualized approach to teaching and the principles of social inclusion; (5) development of the concept of volunteerism at the University level, but also in elementary education; (6) the development of student's teaching and pedagogical practice and preparation of future teachers for continued work in multicultural classrooms and the school community; (7) connecting researches and teaching practice: changing teaching practices in line with the results obtained in researches.

298. So far, the following activities have been carried out: the preparatory phase, research: Analyses of the documents and preparation of research instruments; organization of trainings for students performing research; research implementation. Component 1: mentoring/volunteering: designing and producing an action plan for inclusion in the research part of the project; organization and coordination of training for students volunteers; formation of groups of students volunteers, their work with children and supervision; provision of missing literature (for example, mentoring, group work, multiculturalism, bilingualism, etc.); monitoring of the development of student reports. Component 2: Roma assistant in the community (RAC): advertising the need for RAC; selection of RAC and monitoring of their work.

299. The plan provides for the continuation of the Roma Education Fund (REF) - programme MN 001: "Roma Education Initiative in Montenegro" (project submitted to the REF). The components are: Integration and education through the plan of desegregation; programme of preparation for enrolment in elementary school and psychosocial support programme for preschoolers; additional classes for improvement of school achievement; training for teachers in "desegregated" schools for work with RAE pupils; and school projects in those schools where are included children of the RAE population.

300. At the request of the Employment Agency, the Centre for Vocational Education developed occupational standards and training programmes for the implementation of the project "Creating equal access to work positions for the RAE population". The Centre, also, at the request of the Roma Scholarship Foundation (a programme funded by COSV) and the Red Cross of Montenegro (programme funded by the European Commission and the Danish Red Cross), is developing standards, programmes, and monitor the implementation of the programmes and with Examination Centre is organizing the final exams for students of their programmes for elementary functional literacy. Through the programme organized by the Roma Scholarship Foundation, this year the exam successfully passed 14 of 18 persons who attended the course. Through the programme of functional literacy with Red Cross of Montenegro, 30 adults of both sexes got through. Finally, within the project Inter-Sector Initiative on prevention of diseases and special education for Roma of both sexes from Konik, which we are implementing in cooperation with the Red Cross of Montenegro, 20 Roma men attend the vocational training programme for assistant mechanic or tire repairman in the secondary vocational school "Ivan Uskokovic", and 12 Roma women, vocational training programme for assistant hairdresser in the secondary vocational school "Spasoje Raspopović". These occupations are demanded in the labour market and the majority of participants of the programmes have expressed interest in attending these programmes when interviewed by representatives of the Employment Agency of Montenegro. Training programmes lasted two months and ended on 1 June 2011.

301. In elaboration of this question, the starting point was the Committee's recommendations contained in paragraph 16 of its concluding observations on the initial report.

Culture

302. The basic principles of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which was ratified by Montenegro in August 2008, are contained in articles 3 and 5 of the *Law on Culture* ("Official Gazette of Montenegro", No. 49/08), which foreseen that the culture of Montenegro shall actualize and develop the principles of equal preservation of all cultural identities and respect for cultural diversity, and that for the culture of Montenegro is of the public interest preservation of original and traditional cultural and ethno-cultural characteristics.

303. In accordance with the obligations of each signatory State of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, in 2010 also

Montenegro appointed CCP (Cultural Contact Point), or a person who is responsible for the implementation of requirements arising from the application of this Convention as well as for the exchange of information related to the Convention.

304. In addition, according to the public competition the Ministry of Culture is announcing, the special area for co-financing programmes and projects in culture, are traditional artistic crafts and skills as well as amateur activity in the culture, which represent a segment of culture that reflects the different cultural heritage of Montenegro, the tradition preserved by the minorities and other minority national communities and immaterial cultural heritage aimed at promoting cultural diversity.

305. In accordance with the affirmation of multinational and multicultural characteristics of the heritage of Montenegro, one of the criteria by which are evaluated the project presented at the public tender for co-financing cultural and artistic creation is also "contribution of the projects to the development of multinational and multicultural values", as well as "the preservation of tradition and Montenegro cultural heritage".

306. In order to preserve the authenticity of cultural heritage as part of national identity, the Ministry of Culture, in August 2010, has brought four new laws (Law on Protection of Cultural Property, the Law on Museums, the Law on Archives, the Law on Libraries) in order to ensure protection and preservation of cultural heritage and goods in the manner prescribed by European and international standards and conventions.

