



T-ES(2014)ADD-ME

## **LANZAROTE CONVENTION**

Council of Europe Convention on the protection of  
children against sexual exploitation and sexual abuse

**Addendum to Reply 16 of the General  
Overview Questionnaire and to Reply 10 of the  
Thematic Questionnaire**

### **MONTENEGRO**

Registered by the Secretariat on 7 October 2014



## **CRIMINAL OFFENCE OF RAPE (ARTICLE 204 OF THE CRIMINAL CODE OF MONTENEGRO)**

The basic form of this criminal offence consists in the compulsion to sexual intercourse or an equal act by force or threat of a direct attack on life or limb of that or some other person. The essence of this criminal offence fully corresponds to the solutions adopted in the European criminal law, according to which the perpetrator and the victim may be persons of both sexes, while the act of execution includes sexual intercourse and a similar act, or unnatural fornication. The criminal offence has two severe forms that differ according to the prescribed sanctions. A severe form of paragraph 3 includes the aggravating circumstances such as the occurrence of serious bodily injury to a passive subject, or if the offence was committed by more than one person or if it was committed in a particularly cruel or humiliating manner or if the offence was committed against a juvenile or has resulted in a pregnancy. Paragraph 4 provides the most severe form of the offence that exists in the event of death or if the offence was committed against a child.

Article 34, item (a) of the UN Convention on the Rights of the Child (The inducement or coercion of a child to engage in any unlawful sexual activity) provides for the protection of the child from all forms of sexual exploitation and sexual abuse.

Article 18, paragraph 1, item (b) of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which encompasses criminal offences of sexual abuse, criminalizes the exercise of sexual activity with a child by coercion, force or threats.

**Through the analysis of the above provisions of conventions and domestic legislation we come to the conclusion that rape as the most severe criminal offence against the sexual freedom of a child is prescribed by the Montenegrin criminal legislation in compliance with international standards in all aspects of concretization of specific elements of the crime, along with precise notion of coercion and the most severe form of the criminal offence referring to the compulsion to engage in sexual intercourse with a child.**

## **CRIMINAL OFFENCE OF SEXUAL INTERCOURSE WITH A HELPLESS PERSON (ARTICLE 205 OF THE CRIMINAL CODE OF MONTENEGRO)**

This criminal offence includes the sexual intercourse or an equal act with another person, taking advantage of a person's mental illness, arrested mental development or other mental alienation, helplessness or some other state of that person due to which s/he is not capable of resistance. The criminal offence has two severe forms that include the occurrence of serious bodily injury to a passive subject, if the offence is committed by more than one person, or if it is committed in an especially cruel and humiliating manner, or if it is committed against a juvenile or has resulted in pregnancy. The most severe form of the criminal offence exists in the case of death of a passive subject, or if the offence was committed against a child.

Article 18, paragraph 1, item (b) of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which encompasses criminal offences of sexual abuse of children, criminalizes sexual activities with a child by abusing particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

Through the analysis of the above provisions of international and domestic legislation we come to the conclusion that the criminal offence of sexual intercourse with a helpless person is specified in the Montenegrin legislation in compliance with the criminalization prescribed by Article 18, paragraph 1, item (b) of the Council of Europe Convention, given that the most severe form of the criminal offence exists if the act is committed against a child (Article 205, paragraph 3 of the Criminal Code of Montenegro). Helpless person is not able to resist and the sexual intercourse is committed by taking advantage of some of the previously mentioned conditions.

#### **CRIMINAL OFFENCE OF SEXUAL INTERCOURSE WITH A CHILD (ARTICLE 206 OF THE CRIMINAL CODE OF MONTENEGRO)**

This criminal offence has a basic and two severe forms. Paragraph 1 criminalizes sexual intercourse or an equal act with a child. The Montenegrin criminal law defines a child as a person under the age of 14. Persons aged 14 to 18 are considered junior and senior juveniles. Severe forms of the criminal offence are prescribed taking into account the severe consequences, while paragraph 4 provides the basis for exclusion of the existence of a criminal offence if there is no significant difference in the mental and physical maturity of the perpetrator and the child.

Regulating the criminal offence of sexual abuse, Article 18, paragraph 2 of the Council of Europe Convention provides that each Party shall decide the age below which it is prohibited to engage in sexual activities with a child. No reasonable person could argue the necessity to sanction sexual acts against persons who have not reached the required level of mental and physical development for engaging into sexual relations.

**Montenegrin legislation has established a fixed minimum age of 14 as the average age at which most individuals reach sexual maturity. In terms of this criminal offence, there is compliance of Montenegrin legislation with international standards, i.e. the obligation of the states to prescribe a minimum age below which it is prohibited to engage in sexual acts. However, our legislation does not define the term child in accordance with the stipulations of the Council of Europe Convention.**

#### **SEXUAL INTERCOURSE BY ABUSE OF POSITION (ARTICLE 207 OF THE CRIMINAL CODE OF MONTENEGRO)**

The basic form of this criminal offence consists in instigating to sexual intercourse or an equal act a person who is in a subordinate or dependent position compared to the perpetrator, while the instigation may not involve coercion. A severe form of the criminal offence prescribed in paragraph 2 exists if a teacher, instructor, guardian, adoptive parent, parent, stepfather, stepmother or some other person performs sexual intercourse or an equal act with a juvenile entrusted to him/her for teaching, education, care and attendance by abusing his/her position or authorization. Paragraph 3 prescribes another severe form of this offence, which exists if this criminal offence is committed against a child, with the intent of the perpetrator encompassing the qualifying circumstance, i.e. that the victim is a person who has not attained 14 years of age. The most severe form of the offence is set out in paragraph 5, and it exists in the case that the commission of the offence referred to in paragraph 3 resulted in the death of a child.

Article 18, paragraph 1, item (b) of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse prescribes, as one of the forms of sexual abuse of children, engaging in sexual activities with a child which, according to the provisions of domestic legislation, has not entered the legal age for entering into sexual relations, by abusing the position of trust, authority or influence over the child, including within the family.

**Taking into account all relevant elements of concretization of specific elements of this criminal offence, and especially the act of commission, the passive subject, the severe forms explicitly indicated perpetrator in paragraph 2, the impression is that this criminalization is also in accordance with the relevant provisions of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.**