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## **EUROPEAN SOCIAL CHARTER**

8<sup>th</sup> National Report on the implementation of  
the European Social Charter

submitted by

**THE GOVERNMENT OF MONTENEGRO**

(Conclusions 2015)

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**CYCLE 2019**

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 1 - Prohibition of employment under the age of 15*

The Committee takes note of the information contained in the report submitted by Montenegro.

*The report indicates that young persons of at least 15 years old and with a general health ability to work may conclude an employment contract with an employer (Article 16 of the Labour Law). The report adds that young persons under the age of 18 may enter into an employment contract only with the written consent of their parents, adoptive parents or guardians and provided that the work does not affect their health, moral and education or it is not prohibited by law (Article 17 of the Labour Law). **The Committee asks if Article 16 of the Labour Law (stipulating a minimum age of 15 for admission to employment) applies to all activities, without exceptions, including self-employed workers and family work.***

#### **ANSWER:**

*The Labour Law is a general regulation which applies on employees, with the employer operating in the territory of Montenegro, as well as the employees sent to work abroad by the employer with the headquarters in Montenegro, unless regulated otherwise by the law. Provisions of this law shall also apply on the employees in state authorities, state administration authorities, local self-government authorities and public services and on the employed foreign citizens and persons without citizenship who are working for the employer in the territory of Montenegro, unless regulated otherwise by the law. Therefore, the provision for a minimum age for employment of 15 years refers to all activities, without exception, including self-employed workers and employees in family business.*

Article 7§1 allows for an exception concerning light work, namely work which does not entail any risk to the health, moral welfare, development or education of children. **States are required to define the types of work which may be considered light, or at least to draw up a list of those who are not. Work considered to be light ceases to be so if it is performed for an excessive duration** (International Commission of Jurists (CIJ) v. Portugal, Complaint No 1/1998, Decision on the merits of 9 September 1999, §§29-31).

#### **ANSWER:**

*Montenegro has affirmed the International Labour Organization Convention 182 on the Worst Forms of Child Labour, which requires the States Parties to draw up a list of the worst forms of child labour. In this regard, the Government of Montenegro - the Ministry of Labour and Social Welfare, together with representative social partners and with the participation of the International Labour Organization (ILO), has concluded the Decent Work Country Programme of Montenegro for the period 2019-2021. (DWCP was signed on 8 March 2019). The DWCP is the second program that Montenegro has concluded with tripartite constituents, and is the result of tripartite consultations on the support of the ILO in Montenegro for the period 2019-2021.*

*This program concluded that Montenegro has not produced a list of the worst forms of child labour, and it is planned to develop this list within the DWCP, with the technical support of the ILO.*

The Committee notes from another source that according to the information in a report entitled “Findings on the worst forms of child labour – Montenegro” of 2008 available on the site of the United Nations High Commissioner for Refugees, 12.9 per cent of children between the ages of 5 and 14 years were involved in child labour, mainly on family farms (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Minimum Age Convention, 1973 (No 138) - Montenegro (Ratification: 2006)). ***The Committee asks if the national labour legislation provides exemptions relating to the employment of persons under the age of 15. The Committee asks what are the measures taken by the Labour Inspectorate or by other institutions to detect cases of children under the age of 15 working in the informal economy, outside the scope of an employment contract.***

**ANSWER:**

*National labour legislation does not provide for exceptions for the employment of persons younger than 15 years of age. Thus, 15 years of age is the absolute lower limit for employment below which employment is not allowed.*

*The provisions of the Labour Law on the minimum age for work of children apply to all sectors and activities, unless otherwise provided by a special law. We note that the lower age limit for persons working on a ship raised to 16 years of age, and/or the Law on Maritime Navigation Safety ("Official Gazette of Montenegro" Nos. 62/13, 6/14, 47/15 and 71/17) prescribed that: "A person under 16 years of age cannot work on a ship".*

*The labour Inspection found children under 15 years of age in the informal work, but there is no sanction for these situations, so the children are moved away from the controlled facility, and employers warned about the impossibility of regulating work relations with children of that age, and it is monitored, through frequent visits, that the employer complies with the inspector's warnings.*

***The Committee recalls that the effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspectorate has a decisive role to play in this respect. The Committee asks the next report to provide information on the activities and findings of the Labour Inspectorate of monitoring the prohibition of employment under the age of 15, including on the violations detected and sanctions applied in practice.***

**ANSWER:**

*During 2016, the labour inspection recorded 12 cases of work engagement of children in the informal work within the scope of its regular activities and, mainly, during the summer tourist season on the coast, of which 6 males and 6 females, aged 15 to 18 years. In 2017, it was*

*recorded 40 cases of work engagement of children in the informal work of which 25 males and 15 females, aged 15 to 18 years. In relation to all of these cases, inspectors have taken measures within their competencies and fined employers with instituting measures to obtain the necessary documentation (medical certificate and parental consent), in order to meet the legal conditions for the work of these persons. Fines are paid, recorded irregularities are removed in a manner that a contract was concluded with a number of children in accordance with the Labour Law, and others have not been found at work.*

*It should be noted that children are not caught in difficult and dangerous jobs, but jobs seller or auxiliary workers in retail stores and other outlets for marketing fruit, toys and jewellery, and often in a shop within the residential facility of a person who is a parent of a working child. Thus, the labour inspection did not recorded cases that could be treated as the worst forms of work engagement of children in any business activity.*

*There are no records on caught working persons who are under the age of 15 years, because it is not mandatory by the statutory regulations for which this inspection is carried out.*

***The Committee recalls that States are required to monitor the conditions under which home work is performed in practice (Conclusions 2006, General Introduction on Article 7§1). The Committee asks whether State authorities monitor work done at home by children under 15 and which are their findings in this respect.***

**ANSWER:**

*Despite the legal basis for this form of work process organization by the employer, it is very rare to resort to the conclusion of an employment contract for doing business at home, perhaps because of that a large number of employers do not have a collective agreement that would regulate this matter in more detail, normative, or quality of work per unit of time. Since in practice this type of employment contract is almost not applicable, we have just one case from 2015 of informing the Labour Inspectorate about it. Also, there were no initiatives by employees who might work at home in connection with the protection of their rights arising from and based on work, and the Labour Inspectorate was not in a position to identify such work and undertake measures within its jurisdiction.*

*Therefore, if such work is in practice, it is concealed and inaccessible for inspection control.*

## **Article 7 - Right of children and young persons to protection**

*Paragraph 2 - Prohibition of employment under the age of 18 for dangerous or unhealthy activities*

The Committee takes note of the information contained in the report submitted by Montenegro.

*The report states that Section 60(2) of the Law on Safety and Health Protection at Work provides that secondary legislation (Protection of Young Persons at Work Ordinance) shall be adopted within two years following the date of entry into force of the Law on Safety and Health Protection at Work on 16 August 2014. **The Committee requests up-to-date information with respect to the adoption of such secondary legislation in the next report.***

### **ANSWER:**

*The Ministry of Labour and Social Welfare adopted the Rulebook on Safety Measures in the Workplace\*, which was published in the Official Gazette of Montenegro, No 040/15 of 24 July 2015. This Rulebook prescribes minimum safety measures for both the employer and the employee.*

*In addition to Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace and Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, the Council Directive 94/33/EEC of 22 June 1994 on the protection of young people at work have also been transposed to this Rulebook.*

*Pursuant to the above, the Rulebook stipulates that the employer should provide an employee with a work place that: does not endanger his/her safety and health at work; prevents or limits occupational safety risks and it is regulated and maintained so that it does not present a risk for occupational safety.*

*Also, the employer is to provide to the employee ergonomic working conditions that are determined by regulations, standards, risk assessment act and/or instructions for safe work at workplace.*

*The Rulebook also stipulates that for the purpose of occupational safety of an employed, the employer should ensure that:*

- *evacuation routes leading to the exit and exits, in case of danger, are always free;*
- *workplaces and means of work, specially set out in Annex 1 to this Rulebook, are technically maintained, and that defects that could affect occupational safety and health are removed as soon as possible;*

- workplace and means of work referred to in item 6 of Annex 1 of this Rulebook are regularly maintained; and
- safety equipment and devices intended to prevent or eliminate hazards are regularly maintained, reviewed and examined.

In addition to the mentioned protection measures (Articles 3 to 6 of this Rulebook), the employer should provide minors with jobs that will not adversely affect their development, as well as not be assigned to work on tasks:

- which are objectively above their physical or psychological abilities;
- which include exposure to dangerous substances that cause heritable genetic damage or in any other way cause the acute health effect;
- which include the risks of accidents that can be presumed that minors cannot recognize or avoid due to their insufficient attention or lack of experience; and
- where there is a risk to health due to extreme cold or heat, noise or vibration.

The employer should ensure that minors are not exposed to work with specific risks, such as:

1) physical harms:

- working in a hyperbaric atmosphere, such as enclosed pressure rooms and underwater diving;

2) biological harms:

3) chemical substances and harms:

- a) substances and preparations classified as toxic (T), very toxic (Tx), corrosive (C) or explosive (E);
- b) substances and preparations classified as harmful (Xn) and with one or more of the following risk phrases:
  - danger of very serious irreversible effects (R39-H370),
  - possible risks of irreversible effects (R40-H351),
  - may cause sensitization by inhalation (R42-H334),
  - may cause sensitization by skin contact (R43-H317),
  - may cause cancer (R45-H350),
  - may cause heritable genetic damage (R46-H340),
  - danger of serious damage to health by prolonged exposure (R48-H372, H373),
  - may impair fertility. (R60-H360FD);
- c) substances and preparations classified according to Directives 67/548/EEC and 88/379/EEC as irritant (Xi) and with one or more of the following risk phrases:
  - highly flammable (R12-H220, H221),
  - may cause sensitization by inhalation (R42-H334),
  - may cause sensitization by skin contact (R43-H317);
- d) chemical hazards and industrial processes:
  - manufacture of auramine,
  - work involving exposure to polycyclic aromatic hydrocarbons present in coal soot, coal tar or coal pitch,
  - work involving exposure to dusts, fumes and sprays produced during the roasting and electro-refining of cupro-nickel mattes,
  - strong acid process in the manufacture of isopropyl alcohol,
  - work involving exposure to hardwood dust.
- e) chemical agents like lead and its derivatives in so far as these agents are capable of being absorbed by the human organism; and

f) asbestos.

4) other risks:

- manufacture and handling of devices, fireworks or other objects containing explosives,
- work with fierce of poisonous animals,
- animal slaughtering on an industrial scale,
- work involving the handling of equipment for the production, storage or application of compressed, liquefied or dissolved gases,
- work with vats, tanks, reservoirs or carboys containing chemical agents referred to in 1.3,
- work involving a risk of structural collapse,
- work involving high-voltage electrical hazards, and
- work the pace of which is determined by machinery and involving payment by results.

Also, the Ministry of Labour and Social Welfare adopted the Rulebook on Special Working Conditions Jobs and the Conditions that Employees Need to Fulfil in order to Work on those Jobs ("Official Gazette of Montenegro", No 070/16 of 09 November 2016). This Rulebook prescribes jobs with special working conditions, as well as the special conditions to be fulfilled by the employees to work on these tasks.

A special condition that employees should fulfil in jobs with special working conditions are, among other things, years of life, where it is prescribed that only employees older than 18 years can work on it.

Jobs requiring special working conditions are:

- 1) jobs which during the predominant part of full-time work require severe physical strain (manual handling of loads in accordance with the act regulating safety measures during manual handling of loads) or jobs that are performed in unfavourable ergonomic conditions.
- 2) jobs carried out at height of more than one meter, and/or going down in depth of more than one meter;
- 3) jobs of handling work tools with increased risks to the life and health of employees - certain work tools, in accordance with the act regulating the procedure and deadlines for conducting periodic examinations and testing of work tools, means and equipment of personal protection at work and conditions of working environment;
- 4) jobs performed underground;
- 5) jobs performed underwater (years of age: for employees older than 18 years and for employees older than 21 years at depths greater than 36m);
- 6) jobs in which the employees are exposed to unfavourable microclimate conditions (hot and dry or hot and humid plant operations, cold store operations, etc.) and work under unfavourable atmospheric conditions in the open space;
- 7) jobs at which employees are exposed to unfavourable light conditions;
- 8) jobs at which the employee is exposed to physical harms (noise, vibration, materials with high, low temperature or pressure, dust of physical origin, etc.);
- 9) jobs at which the employee is exposed to conditions of increased and decreased atmospheric pressure;
- 10) jobs related to internal transport, handling of means of transport and traffic that are not regulated by other regulations;
- 11) jobs at which the employee is exposed to dangerous and harmful substances;

- 12) jobs at which the employee is exposed to hazardous chemicals or substances;*
- 13) jobs at which the employee is exposed to biological harmfulness or substances;*
- 14) jobs at which the employee is exposed to work with explosives or gunpowder;*
- 15) jobs of protection and rescue operations;*
- 16) jobs of protection of persons and property;*
- 17) construction and assembly jobs;*
- 18) jobs in the ironworks;*
- 19) jobs at which the employee is exposed to work with electrical installations, devices and plants of a voltage greater than 250 V and a voltage of 220 V.*

***The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activities and findings of the Labour Inspectorate in relation to the prohibition of employment under the age of 18 for dangerous or unhealthy activities, including the number of violations detected and sanctions applied.***

**ANSWER:**

*Within the scope of its competence, the labour inspection, in carrying out inspection supervision, did not find persons under the age of 18 in carrying out dangerous or unhealthy jobs and activities.*



## **Article 7 - Right of children and young persons to protection**

### *Paragraph 3 - Prohibition of employment of children subject to compulsory education*

The Committee takes note of the information contained in the report submitted by Montenegro.

*As noted in its conclusion on Article 7§1, the legislation does not seem to provide exemptions relating to the employment of persons under the age of 15 (such as for example light work or artistic performances). The Committee asks the Government to confirm this understanding.*

#### **ANSWER:**

*National labour legislation is not aware of the exceptions that would allow the employment of persons under the age of 15. The Labour Law does not provide for exceptions relating to the employment of persons under the age of 15, nor for light work or artistic performances. The Labour Law is explicit when it determined minimum employment age as a general condition for persons of not less than 15 years of age.*

*The Committee asks if in practice children who are still subject to compulsory education are employed in any type of work, including in family undertakings such as family farms.*

#### **ANSWER:**

*It has not come to the attention of the labour inspection that children who are still subject to compulsory education are employed in any type of work, including family undertakings. Formally, they are only legally employed after completion of compulsory education and below 15 years of age (most often during the increase in the volume of work in the summer tourist season).*

*The Committee asks how the Labour Inspectorate monitors any illegal work performed by children who are subject to compulsory education and information on its findings.*

#### **ANSWER:**

*The labour inspection monitors the illegal work performed by children through regular activities and direct on-site inspection, especially in the framework of increased inspection during the summer tourist season. However, special records on the work of children subject to compulsory education are not kept.*

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 4 - Working time*

The Committee takes note of the information contained in the report submitted by Montenegro.

***In order to assess if the situation in Montenegro meets the requirements of the Charter on this point, the Committee asks if legislation provides for reduced working hours for young workers under 18 years of age. The Committee also asks if daily and weekly rest periods are established for such workers. Pending receipt of the information required, the Committee reserves its position on this point.***

#### **ANSWER:**

*The Labour Law stipulates that full-time employment shall not be longer than 40 hours a week, without exception in relation to persons under 18 years of age. Also, the law stipulates that a contract of employment may be concluded with part-time engagement, but not less than ¼ (10 hours) of a full time engagement, and such jobs are determined by the act of systematization, depending on the nature of tasks and organization of work. It is furthermore stipulated that an employee working on a position that is extremely difficult, arduous and detrimental to health shall have shorter working hours proportionally to the detrimental effect to employee's health or working ability, but not shorter than 36 hours in a week and such work positions shall be defined by systematization act in accordance with collective agreement. All these situations are not only related to employees under 18 years of age but are related to all employees regardless of age.*

*When it comes to daily rest period, the situation is the same; therefore, there is no difference in the law with respect to employees under 18 years of age, but it is stipulated that the employee is entitled to a break of at least 12 consecutive hours between the two consecutive working days, unless otherwise prescribed by this Law. However, when it comes to a weekly break, then a longer rest is prescribed for an employee under 18 years of age. Namely, the Labour Law stipulates that the employee has the right to a weekly rest period of not less than 24 successive hours continuously, but when it comes to employees under 18 years of age then s/he is entitled to weekly rest of at least two consecutive days, one of which is Sunday.*

***The Committee asks how the Labour Inspectorate monitors the working time and rest periods in relation to young workers under 18 and which are its findings in this respect.***

#### **ANSWER:**

*Labour Inspectorate monitors the working hours of workers under the age of 18, as well as for other employees, through the schedule of shift work and the schedule for the use of weekly rest periods, which the employer is obliged to determine if the activity is continuously carried out and the weekly holiday is not used on Sundays. Also, an overview of the annual leave is being made, given that the law prescribes a minimum annual leave of 24 working days for persons under 18 years of age. In addition, there is an insight into collective agreements with the employer, and there is also a direct interview with these persons, with inquiries about this topic, as well as overtime and night work, which is prohibited by law for these persons.*

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 5 - Fair pay*

The Committee takes note of the information contained in the report submitted by Montenegro.