307. With the goal of affirmation of cultural diversity and the preservation of culture and cultural heritage of minorities and other minority national communities, the Government of Montenegro has established the Centre for Preservation and Development of Culture of Minorities. The Centre for Preservation and Development of Culture of Minorities is a special budget institution which main tasks are:

- Conservation, development and expression of cultural minorities in Montenegro
- Implementation and distribution of programmes and organization of events in all fields of art (art, theatre, literature, movie, etc..) related to members of minorities and institutions of minorities of Montenegro
- Drawing attention of members of minorities of Montenegro, by organizing talks, seminars, courses, lectures, discussions, promotions, etc.
- Organization of professional visits, as well as visits of artists from country and abroad that are relevant to the culture of members of minorities of Montenegro
- Supporting research projects in the field of culture of minorities of Montenegro
- Providing financial support to institutions and associations in the field of culture (libraries, galleries, non-governmental organizations, etc.) in the territory of Montenegro, which are of importance for the culture of minorities
- Funding projects that are relevant to the culture of members of minorities of Montenegro
- Supporting and developing cooperation with cultural institutions and other institutions of similar type in the country and abroad
- Supporting and assisting institutions in Montenegro, which are working on the promotion of mass culture and the cultural and artistic amateurism of members of minorities of Montenegro
- Supporting free artistic initiatives of all members of minorities of Montenegro and in all forms of artistic activity

- Publishing professional literature and other publications within the scope of the work of the Centre
- Publishing magazines from the field of culture and art of members of national and ethnic groups of Montenegro
- Creation of information contents from the area of culture of minorities

308. The Centre for Preservation and Development of Culture of Minorities has a four-member Administrative Board, is provided with adequate space for carrying out the occupation and necessary material and technical means of work, a director was appointed, and this important institution for preservation and development of culture of minorities began its mission in early 2009. In their work so far they had a number of significant events and programmes in the sphere of affirmation of the culture of minorities.

309. Also, following the proposal of the Government of Montenegro, the Parliament, in February 2008, adopted the Decision on establishing the Fund for Minorities ("Official Gazette of Montenegro", No. 13/08). The Fund for Minorities was established to support activities relevant for the preservation and development of national, that is, ethnical specificities of minorities and other minority ethnic communities and their members in national, ethnical, cultural, linguistic and religious identity. In July of 2008 was elected fifteen-member Administrative Board, in 2009 for the operation of the Fund for Minorities were provided the funds in the amount of 975,704.76 euros, and in 2010 in amount of 993,169.64 euros. Assets of the Fund are allocated on the basis of open competition and are intended for institutions, non-governmental organizations and individuals.

IV. Legal protection and control of constitutionality and legality

Article 6

310. The Constitution of Montenegro in articles 19 and 20 provides that everyone has the right to equal protection of the rights and freedoms, or to a legal remedy against any decision concerning his right or interest determined by law.

311. By the procedural laws have been consistently carried out the constitutional provisions guaranteeing prohibition of discrimination, that a person must be immediately informed in his language about the grounds for his deprivation of the liberty and, at the same time, informed that it is not obliged to make any statement, that he has a right to a defence counsel of his own choice and to require that his immediate relatives be informed oh his deprivation of the liberty, the right to use his language in the proceeding, right to defence, right to a remedy, that a court decision cannot be based on evidence obtained through violations of human rights and fundamental freedoms guaranteed by the Constitution and ratified international agreements, etc.

312. The role of the courts in protecting human rights and freedom arises from the fact that all the procedural laws in Montenegro provide for the right to an effective legal remedy through regular and extraordinary legal remedies.

313. The Code of Criminal Procedure ("Official Gazette of Montenegro", No. 57/2009 and 49/2010), prescribes the procedure under legal remedies, regular and extraordinary. Regular legal remedies are appeal on a first-instance court verdict, appeal on a second-instance court verdict and appeal on ruling. Extraordinary legal remedies prescribed by the Criminal Procedure Code ("Official Gazette of Montenegro", No. 57/2009 and 49/2010) are request for reopening of a criminal proceeding, the request for extraordinary mitigation of punishment and the application for protection of legality.

314. The Law on Civil Procedure introduced the new institute of retrial in case the European Court of Human Rights finds a violation of human rights or fundamental freedoms guaranteed by the European Convention on Human Rights and Fundamental Freedoms.

315. The Constitutional Court is competent to decide on constitutional complaints for violation of human rights and freedoms guaranteed by the Constitution, after exhausting all other effective legal remedies. Likewise, the Constitutional Court is competent to initiate the procedure of reviewing the constitutionality and legality regarding the assessments of their compliance with the Constitution and ratified and published international agreements, following the proposal of authorized institutions, the initiative of any person or ex officio.
