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## **EUROPEAN SOCIAL CHARTER**

Addendum to the 4<sup>th</sup> national report  
on the implementation of the revised European Social Charter

submitted by

**THE GOVERNMENT OF MONTENEGRO**

Complementary information on Article 13§4  
(Conclusions 2013)

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**CYCLE 2015**



**Foreigners law** ("Official Gazette of Montenegro", No. 56/14 dated December 24, 2014) shall regulate the conditions of entry into, exit from, movement, stay and work of foreign citizens in Montenegro.

#### Obligation of Foreign Citizen to Leave Montenegro

##### Article 99

A foreign person illegally residing in Montenegro shall leave its territory immediately or within a deadline set forth in this law.

A stay in Montenegro shall be regarded as illegal as referred to in this law if a foreigner stays in Montenegro with no visa when the visa is required in accordance with this Law, a temporary residence permit, a temporary residence and work permit and permanent residence permit or other legal ground prescribed by the law.

It shall be deemed that a foreign person left Montenegro when he or she enters another country into which he or she is allowed to enter.

If a foreign person considers his/her stay in Montenegro legal, he/she shall be obliged to prove that.

#### Deadline for Departure from Montenegro

##### Article 100

The Police shall issue a decision specifying the deadline within which a foreign person whose residence is illegal must leave the territory of Montenegro, and also, if so required the point of crossing of the state border and an obligation to report to the competent border police official.

Pursuant to the decision referred to in paragraph 1 of this Article, a denial of entry into Montenegro may be imposed for a period of one to five years, in accordance with this Law.

An appeal against the decision referred to in paragraph 1 of this Article may be lodged to the Ministry within three days following that of its delivery.

The Ministry shall issue a decision on the appeal from paragraph 3 of this Article, not later than within eight days following that of its submission.

The execution of the decision shall not be deferred by the appeal.

When setting the time limit from paragraph 1 of this Article, an objective time limit within which the foreign person in question will be able to leave the territory on Montenegro shall be taken into consideration, whereas such deadline may not be longer than 30 days after the issuing of a decision.

Following the request of a foreign person or ex officio, another time limit may be set for a foreign person who failed to leave the territory of Montenegro for justified reasons within the time limit from paragraph 6 of this Article.

#### Execution of Compulsive Deportation

## Article 101

A foreign person who resides in Montenegro illegally or fails to leave Montenegro within the specified deadline shall be compulsively deported by the Police.

The decision on the compulsive deportation shall be brought by the Police.

An appeal can be filed to the Ministry against the decision referred to in paragraph 2 of this Article within eight days of receipt of the decision.

The enforcement of a decision shall not be postponed by an appeal.

## Prohibition of Compulsive Deportation

### Article 102

No foreign person shall be compulsively deported to a country where his or her life or freedom may be threatened because of racial or religious belonging, his/her language or nationality, membership in a particular social group or for having a different political conviction or where he or she might be exposed to torture, inhuman or degrading treatment and punishment.

## Detention of Foreigners

### Article 103

When so required for the reasons of ensuring a compulsory deportation, a foreign person may be detained at the premises of the Police, but not for a period longer than 12 hours.

The provisions of the law regulating police affairs shall accordingly apply to the detention of a foreigner.

## Accommodation Facilities for Foreigners

### Article 104

The freedom of movement of a foreign person who could not be compulsively deported at once or whose identity was not established shall be limited by placing this person into a Shelter for foreign persons (hereinafter referred to as "The Shelter").

Exceptionally, another appropriate lodging shall be found for a foreign person in need of medical care or having other special needs.

A foreigner who has a provided accommodation and means of subsistence and cannot be forcibly removed may be required to have to stay in a particular place.

## Deciding on the Stay at the Shelter

### Article 105

The Police shall issue a decision on accommodation at the Shelter.

An appeal against the decision referred to in paragraph 2 of this Article may be lodged to the Ministry, within eight days from the date of receipt of the decision.

The appeal referred to in paragraph 2 of this Article shall be decided upon by the Ministry, within eight days from receipt of the appeal.

The enforcement of a decision shall not be postponed by an appeal.

#### Duration of Stay at the Shelter

##### Article 106

The stay at the Shelter shall not be longer than 90 days.