### ***Young workers***

*The report does not provide information on the amount of the minimum wage during the reference period. In order to assess the situation, the Committee needs information on the starting wages or minimum wages of young workers/adult workers as well as on the average wage of adult workers. The Committee underlines that it requests information on the net values, that is, after deduction of taxes and social security contributions. Net calculations should be made for the case of a single person. Pending receipt of the information requested, the Committee reserves its position on this point.*

### **ANSWER:**

*The minimum wage in Montenegro amounts to 193 euros, and it was established in 2013, and since then it has not changed, which has led to the view that the possibility of its increase should be considered. In this regard, analyses of minimum wages from the aspect of trade unions and employers were made, and the assumptions are so made to start negotiations in the framework of the Social Council of Montenegro, the bodies of tripartite social dialogue. The law stipulates that the amount of minimum wage is determined at the semi-annual level.*

*In the event that the total wage of a full-time or working hours equivalent to full working hours amounts less than the minimum wage, the employee is paid a wage equated to the minimum wage. The minimum wage of the employee represents the basis for payment of wage related taxes and contributions.*

*When it comes to gross salary, it is determined by the formula:*

*Salary = Starting salary + Complexity Coefficient (increased for past labour) x Calculated value of coefficient.*

*The starting part of the wage in gross amount makes a hot meal allowance and 1/12 of the annual leave entitlement. The coefficient of complexity is determined by the contract of employment, i.e. the general or branch collective agreement for certain expertise and complexity of jobs. The calculated value of the coefficient in gross amount is determined on a monthly basis and this is its smallest amount which does not limit that employers can also determine its higher amount.*

*Examples of wage calculation:*

*Minimum wage calculation:*

*2.44 (coefficient of professional title) \*90 (calculation value, coefficient)\*1.025 (% of past labour for 5 years of work experience) + 63 (special part of the wage) = €288.09 (gross)  
288.09 - 33% (9% tax and 24% contributions paid by employee) = €193€ net amount.*

*Average wage calculation:*

$7.58 \times 90 \times 1.025 + 63 = 732.25$  gross

$732.25 - 33\%$  (9% tax and 24% contributions paid by employee) = €510.71 net amount.

## ***Apprentices***

*The report does not provide any information on the allowances paid to apprentices during the reference period. The Committee asks whether there is a legal framework on the status of apprentices in Montenegro. In order to assess on the conformity of the situation with Article 7§5 of the Charter, the Committee requests to be provided with the net values of the allowances paid to apprentices (after deduction of social security contributions) at the beginning and at the end of the apprenticeship. Pending receipt of the information requested, the Committee reserves its position on this point.*

### **ANSWER:**

*The Labour Law stipulates that an employer may sign a contract with a person being employed for the first time as a trainee for a specific level of education, or professional qualification, in accordance with the law and collective agreement. The traineeship shall be extended in case of absence from work due to: temporary incapacity for work in accordance with the regulations on health protection and health insurance and maternity leave.*

*Salary of interns is further regulated by the General Collective Agreement and in Article 20 it prescribes that it shall be determined in the amount that may not be lower than 80% of the salary for appropriate group of jobs referred to in Article 18 or Article 19 of this collective agreement and/or articles whereby basic groups of jobs with coefficients for determining salaries based on the complexity of the learning outcomes achieved are defined. Therefore, the amount of salary of interns depends on the coefficients defined for the jobs being trained for and it may not be lower than 80% of the salary for appropriate group of jobs.*

## **Article 7 - Right of children and young persons to protection**

*Paragraph 6 - Inclusion of time spent on vocational training in the normal working time*

The Committee takes note of the information contained in the report submitted by Montenegro.

*The Committee asks confirmation that in all cases the time spent in vocational training is included in the normal working time and thus remunerated as such.*

### **ANSWER:**

*The labour inspection did not identify cases of acting contrary to the law, that is, the collective agreement and the contract of employment, regarding the treatment of the time spent on the vocational training of employees, including those under the age of 18, as well as the salary compensation for that time. There were no complaints of employees that would indicate disrespect of this right.*

*The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity and findings of the Labour Inspectorate in relation to the inclusion of time spent on vocational training in the normal working time.*

### **ANSWER:**

*The labour inspection will continue to monitor the situation in practice in relation to the inclusion of time spent on vocational training in the normal working time.*

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 7 - Paid annual holidays*

The Committee takes note of the information contained in the report submitted by Montenegro.

*The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity and findings of the Labour Inspectorate in relation to the paid annual holidays of young workers under 18.*

### **ANSWER:**

*The labour inspection monitors situations in practice in relation to paid annual holidays of workers under the age of 18, which will continue to do so in the future. There have been no cases of non-compliance with this legal provision.*

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 8 - Prohibition of night work*

The Committee takes note of the information contained in the report submitted by Montenegro.

*The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity of the Labour Inspectorate, its findings and sanctions applied in relation to possible illegal involvement of young workers under 18 in night work.*

#### **ANSWER:**

*The labour inspection did not identify cases of illegal work at night of workers under the age of 18, and there was no address of these employees in that direction.*

*We are also informing that the drafting of a new Labour Law is in progress, which will supplement the protection of this category of employees, and the planned replacement of an article relates to the ban on night work for persons under the age of 18. The applicable law permits an exception to the ban at night for this category of employees in situations where it is necessary to continue work interrupted by natural disasters, to prevent damage to raw materials or other material. The new law will regulate the night work for these persons without exception and prohibit fully work at night for this category of employees, whereby the protection of youth under 18 years of age will be raised concerning such work.*

## **Article 7 - Right of children and young persons to protection**

### *Paragraph 9 - Regular medical examination*

The Committee takes note of the information contained in the report submitted by Montenegro.

*The Committee asks if regular medical examination are provided to young workers of 15 -18 years after recruitment and at which intervals.*

*The Committee recalls that the situation in practice should be regularly monitored and asks that the next report provide information on the activity and findings of the Labour Inspectorate in relation to the medical examination of young workers under 18.*

### **ANSWER:**

*The Labour Law does not prescribe the obligation of medical examinations after employment of persons under 18. Also, the Law on Safety and Health at Work does not prescribe regular medical examinations after employment for this population of employees, but only for employees at workplaces with special working conditions, or increased risk. The Rulebook on Special Working Conditions Jobs and the Conditions that Employees Need to Fulfil in order to Work on these Tasks ("Official Gazette of Montenegro", No 70/16) stipulates that employees in these positions must be older than 18 years. The interval of three years for medical examinations of all employees is prescribed by the Law on Safety and Health at Work, but this provision is suspensive, until Montenegro joins the EU.*

*Therefore, a person under the age of 18 cannot under any circumstances (even on the basis of the findings of the competent health authority) perform tasks with special working conditions. The aforementioned is prescribed by the Rulebook on Special Working Conditions Jobs and the Conditions that Employees Need to Fulfil in order to Work on these Tasks ("Official Gazette of Montenegro", No 70/16 of 09 November 2016). These jobs are set out within the answer to Article 7&2.*

*This is further confirmed by the fact that the Ministry of Health, with the approval of the Ministry of Labour and Social Welfare, has adopted the Rulebook on the type, manner, scope and deadlines for performing medical examinations of employees at the workplaces with special working conditions and/or with increased risk ("Official Gazette of Montenegro ", No 043/17 of 4 July 2017).*

*This Rulebook prescribes the type, manner, scope and deadlines for performing medical examinations of employees at workplaces with special working conditions, i.e. with increased risk (which do not include employees under 18), as well as in cases of re-engagement of an employee who was absent from work in this place of work for more than a year.*

*Medical examinations of mentioned employees are performed as preliminary and periodical examinations.*



## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 1 - Maternity leave*

The Committee takes note of the information contained in the report submitted by Montenegro.

### ***Right to maternity leave***

Article 111a of the Labour Code provides for 45 days maternity leave before childbirth (upon submission of a medical certificate indicating the expected date of delivery), including a mandatory leave of 28 days before childbirth. Women are entitled to a mandatory leave of 45 days from the birth of the child. After the expiry of this period, either parent is entitled to parental leave to be used during the year following the birth. ***The Committee asks the next report to clarify whether the same rules apply to women employed in the public sector.***

### **ANSWER:**

*The Law on Civil Servants and State Employees stipulates that the general rules on labour applies to the rights, obligations and responsibilities of a civil servant or state employee not regulated by that or a special law.*

*As this issue is not regulated by the Law on Civil Servants and State Employees, the general regulation and/or the Labour Law applies to the category of employees in the public sector. Therefore, this rule also applies to employed women in the public sector.*

### ***Right to maternity benefits***

The report indicates that, according to Article 111b of the Labour Code, workers on maternity or parental leave are entitled to wage compensation corresponding to their regular salary. **The Committee asks what are the requirements for entitlement to maternity benefits, in particular whether the right to maternity benefits is subject to a qualifying period (period of employment or contribution to the social security scheme) and, in such case, whether the qualifying period takes into account interruptions in the employment record. With reference to its Statement of Interpretation on Article 8§1 (Conclusions 2015), the Committee also asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.**

***It furthermore asks whether the same rules apply to women employed in the public sector.***

### **ANSWER:**

*Wage compensation during the maternity leave corresponds to the wage of an employee as being at work and the employer pays contributions for compulsory social insurance along with a wage and there is no termination of employment. The conditions for obtaining the right to maternity*

*benefit is that an employed woman is on maternity leave, and this leave can start 45 days before the birth of the baby and mandatory 28 days before birth. After the birth of the child, the parent is entitled to parental leave, with the mandatory leave for the mother of the child 45 days after the birth of the child. After this time, the child's mother can start to work and the other parent has the right to use an unused part of the parental leave. We recall that parental leave can be used for 365 days from the date of birth of the child.*

*The law does not prescribe the minimum amount of compensation during maternity leave or parental leave, since the employed person who uses such leave receives the same salary as if working, therefore the wage is paid (together with the taxes and the accompanying social security contributions) in whole without deduction, and the wage is not calculated by applying the rate. The General Collective Agreement further elaborates the issue of minimum wage and in Article 16 stipulates the minimum salary may not be lower than 30% of the average salary in Montenegro in the past six months according to the official data determined by the administrative body in charge of statistics, provided that the amount so determined may not be lower than the national absolute poverty line, according to the data of the administrative body in charge of statistics. The same article stipulates that the employees shall be entitled to the minimum salary determined in accordance with the law, for the standard work performance and full-time working hours, or working hours equated to full-time working hours. In the event that the total salary of an employee for standard work performance and a full-time working hours or working hours equated to full-time working hours is lower than the minimum salary, the employee shall be paid a salary in the amount of the minimum salary.*

*Therefore, there is a limit to earning of an employee, even the earning of an employee who uses maternity or parental leave cannot be less than a minimum wage that is set in the amount of EUR 193. The national absolute poverty line was established in the amount of EUR 186.45, the amount was established in 2013 and has not changed since.*

*Provisions related to maternity leave/parental leave apply to employed women in the private sector as well as in the public sector because the Law on Civil Servants and State Employees stipulates that general labour regulations apply to the rights, obligations and responsibilities of a civil servant or state employee that are regulated by that or by special law.*

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 2 - Illegality of dismissal during maternity leave*

The Committee takes note of the information contained in the report submitted by Montenegro.

### ***Prohibition of dismissal***

Article 108 of the Labour Law provides that an employer may not refuse to conclude a contract of employment with a pregnant woman, or terminate her contract because of pregnancy or if she is on maternity leave. If a fixed-term contract of employment expires in the period of exercising the right on maternity leave, the term of employment contract shall be extended until expiry of the maternity leave. According to the report, the employer cannot dismiss a worker during parental leave for redundancy related to technological, economic or restructuring changes. ***The Committee asks the next report to clarify what exceptions, if any, apply concerning the dismissal during pregnancy or maternity leave (for example, in case of misconduct justifying the breaking of the employment relationship or if the employer's business ceases to operate). It also asks whether the same rules apply to employees of the public sector.***

### **ANSWER:**

*The said protection is the protection of an employed woman in case of pregnancy, and/or termination of her employment contract because of pregnancy, but she is equal in law with other employees and her pregnancy is not an aggravating circumstance that would lead to the termination of the employment contract. This means that pregnancy does not protect an employed woman from termination of employment contracts if there are justified reasons for this, such as failure to meet the results of work stipulated by the collective agreement, employer's act or employment contract, non-compliance with the obligations laid down by law, collective agreement and employment contract, which must be harmonized with the law and collective agreement.*

*When the employee is on maternity or parental leave, the employment relationship cannot be terminated due to misconduct, because s/he does not work because s/he is on leave, and in the event of termination of the work of the employer, there are also no exceptions regarding the cancellation of the contract of employment with the employee who is on maternity or parental leave because the employer no longer works and has ceased to operate. This category of employees has protection against cancellation due to the need to introduce technological, economic or restructuring changes and cannot be declared a technological surplus, but such protection does not exist when the employer's business ceases to operate.*

*We are informing about new Labour Law, which is being drafted, which is planning protection of the employed woman from termination during pregnancy and the use of leave during that time in such a way that the employer cannot cancel a contract of employment for an employed woman due to pregnancy or because of the use of the right to leave from work for maintenance of pregnancy, as well as maternity, parental, adoption or foster care. Also, during the leave from*

*work for the purpose of child care, the maintenance of pregnancy, the use of maternity, parental, adoptive and foster leave, an employer cannot declare an employee redundant due to technological, economic or restructuring changes in accordance with this law. Drafting of this law is planned for the second quarter of 2019.*

*The same rules apply to all employees, both in the private and public sector.*

### ***Redress in case of unlawful dismissal***

***The Committee recalls that under Article 8§2 of the Charter compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. It asks the next report to clarify, in the light of any relevant case-law, what criteria are taken into account by the court in awarding compensation and whether any ceiling apply in this respect. It also asks whether adequate compensation is awarded when reinstatement to work is not possible and whether the same rules apply to employees in the public sector.***

#### **ANSWER:**

*In the event of a dispute over claims for damages due to unlawful dismissal during maternity leave, when deciding on the compensation of damage, consideration shall be given to the loss of earnings that an employed woman as an injured party would have achieved by the regular course of the situation if her right to protection had not been violated due to termination of the employment during maternity leave..*

*Regarding non-pecuniary damage, in terms of violation of personality rights due to unlawful dismissal, the amount of compensation would be assessed depending on the workplace where the party was employed and the length of service on the same, all proportionate to the loss that it suffered due to the unlawful dismissal and which is appropriate enough for the employer.*

*Judicial practice also knows the exceptions to the absolute prohibition of giving a dismissal to an employed woman. Namely, it is stipulated by the provision of Article 108 paragraph 4 of the Labour Law that an employed woman whose fixed-term contract of employment expires while she is on maternity leave, the term of employment according to the fixed-term contract of employment shall be extended until expiry of the maternity leave. However, this provision does not apply to pregnant women who have completed a fixed-term contract. Likewise, the absolute prohibition of giving a dismissal to an employed woman while pregnant does not apply to a woman who has concluded a contract for temporary and occasional work that is concluded for a fixed time. The stated practice of the courts is in accordance with the above exceptions.*

*The same rules apply to all employees, both in the private and public sector.*

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 3 - Time off for nursing mothers*

The Committee takes note of the information contained in the report submitted by Montenegro.

The Committee notes from the report that, in addition to the normal daily rest period of at least 30 minutes, employees resuming work before the child is one year old are entitled to a daily nursing period of 90 minutes, under Article 111a of the Labour Code. The nursing break shall be taken in agreement with the employer.

#### **The Committee asks:**

- **whether all employees, including domestic employees, employees in the public sector, fixed-term employees and part-time employees are entitled to nursing breaks;**

#### **ANSWER:**

*The law does not make a difference between employees in terms of the right to breastfeeding a child 90 minutes absence from work for breastfeeding a child.*

- whether nursing breaks are treated as regular working time and remunerated as such;

#### **ANSWER:**

*Absence from work for breastfeeding a child is treated as regular working hours.*

- whether employees are entitled to nursing breaks at least until the child is nine months old.

#### **ANSWER:**

*This right applies until the expiration of maternity leave, or until the child completes 365 days of life.*

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 4 - Regulation of night work*

The Committee takes note of the information contained in the report submitted by Montenegro.

In accordance with Article 110 of the Labour Code, employees who are pregnant or have a child aged below three years old cannot work overtime, or at night. Exceptionally, an employed woman with a child over two years of age may perform night work only if she accepts such work in a written statement. *The Committee asks whether the same rules apply to employees of the public sector.*

#### **ANSWER:**

*The same rules apply to employees of the public sector.*

*The Committee furthermore asks the next report to clarify whether the employed women concerned are transferred to daytime work until their child is three years old and what rules apply if such transfer is not possible.*

#### **ANSWER:**

*The provisions of Article 110 of the Labour Law apply to employed women in the public sector. Namely, women during pregnancy and women with a child under three years of age do not work at night, but only in daily shifts. There were no cases recorded that night shifts could not be carried out in daily shifts, or, in that connection, were there any reports reported to the Labour Inspectorate by women.*

## **Article 8 - Right of employed women to protection of maternity**

### *Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work*

The Committee takes note of the information contained in the report submitted by Montenegro.

According to Article 104 of the Labour Law, women may not work in activities involving mainly very difficult physical work, underground or under water work, or work which may be harmful and particularly dangerous for their health and life. Based on findings and recommendation of the relevant medical authorities, a pregnant or nursing employee may be temporarily reassigned to other positions, if it is in the interest of preserving her health or the health of her child. If an employer is not in a position to redeploy the concerned employee, she shall be entitled to abstain from work, with a wage compensation which may not be lower than the compensation she would receive if she had been working. A temporary reassigned woman shall also be entitled to the salary corresponding to the position where she worked prior to the reassignment. ***The Committee asks the next report to clarify whether the same rules apply also to employees of the public sector.***

#### **ANSWER:**

*The same rules apply to employees in the public sector because the Law on Civil Servants and State Employees stipulates that the general regulations on labour apply to the rights, obligations and responsibilities of a civil servant or state employee which are not regulated by that or a special law.*

***The report refers to a new Law on Safety and Health Protection at Work, which was adopted in 2014 (published in the Official Gazette No. 34/14 on 8 August 2014), out of the reference period and which replaces the Law on Safety at Work ("Official Gazette of RCG" 79/04, "Official Gazette of Montenegro" 26/10 and 40/11). According to Article 60, paragraph 2, of the new Law, implementing legislation, including rules on safety and protection at work for pregnant and nursing women, as well as women having given birth recently, shall be adopted within two years following the date of entry into force of the Law. The Committee asks the next report to provide updated information on the legislation adopted and its implementation***

#### **ANSWER:**

*Pursuant to Article 13§2 and 3 of the Law on Safety and Health Protection at Work ("Official Gazette of Montenegro", No 34/14), the Ministry of Labour and Social Welfare adopted the Rulebook on Safety Measures in the Workplace\* ("Official Gazette of Montenegro", No 40/15).*

*The following is transposed into this Rulebook: Council Directive 89/654 / EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace, Council Directive 94/33/EEC of 22 June 1994 on the protection of young people and Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in*

*the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.*

*This Rulebook prescribes minimum safety measures for both the employer and the employee, including pregnant women, postnatal women and nursing mothers. Namely, Article 9 of the Rulebook on Safety Measures in the Workplace\* defines that the employer should ensure that pregnant women, postnatal women and nursing mothers are not exposed to hazards, working procedures and working conditions if the risk assessment results in a risk to her health and the health of the child, in particular:*

*1) physical harms, which can cause damage to the unborn child and/or may cause placenta abruption, in particular:*

- shocks, vibrations or movements,*
- handling heavy loads, which involves a risk particularly of back injury,*
- noise,*
- extreme cold or heat,*
- movements and positions of the body - movement, and*
- physical and mental fatigue and other physical burdens related to the activity of an employed woman;*

*2) biological harms, if it is known that such harm or therapeutic measures that are applied in the event of damage caused by these damages endanger the health of the pregnant woman and the unborn child;*

*3) chemical substances and harmfulness that endanger the health of pregnant woman and the unborn child, if it is known that:*

- there is evidence of a carcinogenic effect (R40-H351),*
- may cause cancer (R45-H350),*
- may cause heritable genetic damage (R46-H340),*
- may cause damage to organs through prolonged exposure (R48-H372, H373),*
- may cause cancer by inhalation(R49-H350i),*
- may damage the unborn child(R61-H360d), and*
- may cause harm to breastfed children (R63-H36d).*

*a) chemical hazards and industrial processes which include:*

- manufacture of auramine,*
- work involving exposure to polycyclic aromatic hydrocarbons present in coal soot, coal tar or coal pitch,*
- work involving exposure to dusts, fumes and sprays produced during the roasting and electro-refining of cupro-nickel mattes,*
- strong acid process in the manufacture of isopropyl alcohol, and*
- work involving exposure to hardwood dust.*

*b) mercury and mercury derivatives:*

*c) antimetabolic drugs;*

*d) carbon monoxide, and*

*e) dangerous chemical substances that are proven to be absorbed through the skin;*

*4) working under water, and*

*5) working underground in the mine.*

*a) chemical hazards and industrial processes:*

- manufacture of auramine,*



- work involving exposure to polycyclic aromatic hydrocarbons present in coal soot, coal tar or coal pitch,
  - work involving exposure to dusts, fumes and sprays produced during the roasting and electro-refining of cupro-nickel mattes,
  - strong acid process in the manufacture of isopropyl alcohol,
  - work involving exposure to hardwood dust.
- b) chemical agents like lead and its derivatives in so far as these agents are capable of being absorbed by the human organism; and
- c) asbestos.

*It is also stipulated that the pregnant woman shall not be exposed to:*

- physical hazards: working in a hyperbaric atmosphere, such as sealed pressure rooms and underwater diving;
- biological harmfulness, such as toxoplasma and rubella virus, unless it has been shown that the immunization pregnant women are adequately protected against such harmfulness; and
- chemical hazards: lead and its derivatives that can be absorbed into the body.

*It is an obligation of the employer to ensure that pregnant women, postnatal mothers and nursing mothers can lie in appropriate conditions and rest, as well as the temperature in the auxiliary facilities is 24 ° C.*

*Bearing in mind the above, we believe that, by implementing the relevant EU Directives dealing with the issue of health and safety at work, pregnant women, postnatal mothers and nursing mothers, we have created quality foundations in order to ensure a safe and healthy workplace and environment for that category of employees.*

## **Article 13 - Right to social and medical assistance**

### *Paragraph 4 - Specific emergency assistance for non-residents*

The report provides information on medical assistance stating that the right to emergency care is not conditioned on the length of presence in Montenegro but rather on the need and confirming that emergency medical care, as defined by the Law on Emergency Medical Care (Official Gazette of Montenegro 49/08), is provided to all non-resident foreigners regardless of whether they are legally present in Montenegro or are in an irregular situation. **According to the report these provisions are also reflected in a new Bill on Healthcare which in its article 14 provides for emergency treatment and placement of a person whose life is under direct threat due to an illness or injuries. The Committee wishes to be informed of the adoption and implementation of this Bill in the next report.**

### **ANSWER:**

*Provisions of the new Law on Health Care ("Official Gazette of Montenegro" No 3/16, 39/16, 2/17) has not been changed when it comes to providing emergency medical care to foreigners, but they are equated in the overall treatment with the citizens of Montenegro. To that end, the said law stipulates that the state provides priority health care measures that are aimed at preserving and improving the health of citizens and are available to all citizens. The provisions of Article 16 of the aforementioned law prescribe priority health care measures, among which are, inter alia, urgent hospitalization and medical treatment of persons whose life is threatened due to an illness or an injury (paragraph 14) for which persons or foreigners are assets provided by the State Budget.*

*Provision of the Article 12 of the new Law on Health Care passed by the Parliament of Montenegro ("Official Gazette of Montenegro", No 3/16, 39/16, 2/17) also stipulates that a foreigner has the right to health care in accordance with this Law and international agreement. Also, it is stipulated that health care institutions and healthcare workers are obliged to provide urgent medical assistance to the foreigner. The provisions of the said Article stipulate that a foreigner bears the expenses of the provided emergency medical assistance or other types of health care, according to the price list of the health institution, unless otherwise stipulated by an international agreement.*

*Provisions of Article 13 of the mentioned Law laid down that an asylum-seeker, a person who was recognised as a refugee, a person who was approved additional protection and a person who was approved a temporary protection in Montenegro shall be entitled to health care in accordance with provisions of this and a special law unless otherwise regulated by international agreement.*

*Accordingly, and taking into account the above, the Law on Health Care in the provision of health services, as well as emergency medical assistance, recognizes a citizen, users of services, insured and patient, thus, in accordance with this, every citizen regardless of his current or longer status is provided medical emergency services.*

From supplementary information provided by the Government the Committee notes the legal framework applicable to foreigners who are unlawfully present and to asylum seekers. The Foreigners Act No 56/2014 governs the situation of foreigners who are unlawfully present and under an obligation to leave the territory and provides that pending deportation unlawfully present foreigners shall be placed in a "shelter for foreign persons" until deportation can take place or up to a maximum of 90 days (with exceptions possible; Article 104 and 106). **The authorities may seek to recuperate costs incurred in this respect (Article 115). The Committee understands that persons placed in a shelter will also receive basic necessities such as food and clothing and asks that the next report confirm this understanding. It also seeks confirmation that any repatriation of foreigners takes place respecting the conditions laid down by the European Convention on Social and Medical Assistance.**

#### **ANSWER:**

*Since 3 March 2018, the new Foreign National Law, which is harmonized with EU directives, refers to the entry into, exit from, movement throughout, stay and work of EU member states citizens and members of their families, studies, student exchange, non-profitable training or volunteer services, stay and work of highly qualified third-country nationals, as well as illegal stay and return of foreigners, obligation to issue a decision on return, voluntary return came into force.*

*Clear, transparent and fair rules in the policy of returning persons who are illegally staying in Montenegro, and which are an integral part of a well-managed migration policy will have been established by this Law. Persons who are illegally staying in Montenegro will be respected by their basic rights and dignity in the return process. Voluntary abandonment of Montenegro will take precedence over the forced return of a foreigner. Foreigners who are detained will be treated in accordance with international and domestic law.*

*In order to implement this law, inter alia, the following bylaws were adopted:*

- 1. Rulebook on the voluntary return of a foreigner. The Rulebook was published in the "Official Gazette of Montenegro", No 68/2018 of 19 October 2018, and it entered into force on 27 October 2018.*

*Rulebook on detailed method and procedure for compulsive deportation of foreigner. The Rulebook was published in the "Official Gazette of Montenegro", No 68/2018 of 19 October 2018, and it entered into force on 27 October 2018.*

- 2. Rulebook on rules of stay and house rules in the reception centre for foreigners The Rulebook was published in the "Official Gazette of Montenegro", No 53/2018 of 31 July 2018, and it entered into force on 8 August 2018.*

*This rulebook defines the rules of stay and house rules in the reception centre for foreigners. The Rulebook regulates the procedures for the reception of a foreigner (upon completion of the reception in the Reception Centre, the foreigner shall be entrusted with an adequate wardrobe, which, if necessary, shall be provided by the Reception Centre, linens and personal hygiene items. A foreigner out of the items for personal use may keep his clothes, shoes, linens, personal hygiene items, glasses and orthopedic supplies), accommodation, sanitary-hygienic and other accommodation conditions, daily activities, food (the foreigner shall be provided with three meals a day, out of which one is a hot meal, which is appropriate to his age, health, as well as religious and cultural needs), health protection, stay in an open space and communication with persons outside the*

*reception centre, meeting religious needs and maintaining order and discipline, taking out, release and death.*

*The Reception Centre for foreigners has an accommodation capacity of 46 places.*

The Committee notes the regulations applicable to asylum seekers which provide not only for accommodation, food and clothing, but also free health care, financial assistance and access to the labour market.

However, *the Committee notes that information has still not been provided on emergency social assistance for persons who are lawfully present in the territory without residing there (for example tourists and persons in transit). In the absence of this information the Committee considers that it has not been established that emergency social assistance is guaranteed to all non-resident foreign nationals.*

#### **ANSWER:**

*The Law on Social and Child Protection ("Official Gazette of Montenegro", No 027/13 of 11 June 2013, 001/15 of 5 January 2015, 042/15 of 29 July 2015, 047/15 of 18 August 2015, 056/16 of 23 August 2016, 066/16 of 20 October 2016, 001/17 of 09 January 2017, 031/17 of 12 May 2017, 042/17 of 30 June 2017, 050/17 of 31 July 2017) laid down in Article 5 paragraph 4: "Exceptionally, a person not covered under paragraphs 1, 2 and 3 of this Article who needs and adequate form of social protection due to special circumstances and social risk, shall be entitled to a nonrecurring financial assistance and the right to temporary accommodation."*

*In accordance with the said article, the urgent social assistance is an assistance in the form of nonrecurring financial assistance and temporary accommodation service and may relate also to e.g. tourists and persons in transit.*

*The entire Article 5 reads as follows:*

#### *"Persons exercising the rights Article 5*

*A Montenegrin national with the permanent place of residence at the territory of the State shall be entitled to exercise the rights in accordance with this Law.*

*The rights in the area of social and child protection established by this Law and international treaty may be exercised by a foreigner with granted temporary or permanent residence in the state, in accordance with a special law.*

*Social and child protection rights determined by this Law and international treaty may be exercised by the asylum seeker and the foreigner placed under subsidiary protection, pursuant to the law.*

*Exceptionally, a person not covered under paragraphs 1, 2 and 3 of this Article who needs and adequate form of social protection due to special circumstances and social risk, shall be entitled to a nonrecurring financial assistance and the right to temporary accommodation.*

## **Article 16 - Right of the family to social, legal and economic protection**

The Committee takes note of the information contained in the report submitted by Montenegro.

### ***Social protection of families***

#### ***Housing for families***

The report indicates that pursuant to the Law on Local Self-Government resolving housing issues is the responsibility of municipalities.

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction.

As regards eviction, the Committee notes from the report that only courts can issue an eviction order. According to the Law on Free Legal Aid, the right to free legal aid may be exercised by "a beneficiary of material family benefits or any other social care benefit, a child without parental care, a person with disability, a victim of a criminal offence involving domestic violence or violence in domestic unit and human trafficking and a person of poor financial standing."