Following the expiration of the time limit from paragraph 1 of this Article, foreign person may be placed at the Shelter for 90 days more if:

The procedure for the establishing of identity or data collection is in progress;  
So required for security reasons, or  
intentionally interfering with forced removal.

The time spent by a foreigner outside the Shelter, serving a sentence of imprisonment or detention, shall not be included in the duration of his/her stay at the Shelter.

A foreigner whose identity was established can be granted to leave the Shelter, if not forcibly removed for the reasons mentioned in Article 102 of this Law.

#### Compliance with the Rules of Stay and Conduct at the Shelter

##### Article 107

A foreigner shall observe the rules of stay and conduct at the Shelter and shall not leave the Shelter without permission. A foreign person who may be reasonably suspected of behaving in the future in a manner contrary to paragraph 1 of this Article shall be subject to an enhanced supervision. The rules of stay and conduct at the Shelter shall be prescribed by the Ministry.

#### Termination of Stay at the Shelter

##### Article 108

The stay of a foreigner at the Shelter shall be terminated:

- 1) Following the departure from Montenegro;
- 2) when he/she applied for the grant of asylum in Montenegro;
- 3) following the expiration of the determined period of accommodation;
- 4) after determining the identity or gathering data of the foreigner, if that was the reason for accommodation at a shelter.

#### An Accommodation of Underage Person in the Shelter

## Article 109

An underage person shall be accommodated in the Shelter together with his or her parents, i.e. his/her legal representative, unless assessed that another type of accommodation is more favorable for him/her.

The measure of enhanced supervision at the Shelter may be ordered for an underage foreigner who has not turned 16 years of age yet, only if such a person is accompanied by his/her parents or another legal representative.

An underage person shall not be returned to the country of origin or a third country that is ready to accept such a person if this is contrary to Article 1 A (2) of the Convention relating to the Status of Refugees from 1967, Article 3, 5 and 8 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment including Protocol No 2 amending the Convention, and Articles 9 and 37 of the Convention on the Rights of the Child.

## Determination of Compulsory Stay at the Particular Place

### Article 110

The compulsory stay from paragraph 3 of Article 014 shall be established by the Police ex officio. The compulsory stay from paragraph 1 of this Article shall not be longer than six months.

Determination of the mandatory stay under paragraph 1 of this Article shall not relieve the foreigner of having to leave Montenegro. A foreigner for whom a compulsory stay in a particular place is determined shall be issued a special identification document that the foreigner is obliged to return before leaving Montenegro. The appearance and content of such special identification document of the foreigner who is required to stay under paragraph 4 of this Article shall be prescribed by the Ministry.

## Restriction of Movement to a Particular Place of Residence

### Article 111

In the case from the paragraph 3 of the Article 104 of this Law, a foreigner shall remain at a particular address and regularly report to the Police at his/her place of compulsive residence.

## Termination of Compulsive Residence

### Article 112

The compulsive residence of a foreigner shall be terminated:

- 1) Following his/her departure from Montenegro;
- 2) Following the expiration of prescribed time limit;
- 3) if he/she fails to report regularly to the Police in accordance with Article 111 of this Law;
- 4) if he/she is granted a refugee status, approved subsidiary or temporary protection in accordance with the regulations stipulating an asylum, or he/she has been issued a temporary

residence permit, a temporary residence and work permit or a permit for permanent residence,

5) if it is determined that he/she has neither accommodation nor funds of subsistence provided. A foreigner whose mandatory stay at a certain place has been terminated, and who failed to leave Montenegro, shall be forcibly removed or placed at the Shelter.

## Special Categories of Foreigners

### Article 113

During the process of forced removal of a foreigner, special care shall be taken towards the underage foreigners, persons totally or partially incapacitated, children separated from parents, adoptive parents, guardians, foster parents, i.e. persons who were entrusted with the child care and education, persons with disabilities, elderly persons, pregnant women, single parents with underage children, as well as persons who have been exposed to torture, rape or other serious types of psychological, physical or sexual violence.

In the conduct of official actions affecting the foreigners referred to in paragraph 1 of this Article, the Police shall act in compliance with the regulations and international treaties governing the accommodation of persons with special needs.