***To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asks for information in the next report on all the aforementioned points.***

#### **ANSWER:**

*With the entry into force of the Law on Spatial Planning and Construction of Structures ("Official Gazette of Montenegro", No 64/17), a new policy in the area of planning and construction of structures has been established. By the entry into force of the law, that is, from 14 October 2017, the process of legalization of illegal structures has begun. The submission of a request for legalization is mandatory for all illegal builders, and the deadline for submitting the application is 9 months from the date of entry into force of the law, i.e. expired on July 16, 2018.*

*According to the information provided to us by the units of local self-government in the territory of Montenegro about 50,000 requests were submitted. According to official data in the territory of Montenegro, about 40000 illegal structures have been registered, according to the data from the electricity distribution authority, about 60,000 illegal connections have been registered. The provisions of the law imply that the illegal structures can be legalized if it has been built in accordance with the valid planning document adopted before the entry into force of this law, the planning documents issued until the adoption of the General Regulation Plan of Montenegro, in accordance with this law or in accordance with the General Regulation Plan of Montenegro. This state planning document will be adopted within three years from the date of entry into force of this Law.*

*According to a survey conducted for the needs of the "Strategy for Social Inclusion of Roma and Egyptians in Montenegro 2016-2020, about 40% of this population is located in structures that are not legalized. About 60% of the total number of houses and settlements are inadequate structuresis accommodated (30% of the population lives in barracks, 37% is accommodated in structures that were built in bricks and/or blocks, and about 7.3% in buildings. Illegal structures and illegal settlements participate with the highest percentage when it comes to this population.*

*According to the above data, the largest number of structures in which the Roma population lives are not considered objects in terms of the provisions of the Law on Spatial Planning and Construction of Buildings that prescribes the legalization procedure, (Article 152 of the Law "The illegal structure shall be a residential, commercial and commercial-residential building on which rough structural civil works of at least one floor were carried out, constructed without a building permit or contrary to the building permit"; Article 5 para 1 item 29: "building means a permanent structure that has a roof and exterior walls, etc. ".*

*It is important to point out that Article 171 of the Law stipulates that in the case of removal of an illegal structure serving as a primary residence, local self-government unit shall provide alternative accommodation to the owner of the illegal structure serving as primary residence and the members of his family household. More detailed requirements, manner, procedure and criteria for alternative accommodation provision shall be set forth by the competent local self-government authority, with prior approval of the Ministry.*

*Also, the law stipulates that execution of a decision to remove a structure serving as a primary residence may be executed upon alternative accommodation provision, since the protection of vulnerable categories of the population was taken into account while formulating of the mentioned provisions.*

*So eviction is not possible without previously provided adequate alternative accommodation, and the way of securing is prescribed at the local level.*

***The Committee asks that the next report provide information on measures taken to improve the housing situation of Roma families.***

**ANSWER:**

*In the part of social housing policy, it is possible to act institutionally in order to improve and support the resolution of housing needs of RE (Roma and Egyptians) population, as well as in the process of legalization of illegal structures.*

*The Law on Social Housing was adopted in 2013 and stipulates that social housing is the housing of a specific standard, provided to individuals or households, which are not able to solve the problem of housing due to social, economic and other reasons.*

*Lack of financial resources is one of the main challenges for establishing a sustainable social housing system. Therefore, the Law envisages a solution for the social housing system to be developed through special programs, which will be adopted by local self-government units - locally-based social housing programs, which will allow flexibility in the planning and implementation of activities.*

*Article 4 of this law stipulates that the priority in exercising the right to social housing, especially among other vulnerable categories of persons, is that of Roma and Egyptians (RE population).*

*Having in mind the aforementioned the 2017-2020 Social Housing Program, adopted by the Government of Montenegro, it was recommended for local self-government units to intensify the development and implementation of local social housing programs, with a focus on addressing the housing needs of the following target groups: persons with disabilities, persons over 67 years of age, i.e. pensioners, young married couples and members of the RE population.*

*Activities on improving the socio-economic status of Roma are under the authority of the Ministry of Human and Minority Rights, which coordinates the implementation of activities in this field. The Ministry of Sustainable Development and Tourism through representatives in the Monitoring Commission for the implementation of the "Strategy for Social Inclusion of Roma and Egyptians in Montenegro 2016-2020" participates in the preparation and monitoring of the realization of the envisaged activities.*

*In this connection, the data on built housing units allocated for use by members of the Roma and Egyptian population are given below:*

- Through the regional housing program for Montenegro, 62 housing units were built in Niksic, of which 13 were allocated for use by members of the Roma and Egyptian population;*
- Through the regional housing program for Montenegro, 171 residential units in Podgorica (Konik) were built and all were allocated for the use of members of the Roma and Egyptian populations and all families with a minimum of 8 members;*
- 94 residential units in Berane (Rudeš) were built through the regional housing program for Montenegro, and out of that number, 2 housing units were allocated for use by members of the Roma and Egyptian population;*

- *Through the IPA project, 48 housing units were built for members of the Roma and Egyptian population in Podgorica (Konik);*
- *In April 2018, with the cooperation of the Municipality of Herceg Novi and the organization "Help", a housing issue was resolved for 27 Roma people who moved into 6 facilities (prefabricated houses) in the settlement Drenovik in Herceg Novi.*

### ***Participation of associations representing families***

***The Committee recalls that in order to ensure that the views of families are taken into account in the formulation of family policy, all civil organisations representing families should be consulted by the relevant authorities (Conclusions 2006, Statement of Interpretation on Article 16).***

***The Committee asks the next report to provide information on the participation of associations representing families in the light of its above-mentioned case-law.***

#### **ANSWER:**

*Non-governmental organizations are a growing player in the field of social protection, with an intention to make a significant contribution to the field. The status of NGOs is regulated by the Law on Non-Governmental Organizations ("Official Gazette of Montenegro", No 39/11 and 37/17).*

*At the beginning of 2018 as a continuation of the previous Strategy, the Government of Montenegro adopted a new Strategy for Improving the Enabling Environment for the Activities of Non-Governmental Organizations 2018-2020 with the aim of further improving the legal and institutional framework for the activities of NGOs and strengthening the cooperation of public administration and NGO sector in the design and implementation of public policies. The strategy specifically addresses the issue of strengthening the capacity of the state administration to carry out activities of importance for cooperation with the NGO sector, improving the legal and institutional framework for a larger financial sustainability of NGO.*

*The Decree of the Government of Montenegro ("Official Gazette of Montenegro", No 41/18) regulates the selection of representatives of NGOs in the working bodies of the state administration body and the implementation of public debate in the preparation of laws and strategies. This is an updated Regulation in relation to the previous adopted in 2012.*

*In accordance with the above, the Ministry of Labour and Social Welfare is obliged to provide participation of the NGO sector in the process of enacting laws, strategic documents and bylaws, through a public call for competition, where NGOs make a significant contribution. Cooperation with NGOs also takes place through consultations on issues of importance in this field. Participation of NGOs dealing with social and child protection issues was provided during the elaboration of, for example, the Law on Social and Child Protection, the Strategy for the Development of Social and Child Care System 2018-2022, the Strategy for Social Protection of*



*the Elderly for the period 2018-2022, the Strategy for Integration of Persons with Disabilities 2016-2020, Strategy for the Development of Foster Care in Montenegro 2013-2017, the Strategy for Protection against Domestic Violence 2016-2020 and others.*

*Also, NGO representatives are members of the Council for the Rights of the Child and the Council for the Rights of Persons with Disabilities, who are dealing with current issues in these areas, by assessing the situation and submitting proposals for improving the legal solutions.*

*NGOs dealing with social and child protection issues are involved in activities that are important for the local community and have intensive cooperation with local government bodies in both the implementation of individual projects and participation in the adoption of strategic documents at the local level.*

## ***Legal protection of families***

### ***Rights and obligations of spouses***

***The Committee asks the next report to indicate whether spouses are equal, particularly in respect of rights and duties within the couple (reciprocal responsibility, ownership, administration and use of property, etc.) and children (parental authority, management of children's property).***

#### **ANSWER:**

*Family law stipulates that parental care implies responsibilities, duties and rights of parents in order to protect and promote the personal and property rights and well-being of the child and includes the guarding, raising, educating, advocating, supporting, and managing and disposing of the child's property. Parents shall be obliged to exercise the parental right to the best interest of a child, in accordance with its development needs and abilities. Parents have the right to obtain all information on the child from the educational and health institutions. Parents shall have a right and a duty to watch and raise the child by taking care personally of its life, development and health. Parents must not leave a child of pre-school age unattended. Parents may temporarily entrust the child with another person only if such a person meets the conditions for a custodian.*

*Parents shall have a right and a duty to develop with the child a relationship based on love, trust and mutual respect, and to direct the child to adopt those values that have a universal character. Parents shall have a duty to provide primary education to a child, and they are obliged to take care of future education of the child according to their possibilities, bearing in mind its abilities and wishes*

*Parents shall have a right and a duty to represent the child in all legal affairs beyond the boundaries of the business capacity of the child.*

*Parents shall have a right and a duty to represent the child in all court and other proceedings beyond the business and processing ability of a child.*

*Parents shall have the right to undertake legal affairs by means of which they manage and dispose of the revenues that a child younger than 15 has acquired.*

*Parents shall have a right and a duty to support a child under the conditions stipulated by the Family Law.*

*Parents shall have a right and a duty to manage and dispose of the property of the child under the conditions stipulated by the Family Law.*

*Parents shall exercise the parental right jointly and by consent when living together.*

*Parents shall exercise the parental right jointly and by consent even when not living together if they conclude an agreement on joint exercising of the parental right and if the court estimates that such an agreement is to the best interest of the child.*

*An agreement on joint exercising of the parental right includes an agreement of parents to exercise jointly and by consent all the rights and duties contained in the parental right.*

*An integral part of the agreement on joint exercise of the parental right is also an agreement on what shall be considered the permanent residence of the child.*

*One parent exercises the parental right by its own when the other parent is unknown, or s/he died, or has been utterly deprived of the parental right or business capability.*

*One parent exercises the parental right alone when only s/he lives with the child, and the court has not yet made the decision on exercising of the parental right.*

*One parent exercises the parental right by its own based on a court decision when the parents are not living together, and did not conclude an agreement on exercising of the parental right.*

*One parent exercises the parental right by its own based on a court decision when the parents are not living together, and they have concluded an agreement on exercising of the parental right jointly or independently, but the court assesses that the agreement is not to the best interest of the child.*

*One parent exercises the parental right alone based on a court decision when parents are not living together, and they have concluded an agreement on independent exercising of the parental right and if the court assesses that the agreement is to the best interest of the child.*

*An agreement on independent exercising of the parental right implies an agreement of parents on entrusting their child to one parent, an agreement on the amount of contribution for supporting the child to be provided by the other parent and an agreement on the manner of maintaining personal relationships between the child and the other parent.*

*Through an agreement on independent exercising of the parental right the exercising of parental right is transferred to that parent who the child has been entrusted with.*

*A parent who fails to exercise the parental right shall have a right and a duty to support the child, to maintain with the child personal relationships and to make decision on the issues influencing significantly the life of the child together and by consent with the parent exercising the parental right.*

*Issues that significantly influence the life of the child, in the sense of this law, are considered in particular: education of the child, undertaking of major medical interventions on the child, change of permanent residence of the child and disposing of the child's property of considerable value.*

*A parents who independently exercise parental rights shall be obliged to facilitate and encourage the maintenance of personal relationships of the child with other parent, relatives and persons with whom the child is associated with special intimacy, unless this is limited by a court decision.*

*A parent who maintains personal relations with a child shall not conduct distracting to another parent in exercising his/her parental rights.*

*Custodial body shall give appropriate forms of help and support to parents and undertake necessary measures to protect the rights of a child and in its best interest, on the basis of direct knowledge or notification.*

*Judicial authorities, other bodies, medical, educational and other institution, non-governmental organizations and citizens shall notify custodial body as soon as they get to know that a parent is unable to exercise parental right.*

*Custodial body shall examine the case immediately after the receipt of the notification and undertake measures in order to protect the rights of the child.*

*Registrar shall report the birth of a child whose one or both parents are unknown to custodial body, in order to undertake the measures for its protection.*

*If thus required by the justified interests of the child, the custodial body shall warn the parents about errors and failures in education and upbringing of the child and assists them to bring up the child properly, and it can direct them to address, alone or with the child, a particular counselling centre, health, social, educational or some other adequate institution.*

*When parents need longer-term support and direction in exercising their parental rights and duties or when an explicit follow up of the situation and conditions in which a child lives is necessary, custodial body shall determine supervision over the exercising parental rights regarding children or a specific individual child.*

*A decision on supervision made by the custodial body shall define the supervision programme and determine a person to follow up child's development, monitor acts of parents, submit periodical reports to the custodial body and undertake other measures in the interest of a child.*

*In justified cases, the custodial body may require the parents to submit the bills on how they manage the child's property.*

*In an extra-judiciary procedure, the custodial body may require to court to allow means of insurance on the parents' property with a view of protecting the property right of the child.*

*With a view to protecting the property interests of the child, the custodial body may require the court to make a decision according to which the parents shall have the position of a custodian with regard to the management of the child's property.*

## ***Mediation services***

The Committee recalls that States are required to provide family mediation services. The following issues are examined: access to the said services as well as whether they are free of charge and cover the whole country, and how effective they are. The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

***The Committee asks the next report to provide information on mediation services in the light of these points.***

### **ANSWER:**

*The Law on Social and Child Protection prescribes counselling-therapy and social-educational services which include: counselling, therapy, mediation, SOS telephone and other services with the objective of overcoming situations of crisis and improving family relations, as well as the Rulebook on detailed conditions for provision and use of services, rules and minimum standards for counselling-therapy and social-educational services.*

*Beneficiary, parent or relative who is required to support beneficiary and another legal entity or physical person who has taken over payment shall take part in the payment of service with all his earnings, income and assets, except for the income earned on the basis of financial support, child allowance, nonrecurring financial support, income based on awards and severance pay for retirement.*

## ***Domestic violence against women***

***The Committee asks the next report to provide information in practice on the protection provided to women in case of domestic violence through for example the collection and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims.***

### **ANSWER:**

*From the aspect of the work of the Directorate for Civil Status and Personal Documents, it should be noted that the Foreign National Law prescribed that a temporary residence, inter alia,*

*may be granted to a foreign national intending to stay in Montenegro for longer than 90 days for the purposes of humanitarian reasons (Article 38 of the Law).*

*Furthermore, Article 52 of this Law prescribed that a temporary residence permit for humanitarian reasons may be issued to a foreign national presumed to have been the victim of a crime of trafficking in human beings or of a crime of domestic violence.*

*The foreign national who has been issued a temporary residence permit for humanitarian reasons shall have the right to accommodation, health care, education, work, and financial assistance, in accordance with the Law.*

*Also, Montenegro has a duty to establish a single database for Negotiating Chapter 23. This database is recognized by the Protocol on Actions, Prevention of and Protection against Violence against Women and Family Violence. A single database will be implemented by the centres for social work and the Police Administration, and later by the Prosecutor's Offices and the Misdemeanour Courts. Through this database, we will have the exact number of reports of violence, as well as a number of other data such as the relationship between the victim and the perpetrator of violence, and similar. This unique database will soon be finished, we expect soon a trial period and later training for the use of the database.*

*The Institute for Social and Child Protection carried out activities in 2018 and at the beginning of 2019, which concerned the accreditation and implementation of training programs with the topic of protection of women and children that are victims of violence, in particular:*

- 1. 19-21 February 2019, a three-day workshop was organized: "Building Capacity of Professional Workers in Centres for Social Work on Abuse and Sexual Violence against Children" in cooperation with TAIEX (Technical Assistance and Information Exchange Instrument managed by the Directorate-General for Enlargement of the European Commission) where lecturers were Ella Selak Bagarić and Keith O` Reilly. The workshop was attended by 19 professional workers from the social protection system (13 from the centres for social work, 2 from the Children's Home "Mladost" from Bijela, 4 from the Institute for Social and Child Protection and one representative of the health system, from the Health Care Centre from Niksic).*
- 2. 11-12 September 2018.- "Improving the skills of the case manager in dealing with victims of violence, especially children, with particular reference to gender-based violence", this two-day training was organized in cooperation with TAIEX, and conducted by educators from Croatia, Mrs. Renata Odeljan, Director of the Police Academy and Senior Lecturer at the Police Academy in Zagreb, Ninoslava Pećnik, Head of Psychology Department, Faculty of Philosophy in Zagreb and Ms. Sandra Batlak, counselor in the Cabinet of the Ministry of Demography, Family, Youth and Social Policy. The training was attended by a total of 21 participants, 14 professional workers from the centres for social work, 1 expert from the Centre for Children and Youth "Ljubovic", 1 representative of the Inspection of Social and Child Protection and 5 representatives of the Institute for Social and Child Protection.*

*The Institute participated in the organization, in cooperation with the authors, accredited trainings and carried out quality control of realization of the following trainings:*

1. *Participation of female users with experience of violence and risk assessment in cases of domestic violence against women and children. Training provider was NGO Hotline for Women and Children Victims of Violence Niksic. The two-day training was organized in 4 terms, 4-5 August 2018, 2-3 October 2018, 4-5 October 2018 and 13-14 October 2018. The training was attended by 77 participants: 41 CSW practitioners, 29 representatives of NGOs, 1 health representative, 1 expert from the social and child care institution, 2 representatives of the Administration for Inspection Affairs and 3 unemployed experts.*
2. *Training program for providing support to women with experience of violence in accordance with the principles of due care. Training provider was NGO SOS Podgorica. A three-day training was organized from 2-4 November 2018 and attended by 7 representatives of non-governmental organizations.*
3. *Basic training program for professional workers, professional associates and members of multidisciplinary teams for prevention and suppression of child contracted marriages; Training provider was NGOs Centre for Roma Initiatives; two-day training on 18-19 December 2018; 20 participants: 2 CSR professionals, 16 NGOs, 1 from the social and child care institution and 1 representative of local self-government.*

## ***Economic protection of families***

### ***Family benefits***

***The Committee notes from MISSCEO that the scheme of child benefit is based on social assistance, i.e. entitlement upon need. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that family benefits do not cover a significant number of families.***

#### **ANSWER:**

*The Law on Social and Child Protection laid down in Article 42 that the right to child allowance can be exercised by a child who is beneficiary of financial support; is beneficiary of care and support allowance; is beneficiary of personal disability allowance; is without parental care; whose parent, adoptive parent, guardian, foster parent i.e. person to whom care, upbringing and education of the child have been entrusted as beneficiary of financial benefit established employment relationship based on an agreement on active overcoming of an unfavourable social situation.*

*The right to child allowance can be exercised by a child who:*

- 1) *Is beneficiary of financial support;*
- 2) *Is beneficiary of care and support allowance;*
- 3) *Is beneficiary of personal disability allowance; Is without parental care;*
- 4) *Whose parent, adoptive parent, guardian, foster parent i.e. person to whom care, upbringing and education of the child have been entrusted as beneficiary of financial*

*benefit established employment relationship based on an agreement on active overcoming of an unfavourable social situation.*

*Out of five categories of beneficiaries of the child allowance, two categories of beneficiaries (beneficiaries of financial support - monthly social assistance and a child whose parent, adoptive parent, guardian, foster parent, i.e. person to whom care, upbringing and education of the child have been entrusted as beneficiary of financial benefit established employment relationship based on an agreement on active overcoming of an unfavourable social situation) exercise the right to child allowance based on “social assistance-financial support” while this fact is not relevant for other categories of users. Children during their placement into the institution or at the family placement-fostering, it is about the children without parental care, also exercise the right to child allowance.*

*At present, the right to child allowance is currently used by about 15,150 children from around 7,000 families and for their needs is allocated about 400,000 euros a month. The amounts of allowance vary from EUR 24.00 to EUR 40.00 per month.*

*We point out that the Law on Social and Child Protection of 1995 stipulates that the child allowance is realized regardless of family income. In accordance with the aforementioned legal solution, the right to child allowance in the period from 1995 to 2001 was used by 140,000 to 152,000 children per month. On this basis, around DM 2.000.000,00 was allocated from the budget a month (for example, DM 2,114,586.30 was allocated for 148,861 children in February 2001). In Montenegro, there were around 180,000 children under the age of 18 in that period, which means that about 30,000 children did not receive a child allowance, since a number of parents did not ask for a right.*

*Amendments to the Law on Social and Child Protection were made in 2001, in accordance with the budgetary possibilities and in line with the recommendations of international institutions (the consultant in the drafting amendments to the law was a representative of the European Commission). Namely, it was concluded, after several years of application, that the benefits on this basis cannot significantly influence the improvement of the standards of families that are not beneficiaries of the right to financial support (social assistance) and that the resources that are determined on that basis should be redirected to other rights, which will be more beneficial for users.*

*The Law on Social and Child Protection laid down in Article 42 that the right to child allowance can be exercised by a child who is beneficiary of financial support; is beneficiary of care and support allowance; is beneficiary of personal disability allowance; is without parental care; whose parent, adoptive parent, guardian, foster parent i.e. person to whom care, upbringing and education of the child have been entrusted as beneficiary of financial benefit established employment relationship based on an agreement on active overcoming of an unfavourable social situation.*

## ***Vulnerable families***

***States’ positive obligations under Article 16 include implementing means to ensure the***

*economic protection of various categories of vulnerable families, such as single-parent families and Roma families. The Committee consequently asks what measures are taken to ensure the economic protection of these vulnerable families.*

**ANSWER:**

*In 2005, the Government of Montenegro, along with several other European countries (Bulgaria, Czech Republic, Hungary, Macedonia, Romania, Slovakia, Croatia and Serbia), joined the "Decade of Roma Inclusion 2005-2015" initiated by the World Bank and the Open Society Institute in cooperation with several other international actors. In 2005, the Government of Montenegro adopted the National Action Plan for the implementation of the Decade in the fields of education, employment, housing and health care. Given the limited action of the Action Plan in the four priority areas, at the end of 2007, the Government of Montenegro adopted the Strategy for Improving the Position of RAE Population in Montenegro 2008-2012, followed by another, under the title 'the Strategy for Improvement of Position of Roma and Egyptians in Montenegro 2012-2016'.*

*Given that the position of the members of this population is still uneven in many areas and that in order to improve the socio-economic position it is necessary to set concrete goals for each area, the Government of Montenegro has adopted a new Strategy for Social Inclusion of Roma and Egyptians from 2016 to 2020, which is being upgraded to the previous two, redefining national priorities, ways of implementing and taking special measures according to changed social and political circumstances, progress made and further challenges in the process of including and improving the socio-economic position of Roma and Egyptians. Monitoring of the results of the implementation of the mentioned Strategy is under the authority of the Ministry for Human and Minority Rights. Strategy and Reports on the implementation of the Strategy can be found on the link [www.mmp.gov.me/en/library/strategije?alphabet=lat](http://www.mmp.gov.me/en/library/strategije?alphabet=lat).*

*The basic principle of the mentioned Strategy is the principle of affirmative action. The principle of the prohibition of discrimination and equality before the law is a prerequisite for the enjoyment of all human and minority rights, but they are not sufficient to secure the factual equality of the minority against the majority. Therefore, international legal standards and national legislation foresee the institute for the recognition of an additional set of rights for members of minorities, which is called affirmative action-preferential treatment - positive discrimination, as provided for in Article 8 of the Constitution of Montenegro, which stipulates that regulations and introduction of special measures aimed at creating the conditions for the exercise of national, gender and overall equality and protection of persons who are in an unequal position on any grounds shall not be considered discrimination. Special measures may only be applied until the achievement of the aims for which they were undertaken.*

*According to the existing and available data from the census of households, households and dwellings in Montenegro, 6251 persons declared themselves to be Roma or 1.01% of the total population.*

*For the purpose of Roma inclusion, the Strategy covers the following areas: housing, education, health care, employment, legal status, social status and family protection, culture, language and identity.*



*Within the framework of the Strategy, a whole set of issues is being worked out covering various aspects of social issues.*

*First, when it comes to material status on the basis of survey questionnaire (for exercising the right to social and child protection there is no obligation to declare on a national basis for which reasons there are statistical data on that basis), about 12% of Roma and Egyptian households have no income, and the average household income is between EUR 150.00 and EUR 200.00. In 60% of cases, the key or significant income of Roma and Egyptian families is social assistance provided in different forms. In situations where social assistance is received, it is determined, it is determined on the basis of data that this is an average of EUR 120.00 per month.*

*The right to basic material benefits from social protection are: financial support; personal disability allowance; care and support allowance; health care; funeral costs; nonrecurring financial assistance; parental or guardian's allowance of the personal disability.*

*Basic material benefits in the area of child protection are: benefit for a new-born child; child allowance; costs of nutrition in pre-school institutions; assistance for up-bringing and education of children and young people with special educational needs; reimbursement of salary compensation and salary compensation for maternity or parental leave; the maternity leave pay; reimbursement of salary compensation and salary compensation for part time work.*

*The child allowance on average per family is about EUR 60.00. On the basis of their health condition, they have the right to care allowance of about EUR 63.00 and the right to a personal disability allowance of about EUR 180.00. As beneficiaries of rights, they have the right to health care, nonrecurring financial assistance, the right to social and child care services, etc. In addition to the state assistance, the assistance is also provided through the local self-government, the Red Cross and NGOs.*

*When it comes to services, they are entitled to the following: services in the field of social and child protection are: support for the life in the family; counselling-therapy and social-educational service; accommodation; urgent interventions.*

*When it comes to family protection, the same applies to: combating domestic violence and violence against women; prevention in combating begging; fight against human trafficking; prevention of unlawful marriages.*

*In order to improve the material position of Roma, significant activities are taking place in other areas, e.g. education, employment, housing, which also affects the need for social protection, is given in the text of the Strategy for Social Inclusion of Roma and Egyptians from 2016 to 2020, as well as in the results of these activities that are detailed in the annual reports.*

*When it comes to the material status of one-parent families, and/or single parents, the Law on Social and Child Protection, Article 19, paragraph 1, point 10a) stipulates that a single person shall mean a divorced parent or other parent has died or is unknown, maintaining a child, or*

*exercising extended parental right, in accordance with the law, until a marriage or informal marriage is established.*

*Single parenthood as a status does not give grounds this family to be considered materially endangered by automatism, but the material status is determined in accordance with the provisions of the Law on Social and Child Protection in relation to the provisions of the Family Law.*

*Namely, the uncontested and joint parenthood after the divorce are the obligation of both parents to contribute to the maintenance of the child, which is determined by the decision of the competent court. Also, the income of one parent may be significant that this family cannot be considered materially endangered. Possible provision of services for these families, for example, the provision of baby-sitting services is provided by education regulations (pre-school education institutions), and home assistance services can be provided by private service providers.*

*One-parent family realizes all the rights from social and child care in accordance with the prescribed conditions, given that in certain segments a single parent, when exercising rights, has more benefits than other rights beneficiaries. In relation thereto, the single parent in the procedure for exercising the right to financial support (monthly social assistance) in accordance with Article 25 of the Law on Social and Child Protection may exercise this right, even if it does not fulfil the conditions prescribed by law regarding income, property, etc., provided that it is estimated by the Commission of the Centre for Social Work. In this case, the right is determined for a period of three months, with the obligation of review by official duty.*

*A single parent with a child until the age of three may be provided with support services for life in the community or family placement – fostering or family placement or placement in an institution*

### ***Equal treatment of foreign nationals and stateless persons with regard to family benefits***

The Committee recalls that States Parties must ensure equal treatment of foreign nationals of other States Parties who are lawfully resident or regularly working in their territory and stateless persons with respect to family benefits. ***The Committee asks the next report to indicate whether foreign nationals, stateless persons and refugees are treated equally with regard to family benefits.***

#### **ANSWER:**

*The Law on Social and Child Protection ("Official Gazette of Montenegro", No 027/13 of 11 June 2013, 001/15 of 5 January 2015, 042/15 of 29 July 2015, 047/15 of 18 August 2015, 056/16 of 23 August 2016, 066/16 of 20 October 2016, 001/17 of 09 January 2017, 031/17 of 12 May 2017, 042/17 of 30 June 2017, 050/17 of 31 July 2017) laid down in Article 5 categories of persons who may exercise the rights prescribed under the mentioned law.*

*The entire Article 5 reads as follows:*

*“Persons exercising the rights*

*Article 5*

*A Montenegrin national with the permanent place of residence at the territory of the State shall be entitled to exercise the rights in accordance with this Law.*

*The rights in the area of social and child protection established by this Law and international treaty may be exercised by a foreigner with granted temporary or permanent residence in the state, in accordance with a special law.*

*Social and child protection rights determined by this Law and international treaty may be exercised by the asylum seeker and the foreigner placed under subsidiary protection, pursuant to the law.*

*Exceptionally, a person not covered under paragraphs 1, 2 and 3 of this Article who needs and adequate form of social protection due to special circumstances and social risk, shall be entitled to a nonrecurring financial assistance and the right to temporary accommodation.”*

*The status of foreigners is regulated by the Foreign National Law (“Official Gazette of Montenegro”, No 12/18) whereby is prescribed that a foreign national means any citizen of another state or a stateless person. Mentioned Law, inter alia, stipulates categories of foreign nationals, as well as their rights and obligations in Montenegro.*

*Also, the protection of foreigners is also regulated by the Law on International and Temporary Protection of Foreigners (“Official Gazette of Montenegro” No. 2/17), which governs the principles, conditions and procedure for granting international and temporary protection to a foreigner seeking international protection, the rights and duties of a foreigner seeking international protection, an asylee, a foreigner granted subsidiary protection, a foreigner granted temporary protection, as well as the conditions and the procedure for the withdrawal and cessation of asylee status, subsidiary and temporary protection. Mentioned laws are under the jurisdiction of the Ministry of the Interior.*

*The Decree on Financial Assistance to the Asylum Seeker, Recognized Refugee and to the Person Granted Subsidiary Protection (“Official Gazette of Montenegro” No 28/18) stipulates that a foreigner asking for international protection is entitled to a one-time financial assistance, and an asylee and a foreigner under subsidiary protection are entitled to monthly financial assistance, the amount of which depends on the number of family members. By passing the said Decree, the Decree Concerning Financial Assistance to Asylum Seeker who has been granted refugee status and which was granted additional protection (“Official Gazette of Montenegro”, No. 56/08) has ceased to be in force.*

*New Decree, in accordance with special regulations, contains no category of refugees bearing in mind that refugees, who have been granted refugee status in Montenegro, now have the status of a foreigner with permanent residence in Montenegro and exercise all the rights from social and child care in accordance with Article 5 paragraph 2 of the Law on Social and Child Protection.*

## **Article 17 - Right of children and young persons to social, legal and economic protection**

*Paragraph 1 - Assistance, education and training*

The Committee takes note of the information contained in the report submitted by Montenegro.

### ***The legal status of the child***

The Committee recalls that under Article 17 of the Charter there should be no discrimination between children born within marriage and outside marriage, for example ***in matters relating to inheritance rights and maintenance obligations. The Committee wishes to be informed about the applicable legislation in this regard.***

#### **ANSWER:**

*Family Law stipulates that a community of life of one man and one woman lasting at least three years (informal marriage) is equalled with marital community with regard to the right to mutual support and other property-legal relationships.*

*If a common child is born in an informal marriage or is resumed by marriage, this informal marriage is equalled with marital community in respect of rights even before the expiration of three years.*

*Informal marriage does not produce effect if the obstacles to enter into a valid marriage existed at the time when it started.*

*The Law on Social and Child Protection stipulates that the family is composed of spouses and children (marital, illegitimate, adopted and stepchild) and relatives in the first line regardless of the kinship relationship, as well as the collateral relatives including also other relatives living together; a child not living in the family if attending regular secondary school education, until the time limit prescribed for that education and the spouse regardless of the place of living.*

*Pursuant to the stated, the Law on Social and Child Protection equated the informal married with the common law marriage.*

***The Committee recalls that under Article 17 there must be a right for an adopted child to know his or her origins. It asks whether there are restrictions on this right and under what circumstances.***

#### **ANSWER:**

*Article 121 of the Family Law ("Official Gazette of Montenegro", No 1/07 and 56/16) adoption is defined as a special form of family-legal protection of children without parents or without adequate parental care, by which parental and/or the relationship of kinship is created.*

*Article 122 of the said law stipulates that a child has the right to know that it has been adopted, and the adopters are under an obligation to acquaint the child with the fact that it has been adopted at latest up to its seventh year of life i.e. immediately after adoption if an older child has been adopted and to inform the custodial body thereof.*

*Article 61 of the said law stipulates that a child has the right to know who its parents are and the right of a child to know who its parents are may be limited only by this law. The same article prescribes that a child who is able to form an opinion may have an insight into the birth register and other documents pertinent to its origin as well as that the child has the right to receive notice of all important circumstances regarding parents, family members and other close persons, unless it is contrary to his best interests.*

*Regarding the issue raised, and based on the aforementioned provisions of the Family Law, we note that the subject of regulation of the said law and the right of the adopted child is to know its origin.*

*When it comes to limiting this right, we indicate that the Law on Amendments to the Family Law of 2016 ("Official Gazette of the Republic of Montenegro", No 53/16) removed the age limit of 15 years, as the age limit for the child to know his or her origin, and an assessment by the custodial body is being carried out regarding its judgment on this issue. Limitations in this part may exist in certain cases, when it comes to the health condition of natural parents, the conviction of those parents for serious crimes or the court's decisions on the deprivation of parental rights related to violence against a child, etc., all those situations that would in certain cases influenced the natural development of the child.*

### ***Protection from ill-treatment and abuse***

*The Committee notes from the Global Initiative to End Corporal Punishment of Children that corporal punishment in Montenegro is lawful in the home. There is no legal defence for its use enshrined in law and provisions against violence and abuse in the Criminal Code 2004, the Family Act 2007, the Charter on Human and Minority Rights and Civil Liberties 2003 and the Law on Family Violence Protection 2010 do not include explicit prohibition of all corporal punishment in childrearing.*

*There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents.*

*Corporal punishment is prohibited in schools according to Section 111 of the General Law on Education. The Law on Primary Education (art. 66) and the Law on High School (art. 49) do not include corporal punishment among permitted disciplinary measures.*

***The Committee considers that the situation is not in conformity with the Charter as corporal punishment of children is not explicitly prohibited in the home and in institutions.***

**ANSWER:**

*The Law on Amendments to the Family Law ("Official Gazette of Montenegro", No 53/16) passed in July 2016, included prohibition of all corporal punishment of children, thus article 9a states that a child shall not be subjected to corporal punishment or any other cruel, inhuman or degrading treatment. This prohibition pertains to parents, guardians and all other persons taking care of or coming into contact with the child and mentioned persons are obliged to protect the child from any stated form of treatment or punishment.*

***Rights of children in public care***

The Social Protection Reform Strategy aims at development of various services which support the natural family and family environment, as least restrictive environment for a child.