## Seizure of Documents and Objects

### Article 114

For the purpose of ensuring the execution of a protected measure of deportation or in a course of accepting of a foreigner in the shelter, his/her foreign travel and other documents, travel tickets, objects and funds are temporarily taken away from a foreign person by the Police.

A confirmation document on the seizure of travel and other documents, travel tickets, objects and funds shall be issued to the foreigner.

## Charge of the Costs

### Article 115

The costs of accommodation at the Shelter and those incurred during the forced removal shall be borne by the foreigner. The costs referred to in paragraph 1 of this Article shall be covered by the funds seized in accordance with Article 114, paragraph 1 above, as well as other assets owned by the foreigner. If the foreigner does not have the funds to reimburse the costs referred to in paragraph 1 of this Article, the costs shall be compensated by:

- 1) a physical or legal person who has committed to bear the costs of the stay of the foreigner;
- 2) the carrier that failed to transport the foreigner in accordance with paragraph 2 and 3 of the Article 15 of this Law;
- 3) The organizer of tourist or business trips as referred to in the Article 15, paragraph 4 hereof;
- 4) the employer who employed the foreigner contrary to this law.

The amount of costs of accommodation at the Shelter and those incurred during the forced removal shall be established by the Police with the decision enacted on the basis of the

actually incurred expenses. The costs that cannot be charged as set forth in paragraphs 2 and 3 of this Article shall be settled from the budget of Montenegro.

### **Asylum seekers**

Persons seeking asylum shall be guaranteed the right to file an application for asylum in Montenegro, to the Ministry of Interior – Asylum Office. After applying for asylum in the Ministry of Interior, the Asylum Office, Ministry of Labour and Social Welfare -Directorate for Refugees perform the activities aimed to provide social assistance of persons from the asylum system, in accordance with the Regulation on the organization and functioning of public administration ("Official Gazette of Montenegro" No. 5/12)

Activities relating to the care of asylum seekers, and persons recognized as refugees or accorded subsidiary or temporary protection encompasses assistance in realization of the rights to: accommodation and adequate standard of living, education, health care, psychosocial care, labor, legal assistance, religious freedom, access to humanitarian and non-governmental organizations, humanitarian assistance, family reunification, social inclusion and other rights prescribed by law.

Legal basis is the Regulation on the manner of exercising the right to housing asylum seekers, persons who have been recognized as refugees, persons granted subsidiary protection and persons who have been granted temporary protection ("Official Gazette of Montenegro" No. 44/14).

Department for refugees, Center for asylum seekers, provide:

- Accommodation;
- Three meals (to juveniles, depending on the age, one or two snacks);
- Basic toiletries;
- Help in clothing and footwear;
- Primary health care;
- Psychosocial support;
- Internet and television;
- Transport for the needs of interview at the Ministry of Interior, etc.;
- Services of interpreters (English, French and Arabic);
- Info leaflets in several languages with basic information.

For persons granted subsidiary protection, Center organizes workshops for overcoming basic communication on Montenegrin language and learning about the political system, history and culture, as well as workshop for making handcraft products (jewelery and decoupage).

Also, asylum seekers, are entitled to:

- Free health care in the public health institutions on the basis of the Regulation on the manner of implementation of health care of asylum seekers, persons who have been recognized as refugees, persons granted subsidiary protection and persons granted temporary protection ("Official Gazette of Montenegro" No. 31/10).
- Legal aid via NGOs;
- Financial assistance on the basis of the Regulation on financial assistance for the asylum seeker, persons with refugee status and subsidiary protection ("Official Gazette of Montenegro" No. 56 / 2008)



- Persons with refugee status or persons granted subsidiary protection have a right to access to the labor market.

The Centre for asylum seekers provide adequate conditions for the reception of vulnerable groups. Special attention is paid to underage persons and women at risk.

The Center for asylum seekers is often visited by representatives of the EU, NGO representatives and representatives of other relevant international institutions. In order to evaluate occupancy and adequacy of the capacity in the Centre, a permanent monitoring mechanism is established in cooperation with UNHCR, with a special focus on vulnerable groups. This activity was the realization of measures from Action Plan for Chapter 24.