The aim of the reform is primarily to reduce the number of children in institutions and develop a range of new services in order to bring the conditions in the institution closer to the standards of living in the family.

The expectations of the reform are to prevent separation of children from their families, improved developmental outcomes, protection from neglect and abuse. Reduction of residential capacities will free up resources which can be channelled towards offering services in the community for children who live with their families as well as establishment of new centre to support foster families.

***The Committee wishes to be informed about the implementation of the Social Protection Reform Strategy. In the meantime it notes that there were six children up to the age of three and 91 children aged 3-18 in institutions.***

**ANSWER:**

*An Analysis of the Implementation of the Social and Child Protection System Development Strategy for the period 2013-2017 was prepared and, based on the given analyses in the third quarter of 2017, a new Social and Child Protection System Development Strategy for the period for the period 2018-2022 was adopted as a continuation of activities from the previous Strategy. These documents can be found on the link [www.mrs.gov.me/en/library/strategija?alphabet=lat](http://www.mrs.gov.me/en/library/strategija?alphabet=lat).*

*In the period covered by the Social and Child Protection System Development Strategy 2013-2017, a large number of activities in the field of social and child care in Montenegro have been realized. The general characteristic of these activities is that they are largely in line with the planned measures and activities defined by the Strategy and related action plans.*

*The Government of Montenegro, and/or the Ministry of Labour and Social Welfare, during the implementation of the Strategy had significant support from external actors both in financial and non-financial manner, so that this support can be considered as one of the important factors in the development of the Strategy and its realization in numerous segments.*

*During the period of implementation of the Strategy, activities focused on improvement of the regulatory framework dominated, i.e. the adoption of general legal acts. In addition, significant systemic changes were achieved through institutional strengthening of the system, primarily by establishing the Institute for Social and Child Protection, as well as by introducing the Social Welfare Information System (SWIS).*

*Also, the key changes can be considered improvements in the work of the centres for social work, which are largely conditioned by the functioning of the Institute for Social and Child Protection and the Social Welfare Information System (SWIS) - which are reflected in the implementation of the case management methodology and the reorganization of the work of the centres for social work.*

*Functional changes cannot be fully considered in the short term after their introduction. They concern the quality of professional work, the quality of services and the improvement of the position of users.*

*The dominant changes primarily relate to: the quality of professional work; quality and adequacy of case management methods; supervisory support and improvement of its modalities; licensing system for organizations and experts in the system; accreditation of the program. The regulations for the implementation of the Law on Social and Child Protection were necessary and they were adopted. One of the fields of responsibility and activities of the Institute for Social and Child Protection should be to check the adequacy of the existing legal norms in the secondary legislations and initiate their improvement.*

*The new Strategy on Development of Social and Child Protection System for the period 2018-2022, relates primarily to: further improvement of the regulatory framework and quality system in social and child protection; reviewing and improving soft regulatory mechanisms, through (method of case management and use of the Social Welfare Information System (SWIS), improvement of supervision, improvement of professional competencies of professionals); continuation of de-institutionalization and development of services in the community.*

*When it comes to the protection of children without parental care, with the support of UNDP and UNICEF, family-friendly services are provided. The goal of this service is to empower biological families and their parental competencies, so that children, especially children from 0 to 3 years of age, grow up in their family. The provider of this service is the NGO "Family Centre" - Kotor.*

*The service is currently being implemented in six municipalities in Montenegro and it is planned that the service will be developed and expanded in all municipalities in Montenegro. In 2017, this service included 100 families in which the goal of the service was achieved - the growing of children in their own family.*

*According to the data from December 2017, 84 children without parental care and children whose development is hindered by family conditions older than 3 years, out of which there are 25 children with disabilities, stayed at the PI Children's Home "Bijela". There were no children up to 3 years of age placed at the mentioned institution.*

*The Centre for Social Work is obliged to reassess the child's accommodation in the institution at least once in six months.*

*Family placement-fostering was used by 368 children, of which 317 were placed with relatives and 51 were placed with not-relatives.*

*So far, 13 day care centres for children with disabilities have been established, as a child protection service: Bijelo Polje, Niksic, Pljevlja, Herceg Novi, Plav, Ulcinj, Cetinje, Berane, Mojkovac, Rozaje, Danilovgrad, Podgorica and the Youth Centre "Mladost" – Bijela within the framework of transformation. It has been noted 185 users of day care centres service in 13 day care centres (children and youth with disabilities and difficulties).*

***Committee asks what are the criteria for the restriction of custody or parental rights and what is the extent of such restrictions. It also asks what are the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances. It further asks whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.***

#### **ANSWER:**

*Criteria for restricting parental rights and the scope of such restrictions are prescribed by the provisions of the Family Law.*

*Article 85 of the Family Law prescribes that in an extra-judiciary procedure, the court may by its decision restrict the parental right to the parent who unconscientiously exercises the rights or duties towards the child. Through the restriction the parent may be deprived of the exercising of one or several rights and duties towards the child, except of the duty to support the child. It is laid down that the court shall deprive a parent of the right to live with a child if s/he neglects to a larger extent the upbringing and education of the child. A parent is considered to neglect to a larger extent the upbringing and education of a child in particular if s/he does not pay sufficient attention to nutrition, clothing, medical assistance, regular attendance of school, does not prevent the child from keeping bad company, tramping, begging or theft.*

*Article 86 of the said law prescribes the procedure for restricting the parental right is initiated by the court by the official duty upon a proposal of the custodial body, other parent or the child. The restriction of parental right is determined for a period up to one year and a complaint against the decision as of Article 85 of this law does not postpone its execution. Prior to expiry*



*of the term of one year, the court shall investigate all the circumstances of the case and to the best interest of the child through a new decision return the restricted right to the parents, prolong duration of the pronounced measure or pronounce another measure for the protection of the child's best interest.*

*Article 86 is the answer to the question about lodging of an appeal against a decision to restrict parental rights, since the right to appeal is prescribed, with the fact that court procedure can be initiated against the final court decision to review the legality thereof and, in the extreme case, its constitutionality with the Constitutional Court of Montenegro.*

*When it comes to guardianship, we point out that in accordance with Article 178 of the Family Law, a custody is granted to a child without parental care, that in accordance with Article 179 the purpose of custody over a child is that, through providing for, upbringing and education, the personality of a child is developed as fully as possible and that a child is capable for independent life and work, so as under Article 180, the decision on granting custody is made by a custodial body, and contains a plan of custody.*

*Article 185 stipulates that the custodial body shall continually monitor and examine the conditions of life of protégées, particularly minors and it shall control their accommodation, upbringing, health condition, process of qualifying for independent life, social environment in which they live, social relationships that they have and how their property is managed, as well as how their rights and interests are protected.*

*Article 187 stipulates that a guardian shall be a person who has personal characteristics and abilities necessary for performing the duties of a guardian, and who agrees in advance to be a guardian, under Article 191, a custodial body may, by a decision, limit the powers of a guardian and decide to perform certain activities of a guardian directly (note: this primarily concerns the management of immovable property or financial assets, education, etc.), and Article 192 that in the decision on appointing a guardian, the custodial body shall determine his/her duties and the scope of his/her powers.*

*Article 197 stipulates that the guardian shall not be: a person deprived of parental rights; a person who lost business capacity; a person whose interests are in conflict with the interests of the protégée; and a person who cannot be expected to perform the duties of a guardian in a proper manner, due to his/her earlier or current behaviour and personal characteristics and relations with the protégée and his/her parents and other relatives.*

*Article 214 stipulates that if a guardian dies or arbitrarily stops performing the duties of a guardian or if such circumstances appear which prevent the guardian to perform his/her duties, custodial body shall be obliged without any delay to undertake measures for protection of the interests of the protégée until a new guardian is appointed.*

*Article 215 stipulates that the custodial body shall remove a guardian from his/her duties if the custodial body finds that in performing his/her duties the guardian is negligent, that he/she abuses his/her powers and that by his/her activities he/she jeopardizes the interests of the protégée, or if it considers that it would be more useful for the protégée to appoint another*

guardian. Custodial body shall remove a guardian from his duties when the guardian asks for it at latest within three months from the day of submitting such a request and undertake all the necessary measures for protection of the interests of the protégée. The guardian whose duties have ceased shall be obliged to submit a report about his/her work to the custodial body within the deadline determined by the custodial body.

Article 218 stipulates that the custodial body shall be obliged to undertake the necessary measures towards the guardian for the protection of rights and interests of the protégée which arise from the improper work of the guardian, as well as measures for protection of the rights and interests of other persons which arise from the custody relations.

Article 221 stipulates that procedure for granting custody and for cessation of custody shall be initiated and conducted ex officio by the custodial body.

Article 231 prescribed that the guardian of a minor person is obliged as a parent to care of the personality of the minor, and in particular of the health of the minor, his/her upbringing, education and qualifying for independent life and work.

Article 234 prescribes that custody over a minor protégée shall cease when the minor comes of age, enters into a marriage, is adopted or when he/she dies.

Bearing in mind that the procedure for granting custody and cessation of custody is conducted according to the provisions of the Family Law and the Law on Administrative Procedure, all decisions of the custodial body, and/or the Centre for Social Work as the first instance body may be appealed to the second instance body, that is, the Ministry of Labour and Social Welfare, a complaint may be filed with the Administrative Court of Montenegro against a decision of the Ministry. Also, a judgment of the Administrative Court of Montenegro may be the subject of a review of legality by the Supreme Court of Montenegro.

When it comes to the possibility of lodging an appeal on the decision on placement in the institution, we state that accommodation in the institution is one of the rights from social and child protection and Article 73 of the Law on Social and Child Protection prescribes the competence of the Social Care Centre to decide on the right to accommodation, and the competent administrative authority, i.e. the Ministry of Labour and Social Welfare decides in the appeals procedure, as a second instance body. In accordance with the Law on Administrative Disputes, an administrative dispute may be started with the Administrative Court against the decision of the second instance body, whose lawfulness of the decision may also be the subject of procedure at the Supreme Court of Montenegro.

Access to the closest relatives to a child placed in an institution may be limited only by a decision of the competent court and, as already stated, an appeal may be lodged against all decisions of the competent courts.

Also, Article 20 of the Constitution of Montenegro states that everyone is guaranteed the right to an appeal or some other legal remedy against the decisions deciding on his rights or interests based on the law.

## ***Young offenders***

***The Committee asks what is the age of criminal responsibility and the maximum length of pre-trial detention and prison sentence that can be imposed on a minor.***

### **ANSWER:**

*Article 3 of the Law on the Treatment of Juveniles in Criminal Proceedings ("Official Gazette of Montenegro", No 64/11 and 01/18), a juvenile is a person who at the time of commission of a crime is at least 14 but under 18 years of age ('juvenile'). Also, the same article makes a difference between a person who at the time of commission of a crime is at least 14, but under 16 years of age ('younger juvenile') and a person who at the time of commission of a crime is at least 16 but under 18 years of age ('older juvenile'), while a young adult is a person who at the time of commission of a crime is at least 18, but under 21 years of age. This Law excludes the application of criminal sanctions and other measures in relation to persons who at the time of commission of a crime are younger than 14 (a child).*

*There are three types of criminal sanctions that may be applied to juveniles, in particular: to correctional measures, a juvenile detention term, or security measures. A younger juvenile may only be sanctioned by correctional measures. An older juvenile may be sanctioned by correctional measures and, by exception and under conditions set by this Act, may also be sanctioned by a juvenile detention term. A juvenile may also, under conditions set by this Act, be sanctioned by the security measures set by the Criminal Code.*

*Under Article 33 of this Law, subject to a sanction in juvenile detention centre may only be an older juvenile who has committed a crime which by law carries a sanction of over five years in prison where for reason of a high degree of his guilt, level of educational neglect, the circumstances under which the crime was committed, or the nature and seriousness of the crime, it would be manifestly ill justified to pronounce a correctional measure.*

*Regarding the length of a juvenile detention term, the sanction may be set for not less than six months and not longer than five years. By exception, for crimes which carry a prison term of not less than ten years the court may order a sanction of up to ten years in juvenile detention.*

*Article 62 of this Law contains provisions of ordering custody of juvenile, namely, a juvenile judge, by exception and at the substantiated motion of the juvenile state prosecutor, after he has heard the juvenile, may order custody provided that the requirements for ordering custody provided by the Criminal Procedure Code are met, where the purpose for which the custody has been ordered may not be achieved with the measures under articles 60 and 61, paragraphs 1 and 2 hereof. The juvenile judge is obliged to duly substantiate the reasons for custody in his decision ordering custody.*

*Under the custody order issued by a juvenile judge, the custody in preliminary procedure may last for not longer than 30 days, while the juvenile panel of an immediately superior court may, for justified reasons, prolong custody by not more than 30 days.*

*Under the Law, if a custody has been ordered to a juvenile, the said shall be separated from adults while in custody, and in accordance with the Constitution, the detention of persons underage (minors) may not exceed 60 days.*

***Also, the Committee asks if juvenile offenders are always separated from adults.***

**ANSWER:**

*Pursuant to Article 168 of the Law on the Treatment of Juveniles in Criminal Proceedings, the juvenile detention shall be enforced at the juvenile section. Juveniles who have been pronounced juvenile detention shall serve the sentence jointly, and separately only if required so by the medical condition of the juvenile or the reasons of security, order and discipline. The juvenile detention for female offenders shall be enforced separately from male offenders.*

*Thus, juveniles serve the sentence together in the juvenile section and are separated from adults, and separately (among the minors) only if the health condition of the minor requires so, or the reasons of security and maintenance of order and discipline.*

### ***Right to assistance***

***The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.***

**ANSWER:**

*In the period 2010-2016, Montenegro has made efforts to amend and adopt new legislation that will enable the full implementation of the Law on Domestic Violence Protection and ensure comprehensive protection of victims in accordance with international standards. In the first two years after the adoption of the Law on Domestic Violence Protection, the application of the Law was slow due to the non-harmonization of other relevant laws with the Law on Domestic Violence Protection. In 2011, with the adoption of the Strategy on the Protection against Domestic Violence, the process of adopting and passing of laws was initiated in order to harmonize with the Law on Domestic Violence Protection. The process of harmonization was continuously implemented by 2015 and was marked by the cooperation of all relevant state institutions, the non-governmental sector and international organizations.*

*The Law on Treatment of Juveniles in Criminal Proceedings entered into force on 6 January 2012 and began to apply as of 1 September 2012. The most important novelties of this law were the introduction of new alternative measures, extended application of educational orders, education of professional services providing expert support to courts and state prosecutors' offices,*

*improvement of treatment of minors in the execution of institutional educational measures and juvenile imprisonment.*

*In 2013, the Law on Social and Child Protection was passed, which provided more comprehensive measures for the protection of children who are victims of violence.*

*By the amendments to the Criminal Code of July 2013, two new security measures were introduced: restraining order (Article 77a) and the removal from the apartment or other living space (Article 77b). The aim of introducing these measures is to eliminate the risk of re-offending certain criminal offenses, prohibit access of the perpetrator to the victim of the crime, or the place where the victim lives, or his removal from the apartment. The introduction of these measures led to the harmonization of the Criminal Code of Montenegro with the Istanbul Convention.*

*To that end, the Law on Treatment of Juveniles in Criminal Proceedings ("Official Gazette of Montenegro", No 64/11), Law on Social and Child Protection ("Official Gazette of Montenegro", No 27/13, 1/15, 42/15, 47/15 and 56/16, Criminal Code ("Official Gazette of Montenegro", No 40/13) are passed.*

*At the session held on 18 March 2015, the Parliament of Montenegro adopted the Law on Amendments to the Law on Free Legal Aid. The Amendments to the Law on Free Legal Aid enabled the victims of domestic violence, in accordance with the Law on Domestic Violence Protection, to be now recognized as beneficiaries of the right to free legal aid, in the same way as the victims of the crime of domestic violence or the family community and human trafficking.*

*Also, in June 2015, Law on the Compensation of Violence Crime Victims was passed. The Law set forth the protection and assistance to victims of criminal acts of violence which are committed intentionally in a way to provide victims with monetary compensation for damages from the budget of Montenegro for the sake of timely removal of harmful consequences in order to correct the harmful consequences of severe physical and mental state of the victim.*

*The Law on Amendments to the Family Law of 2016 introduced a ban on corporal punishment of children in such a way that a child should not be subjected to corporal punishment or to any other cruel, inhuman or degrading treatment or punishment. The Government of Montenegro adopted it in December 2015 the new Strategy on the Protection against Domestic Violence (2016-2021), and also for the first time adopted the Strategy for the Prevention and Protection of Children from Violence for the period 2017-2021, which will be discussed in the further part of the answer to this question.*

*Article 5 Family Law ("Official Gazette of Montenegro", No 1/07 and 56/16) laid down that the state shall respect and improve the rights of child and undertake all the necessary measures to protect the child from neglect, abuse and exploitation. It is laid down that everyone shall be obliged to inform the centre for social work (custodial body) on the violation of children rights when aware thereof. It is prescribed that measures which extend into family life are permitted only if the protection of family members cannot be provided in a less restrictive way, by providing social and child care services. It is stipulated that competent authorities, institutions, public services and individuals are obliged to cooperate with one another in the realization, promotion and protection of the rights of the child. With regard to the said law, measures are applied under the court competence as prescribed by the provisions of the Family Law relating to supervision by the custodial body over the exercising parental rights, custody, restriction or*

*depriving of parental rights within the jurisdiction of the court to protect children from neglect, abuse, exploitation and discrimination. Also, measures are applied by other competent authorities in accordance with the regulations from the criminal law area and the field of discrimination. The provisions of the Law on Social and Child Protection also apply, having in mind that Article 4 of the said Law which prescribes the protection of this category of children in accordance with the prescribed rights in this field.*

*Montenegro has set as its priority goals the creation of conditions that are acceptable for the optimal growth and development of children, including investing in parental competencies, the use of solid-based practices and interventions aimed at the protection of every child. These priority goals have been transposed into the Strategy for the Prevention and Protection of Children from Violence for the period 2017-2021. It applies to all children aged 0-18 years, regardless of gender, nationality, level of functional abilities, sexual orientation or other personal characteristics. Measures to intensify work on protection and other forms of assistance to children who have been exposed to violence or sexual abuse have also been presented here. The overall vision of the Strategy is to create an environment without violence and a more happy childhood for all children in Montenegro. The strategy projects its vision for the future, but it is based on the current situation in the country.*

*The overall goal of the National Strategic Framework for Prevention and Protection of Children from Violence in Montenegro 2017-2021) is to strengthen the role of the national system in the framework of a multidisciplinary response in: prevention of violence and protection of the physical and mental health of children who are exposed to violence or at risk of violence; providing care and services for children victims of violence and mitigating health and other negative consequences of violence.*

*The specific objectives of the Strategy are focused on improving the legislative and institutional framework, the judicial system, social norms, developing life skills and resilience in children, as well as creating a monitoring and evaluation system.*

*The strategy is governed by the international human rights and children's rights standards set forth in the Convention on the Rights of the Child.*

*The Strategy defines that violence against children refers to all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

*Neglect refers to the failure of meeting all aspects of child development: health, education, emotional development, nutrition, housing, social protection. It may include: (a) physical neglect, or failure to protect a child from harm, or failure to provide the child with basic necessities including adequate food, shelter, clothing and basic medical care; (b) psychological or emotional neglect, including the minimum emotional support and love, chronic inattention to the child, failure to provide the child care by overlooking young children's cues and signals; (c) neglect of children's physical or mental health: withholding essential medical care; (d) educational neglect: failure to comply with laws requiring caregivers to secure their children's education through attendance at school or otherwise; (e) and abandonment.*

*Exploitation or ill-treatment refers to the use of children for someone else's advantage, including child prostitution, trafficking in children and recruitment of children for armed conflicts. The said Strategy, in a comprehensive manner, based on the analysis of the current situation, have determined the objectives of further treatment in all segments of the society that can contribute to the protection of children against violence, and activities with a deadline for realization have been elaborated in the framework of each goal.*

*We emphasize that pursuant to the Law on Protection against Domestic Violence, multidisciplinary operational teams have been formed in all centres for social work. The activities of the said team relate to: providing psychological support, risk assessment, individual plans for the victim, legal assistance to victims, as well as the identification of a confidential person from the centre for social work. The assistance is also related to the realization of the rights from social and child protection and family relations in accordance with the prescribed conditions. Annual reports are carried out on these activities.*

*In line with the undertaken obligations from the Action Plan for the negotiation chapters 23, the Ministry of Labour and Social Welfare carried out activities to establish a unique and Free SOS line for victims of domestic violence, and in partnership with the UNDP office in Montenegro and NGO SOS Hotline for Women and Children Victims of Violence. A unique national, free SOS line to help victims of domestic violence began on 9 September 2015. The national SOS line for victims of domestic violence received 3737 calls in 2018. A total of 4684 services have been provided, information services the most i.e. 2353 calls, and a confidential call service 1402 times. In 2018, calls were received from 23 municipalities in Montenegro. For direct work on the line, a team of six employees was in charge, consisting of a coordinator, four consultants and a professional psychologist.*

*We are pointing out that a service "National SOS Children's Line" for children who are victims of violence was established within the Children's Home "Mladost" in Bijela, at the end of December 2018.*

*In Montenegro, there are three shelters for family violence (Podgorica, Niksic and Berane) with a total capacity of 38 persons (women and children). They provide an emergency and long-term service for women and children seeking shelter from domestic violence. In addition, they provide support in the following areas: legal advice, psychological support and advisory services, legal representation, escorting to court and mediation, as well as finding a job. Their assistance is crucial in all official procedures and significantly increases the chances of obtaining urgent protection measures or restraining orders.*

## **Article 17 - Right of children and young persons to social, legal and economic protection**

*Paragraph 2 - Free primary and secondary education - regular attendance at school*

The Committee takes note of the information contained in the report submitted by Montenegro.

***The Committee asks what is the enrolment rate in primary education as well as the drop-out rate. It also ask what measures are taken to reduce absenteeism.***

### **ANSWER:**

*The education system for children includes pre-school education, basic primary education and secondary education and upbringing.*

*In Montenegro, pre-school upbringing and education is organized for all children until they enter elementary school. It is realized in 21 public preschool institutions with a network of 136 educational units containing 681 organized educational groups. A publicly valid educational program is also implemented in 22 licensed private preschools with 29 educational units and 74 groups. The total number of enrolled children in pre-school institutions in the school year 2017/18 was 20028 and 2018/19 was 21662. The coverage from 3 to 6 years was up to 70%.*

*Primary education and upbringing. During the school year 2017/2018, primary school was attended by 68,000 students in 163 public institutions (245 branch schools), and 206 students in four private institutions. There have been 3368 classes established in public primary schools, while there have been 32 classes established in private primary schools. During the school year 2018/2019, 67495 students attended the classes in 162 public institutions (241 branch institutions), and 205 students in four private ones. There have been 3414 classes established in public primary schools, while there have been 28 classes established in private primary schools. In order to improve the conditions for conducting basic education, the number of students in classes has been reduced – currently classes of the first grade may have up to 28 students.*

*Secondary education and upbringing. Educational programs for general and vocational education in Montenegro in the school year 2017/2018 were realized in 12 gymnasiums, nine mixed schools that implement programs of professional and general secondary education, 21 vocational school, 6 art schools and two educational centres. During the school year 2017/2018, the total number of secondary school students was 28,084 - 14,557 boys and 13,527 girls (2016/2017-27,744; 2015/2016-28,098). In order to facilitate the transition from school to work, a dual education system with compulsory practical training with the employer was introduced.*

*Protocol for Action upon and Prevention of Early School Drop-outs with clearly elaborated multidisciplinary procedures of the competent institutions has been developed: Ministry of Education, Bureau for Education Services, educational-upbringing institutions, Educational Inspection, Centres for Social Work, Red Cross, the Office for the Fight against Trafficking in Human Beings, the Ministry for Human and Minority Rights, judiciary, etc.*

*Within the MEIS application (Montenegrin Education Information System), data are collected for each employee, student and infrastructure. An application has been made in the MEIS to*



*identify the early abandonment risk at primary and secondary school level. Risk indicators, recordkeeping parameters, warning criteria and measures to be taken were set. The reasons for this are the following: the dropout rate is 0.54%, and the expressed percentage is not considered high and worrying. However, the number of students excluded represents the so-called "hidden dropout". Then, in addition to children who are at risk of leaving school, very important are children who during the school year are not spending much time in school, but who have not left education. In elementary schools, these are mostly children of RE population, while in secondary schools a certain number of students are excluded during the school year due to absences, conduct (behaviour) etc. At the end of the school year, these children have the right to take a class exam and finish the class of the same school year they enrolled.*

***The Committee asks whether unlawfully present children have a right to education.***

**ANSWER:**

*General Law on Education and Upbringing ("Official Gazette of Montenegro" Nos. 64/02, 31/05, 49/07, 4/08, 21/09, 45/10, 40/11, 45/11, 36/13, 39/13 and 44/13 i 47/17) in Article 9 related to "Equality" and reads: "All citizens of Montenegro shall be equal in the exercising of the right of education regardless of the national affiliation, race, gender, language, religion, social background, disability and of other personal characteristics. Foreign nationals who has been issued a temporary residence permit or permanent residence shall be equal in exercising the rights to education to the Montenegrin nationals in line with the special law".*

***The Committee asks to be informed about the progress made with improving access and enrolment of Roma children and children from other vulnerable groups in education.***

**ANSWER:**

While working with the children of the Roma and Egyptian population, the focus is on integration, fairness, quality, the continuity of education and improvement of school and social achievement.

RE children were enrolled at: pre-schools = 249; primary school = 1860; high school = 142. We have designed a mechanism for full integration of children into regular preschool activities: a) they are included into regular educational groups, b) educational units are organized in Roma settlements or c) interactive services in the municipalities where a significant number of RE population is recorded: Podgorica, Niksic, Berane, Bijelo Polje, Tivat, Herceg Novi, Bar, Ulcinj, Kotor, Cetinje and Pljevlja. We have conducted two rounds of training of staff working with these children on the topics: early development and learning, the importance of preschool education and the monitoring of the attendance of RE children, non-discrimination, prevention of prejudices. A new round of support is on-going that includes:

*in June, seven years in a row, a preparatory kindergarten, which is not covered by formal education, has been organized in 9 pre-school institutions (Bar, Tivat, Herceg Novi, Kotor,*

*Cetinje, Niksic, Podgorica, Berane and Bijelo Polje) for Roma and Egyptian children who acquired the legal right to enrol in the first grade.*

*The campaign for the enrolment of RE children in the first grade of elementary school is conducted. During the campaign, flyers were also distributed in the Roma, Montenegrin and Albanian languages. In particular, we emphasize that the Konik camp branch class of the PI elementary school "Božidar Vuković Podgoričanin" was closed. Students were gradually enrolled in 7 primary schools in Podgorica: "Božidar Vuković Podgoričanin", "21. maj", "Marko Miljanov", "Savo Pejanović", "Vuk Karadžić", ES "Vladimir Nazor" and "Oktoih" (activities started during the school year 2008/09). In order to support these activities and to promote fairness, free textbooks are provided for these children every year. It is also provided free transportation for all students of RE population in Podgorica, Niksic and Berane (bus and vans). Roma mediators - associates in social inclusion – are engaged in schools. All students in secondary schools are provided scholarships in the amount of 60 euros, and for students in the amount of 150 euros. All interested high school students are enrolled in faculties (24 students).*

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 11 - Teaching language of host state*

The Committee takes note of the information contained in the report submitted by Montenegro.

***The Committee asks that the next report provide information concerning the number of migrants in Montenegro.***

### **ANSWER:**

*The Foreign National Law (“Official Gazette of Montenegro”, No 12/18) regulates the conditions of entry into, exit from, movement throughout, stay and work of foreign nationals in Montenegro. A foreign national 's residence in Montenegro, in terms of Article 32 of this Law, shall be: a stay of up to 90 days, temporary residence and permanent residence.*

*The Foreign National Law stipulates that a temporary residence permit shall be issued by the Ministry of the Interior. A temporary residence permit shall be issued for the validity period of up to one year. The application for issuing of a temporary residence permit shall be personally filed by a foreign national, to the Ministry in the place of residence.*

*A temporary residence may be granted to a foreign national intending to stay in Montenegro for longer than 90 days for the purposes of:*

- 1) family reunification;*
- 2) schooling;*
- 3) participation in international student exchange programs or in other youth programs;*
- 4) specialization, professional competence training or practical training of foreign nationals;*
- 5) scientific research work;*
- 6) medical treatment;*
- 7) humanitarian reasons;*
- 8) exercising the right to enjoy as well as to dispose of a real property owned in Montenegro;*
- 9) religious service;*
- 10) volunteering in the European Voluntary Service Programme;*
- 11) a stateless person's stay;*
- 12) work; and*
- 13) other events, according to the law and an international treaty.*

*Certainly the largest number of temporary residence permits in Montenegro is issued for work, and this is most often the citizens of the Montenegro bordering countries. Thus for the period from 1 January to 2 November 2018, in total 21,727 licenses were issued. Sorted according to the citizenship of a foreigner from the regional countries, these statistics appear as follows:*

- 1. 7594 citizens of Serbia*
- 2. 2883 citizens of Bosnia and Herzegovina*
- 3. 1548 citizens of Albania*
- 4. 1267 citizens of Kosovo*
- 5. 892 citizens of Macedonia*
- 6. 117 Croatian citizens*

*Considering the issue of the number of migrants in Montenegro, for the period 1 January 2014 – 31 December 2017, in addition to migrants, in accordance with the Foreign National Law, asylum seekers were also a special category of foreigners in Montenegro, according to the applicable Law on Asylum, and their number by years is as follows:*

*2014 - 2312*

*2015 - 1611*

*2016 - 335*

*2017 - 849*

*According to the statistics of the Police Administration, 1490 migrants in total were registered during the period between 1 January 2014 and 1 January 2018.*

*Given the fact that on 1 January 2018 started the application of the new Law on International and Temporary Protection of Foreigners, 2916 requests for international protection were submitted in Montenegro. Also, in accordance with the provisions of this Law, in the period between 1 January 2018 and 31 October 2018, 4178 migrants in total (i.e. foreigners who expressed intention to submit an application for international protection in Montenegro) have been registered.*

The Committee considers that although the language of the host country is automatically taught to primary and secondary school students throughout the school curriculum, this is not enough to satisfy the obligations laid down by Article 19§11. States must make special effort to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country (Conclusions 2002, Sweden). ***The Committee takes note of the one year of additional assistance and the special course in Montenegrin. It asks for further information on the implementation of these initiatives, including data on how many students benefit from such additional education, and whether children who continue to struggle may receive further assistance.***

**ANSWER:**

*A program for the "Montenegrin as non-native language" was prepared and adopted, and the Bureau for Textbooks and Teaching Aids edited the accompanying textbook.*

The Committee also recalls that States should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age (Conclusions 2002, France). ***The Committee asks what policies are in place to provide or support the education of adult migrants in the national language.***

**ANSWER:**

*There is an Education Program for learning the Montenegrin language (by levels) prepared by the Centre for Vocational Education and adopted by the National Council on 9 July 2013.*

*The Centre for Vocational Education established a working group and started activities on the development of the Education Program for learning the Montenegrin language, history and culture for asylum seekers and foreigners under subsidiary protection in accordance with the Law on International and Temporary Protection of Foreigners.*

## **Article 19 - Right of migrant workers and their families to protection and assistance**

### *Paragraph 12 - Teaching mother tongue of migrant*

The Committee takes note of the information contained in the report submitted by Montenegro.

*The Committee notes the flexibility provided in the curriculum, and asks for examples to be provided in the next report of implemented plans focussing on the culture of origin of migrant students.*

### **ANSWER:**

*Consultations about the way of inclusion and monitoring were conducted for the administration and professional service of schools in which there were a couple of cases (2 schools), and counselling for the implementation of the program: "Montenegrin as non-native language" for teachers.*

The Committee recalls that the undertaking of States under this provision is to promote and facilitate the teaching, in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory. *The Committee asks what policies or initiatives are in place which specifically aim towards the education of migrant children of the most represented groups in their own culture, language and traditions.*

### **ANSWER:**

*In addition to the aforementioned consultations for administration and professional service of schools on the way of inclusion and monitoring, the implementation of the program: "Montenegrin as non-native language", consultations were held in 2 schools on how to organize and conduct remedial classes with the aim of studying the history and culture of underage migrants.*

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 1 - Participation in working life*

The Committee takes note of the information contained in the report submitted by Montenegro.

The Committee notes that Montenegro has only accepted Article 27§1a.

### **NOTE**

*In addition to Article 27§1a, Montenegro accepted para. 2 and 3 of the Article 27.*

### ***Employment, vocational guidance and training***

*The Committee refers to its conclusion under Article 10§3 (Conclusions 2012) where it reserved its position pending receipt of the information concerning the types of continuing vocational training and education available on the labour market, training measures for certain groups, such as women, the overall participation rate of persons in training and the gender balance, the percentage of employees participating in continuing vocational training, and the total expenditure.*

### **ANSWER:**

*In 2018, the Employment Agency of Montenegro disposes with €4.6 million, which is €2 million more than in the previous year for the implementation of measures of active employment policy. These funds, inter alia, enable the implementation of new activation measures primarily intended for unemployed women, long-term unemployed and young people.*

*The Agency planned to implement active policy measures in the framework of the available funds for 4 000 priority young people, long-term unemployed and female employees, in order to make them more efficient in the labour market.*

*In the past period of the current year, measures covered 3,488 unemployed persons, or 87.2% of the planned number of participants. In the total number of participants, women participate with 65.3%, young people with 27%, while the share of long-term unemployed persons is 28.4%. About 50% of participants are persons from the municipalities of the Northern Region.*

### **Adult Education and Training**

*This active employment policy measure has been implemented through education programs for acquiring professional qualifications and for acquiring key skills in order to increase employability, or employment of successful program participants. The executors of this measure were organizers of adult education, that is, legal entities that hold a license issued by the Ministry of Education for the implementation of publicly valid adult education and training programs.*

*Adult education and training was realized for 1.056 persons. The share of women was 50.8%, young people 37% and long-term unemployed (job seekers for longer than 12 months) 43.2%. About 42% of participants in this measure are persons from the municipalities of the Northern Region.*

*Programs for acquiring professional qualifications were realized for 427 persons, and programs for acquiring key skills for 629 unemployed persons, which identified the need for adopting additional knowledge, skills and competencies required in the labour market.*

### Public Work

*Starting from the program goals determined based on the needs and possibilities of hard to employ persons, the needs of beneficiaries of public interest programs, all in funds available for these purposes, the Agency implemented public works programs for 1,327 participants in the respective period. The realization of this measure enabled a priority employment for hard to employ persons for a fixed period of time lasting from three to five months to preserve and improve their working abilities. Females participated with 59.2%, young people 29.1%, and long-term unemployed persons with 27.5% in the public work programs. About 60% of participants in this measure are persons from the municipalities of the Northern Region.*

*Recognizing the importance of developing a social service for people with disabilities, the Agency, in cooperation with public institutions and the civil sector, implemented a public work program "Personal Assistant". This program employs 507 persons, for a fixed period of time, with an average duration of five months, on the jobs of providing assistance and support for 1,221 persons with disabilities. In order to provide support to the elderly in a state of social need, a public work program "Care of the Elderly" was implemented. In this program, 110 persons, for a fixed period of time, for an average duration of five months, were employed on geronto housewives/housemen jobs, for 920 users. Through the programs of environmental protection, educational, cultural and other socially useful programs, 630 persons, who are on the Agency's register list, are employed for a fixed time with an average duration of three months. In order to adequately prepare Montenegro for the tourist season, in cooperation with the Ministry of Sustainable Development and Tourism, the PE Morsko Dobro, the municipalities of the Capital Town, Old Royal Capital and public utility companies, the public work "Let It Be Clean" for a period of four months was realized. Through this work, 80 unemployed persons, who are on the Agency's register list, are employed on cleaning and maintenance of main and regional roads in Montenegro.*

*Other measures aimed at increasing employment, i.e. reducing unemployment were realized through the Pilot program of support to the hard-to-employ people in the preparation and activation in the labour market "Empower me and I'll Succeed" (me. "Osnaži me i uspeću") and the Program of training and employment of young people with higher education in the field of prevention of informal business operations "Stop grey economy".*

- *A pilot program of support for hard-to-employ people in preparing and activating on the labour market "Empower me and I'll Succeed"*

*The Employment Agency of Montenegro, in cooperation with employment agencies, started the implementation of the pilot program of support for hard-to-employ people in preparing and labour market activation "Empower me and I'll Succeed" at the end of June 2018. The program was created on the basis of national and European guidelines and recommendations, with the aim of providing support to the elderly, with priority to women, former beneficiaries of allowance due to the birth of three or more children and beneficiaries of financial support of the family, in preparation and labour market activation. A partnership approach to tackling the unemployment problem of hard-to-employ people will contribute to strengthening the capacities of personal and professional development of these persons in the process of recognizing, planning, creating and managing careers, as well as developing and improving job seeking skills as a key precondition for solving the unemployment problem. The program encompassed 925 hard-to-employ people, of whom 538 women, ex-beneficiary of multiple birth benefit, and 185 beneficiaries of family financial support. Program activities will be realized for up to six months. In the period of program implementation, participants are primarily provided with psycho-social support in personal and professional development during the first part of the program implementation, for one month. After providing psycho-social support, in the second part of the program implementation, lasting up to five months, immediate help is provided in finding a job for 50% of the participants who were successful in the first part of the program.*

*The respected program included 95.7% women, 37.6% people older than 50 years, 22.2% long-term unemployed persons and 8.2% persons under 30 years of age. About 44% of participants in this measure are persons from the municipalities of the Northern Region.*

- *Program "Stop the Grey Economy"*

*This program enabled training and employment for six months for 180 persons with acquired higher education, up to 30 years of life and work experience in the shortest period of nine months. The program is being implemented in cooperation with the Tax Administration, the Administration for Inspection Affairs and the Police Administration. During the program period, participants acquire usable knowledge and skills and provide technical support and assistance to the officials of these administrations in order to suppress informal business with continuous mentoring.*

*The participation of women is 56.7%, long-term unemployed 15%, and participation of persons from the northern municipalities is 38.4%.*

*In the current, as in previous years, the Agency also participated in the realization of vocational training of persons with higher education.*

*The professional training of persons with previously acquired higher education is carried out in accordance with the Law on Vocational Training of Persons with Acquired Higher Education. The right to vocational training have persons with acquired higher education having no working experience in the specific level of education and are on the Employment Agency's register list.*

*In the respected period, the program is implemented for 3.055 persons with higher education (1,458 persons in the public sector and 1,597 persons in the private sector). The beneficiaries of the program are professionally trained for a period of nine months, during which they receive compensation in the net amount of 50% of the average net salary in Montenegro in the previous*



year. The participation of women in the total number of persons involved is 58%, and the participation of persons from the municipalities of the Northern Region is 24%. Furthermore, the data related to the continuing professional development and training carried out by the Human Resources Management Authority for the period from 1 January to 30 October 2018:

In the period from January 1 to 30 October, 2018, the Human Resources Management Authority organized 159 trainings on various topics, for 2098 employees in state administration and local self-government (1312 women and 749 men). Trainings are organized through different programs:

- Vocational training program and state-level training of civil servants and state employees: 41 trainings for 844 civil servants and state employees
- Training of local civil servants and employees: 30 training for 498 local civil servant and state employees
- Specific programs: 28 trainings for 366 civil servants and state employees
- Other seminars (realized by project, conclusion, action plan ...): 61 trainings for 418 civil servants and state employees.

***The Committee wishes to be informed about the implementation of the Law on Employment and Exercising Rights with respect to Unemployment Insurance and asks what special assistance is given to persons with family responsibilities wishes to return to work after parental leave.***

#### **ANSWER:**

*The Law on Employment and Exercising Rights with respect to Unemployment Insurance (“Official Gazette of Montenegro”, No 14/10, 45/12, 61/13, 20/15 and 52/16) stipulates that “an **unemployed person** shall be a person from 15 to 17 years of age who is a Montenegrin citizen and a foreigner with an approved permanent residence, recognized status or approved additional protection, who is registered at the Employment Office of Montenegro, capable to work or partially disabled, who did not enter into an employment contract and is actively seeking employment”.*

*This Law does not apply the term: “**person with family responsibilities**”.*

*The Employment Agency establishes an individual employment plan with all unemployed persons. **An individual employment plan is an agreement between the Employment Agency and the unemployed person about job search activities and involvement in active employment policy measures.** In accordance with new knowledge and changed circumstances in the labour market, the individual employment plan is amended.*

*Unemployed persons are obliged to perform the activities defined by the individual employment plan.*

*Rulebook on the conditions, manner, criteria and scope of implementing active employment policy measures (“Official Gazette of Montenegro”, No 27/12) laid down that unemployed persons, according to employability degree are classified as:*

- *immediately employable person;*
- *conditionally employable person;*
- *harder-to employ person.*

***The classification of unemployed, according to the degree of employability, is the basis for his/her inclusion in appropriate measures of active employment policy.***

*The criteria for classification of an unemployed person according to the degree of employability are:*

- *matching of the educational profile of the unemployed with the needs of the labour market;*
- *health and social status of the unemployed;*
- *job seeking time;*
- *motivation for active job search.*

***It is not prescribed under the Law on Employment and Exercising Rights with respect to Unemployment Insurance that special assistance is given to persons with family responsibilities wishes to return to work after maternity leave.***

*We are informing that concerning the employed person, after the completed maternity/parental leave, s/he returns to his/her work place and the employer is obliged to provide the employee, upon expiration of the maternity i.e. parental leave, with a return to the same position or to a suitable position with at least the same salary.*

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 2 - Parental leave*

The Committee takes note of the information contained in the report submitted by Montenegro.

According to Article 111 of the Labour Law parental leave is entitlement of one of the parents to use absence from work for the purpose of providing child care. Parental leave may be used for 365 days from the birth of the child. The parent may start working even prior to expiry of the leave (365 days), but not prior to expiry of 45 days from the birth of the child. In this case, the parent shall not be entitled to continue to use parental leave.

***The Committee asks whether fathers have a non-transferrable right to parental leave and if so, what is its length.***

### **ANSWER:**

*According to the applicable Labour Law, fathers have the right to parental leave, but this right is not transferable. The father can use that right after the expiration of the mandatory 45 days from the date of birth of the child given the date of being mandatory for the mother of the child.*

*However, the new Labour Law, whose drafting is in progress, provides for the non-transferable right of a father to parental leave. The right to parental leave has both parents in equal parts.*

*Parental leave can be used after the expiration of the period of 70 days after the birth of the child, and this is the period that the employed woman is obliged to use. Except for this right, the parental leave that a parent has started to use may be transferred to another parent after the expiration of a period of 30 days from the beginning of its use.*

*The new proposal of the Law envisages the possibility of transferring the right to one of the parents and prescribes:*

- (1) "If one of the parents dies or for the other justified reason is prevented from using the right to parental leave referred to in Article 121 paragraph 4 of this Law, the right to part of his parental leave is transferred to another parent.*
- (2) The justified reason referred to in paragraph 1 of this Article shall mean:
  - 1) if one of the parents is: deprived of parental rights; deprived of business ability; declared to be missing, unknown, unknown place of residence or place of stay; or, according to the findings of the competent social work centre, grossly neglect a child;*
  - 2) when one of the parents of a child, for the protection of a child, on the basis of a court decision, banned or restricted contacts with the child;*
  - 3) when one of the parents of a child is seriously ill or dependent on the assistance of another person, for which s/he has been prevented for a long time or is significantly limited in carrying out his/her parental care, according to the findings of the competent specialist doctor;**

- 4) *if one of the parents is engaged as a military person in a military mission outside Montenegro, provided that the written declaration waived the right to use parental leave for the benefit of another parent;*
  - 5) *when one of the parents is serving a sentence of imprisonment.*
- (3) *Provisions of para. 1 and 2 of this Article shall also be applied to the transfer of adoption and foster care, provided that the beneficiary to whom this right is transferred meets the requirements in accordance with this Law. "*

*The work program of the Government of Montenegro planned to make Proposal of the Labour Law concluding with the second quarter of 2019.*

## **Article 27 - Right of workers with family responsibilities to equal opportunity and treatment**

### *Paragraph 3 - Illegality of dismissal on the ground of family responsibilities*

The Committee takes note of the information contained in the report submitted by Montenegro.

### ***Protection against dismissal***

The Committee notes that according to Article 108§3 of the Labour Law, during absence from work for the purpose of nursing a child and parental leave an employer may not terminate the employer's contract of employment. An employer may not terminate contract of employment of employees nor declare them redundant due to introduction of technological, economic or restructuring changes, who are working on part time due to providing care to a child with severe developmental disabilities, as well as single parents with a child up to seven years old or a child with severe disability.

***The Committee asks whether such protection equally applies to fathers on parental leave.***

#### **ANSWER:**

*The legislator prescribed the right to parental leave to the parent, not making the difference whether it is a mother or father, except for the mandatory part that belongs exclusively to the mother of the child, which is 45 days after childbirth. Therefore, all protection of an employee based on the right to parental leave from work for care and care of a child applies to both mother and father.*

### ***Effective remedies***

***The Committee asks for the case law examples specifically relating to dismissal of persons with family responsibilities. It asks whether the legislation sets an upper limit to the amount of compensation that is awarded in case of unlawful dismissal on the ground of family responsibilities.***

#### **ANSWER:**

*The Labour Law prescribes protection against dismissal for employees with family responsibilities in the situations listed in the previous report. In case of dismissal by the employer, the Law does not set the upper limit of the amount of compensation, but prescribes the protection of an employee in such a way that if it is determined in the procedure before the competent court or the Agency for Amicable Settlement of Labour Disputes that an employee's contract of employment was terminated without legal or justifiable grounds, he/she shall be entitled to a compensation of financial damage in the amount of the lost salary and other*

*earnings he/she would earn at work, in accordance with the law, collective agreement and contract of employment, and payment of contributions for mandatory social insurance.*

*Criminal Code of Montenegro incriminate a criminal offence “Breach of Labour Rights” and in Article 224 prescribes that anyone who knowingly does not abide by laws or other regulations, collective agreements and other general legal acts on labour rights and occupational health of youth, women and persons with a disability and thereby denies or limits the statutory right of another person shall be punished by a fine or a prison term up to two years. Also, the same Article, paragraph 2 prescribes that anyone who terminates a contract of employment to an employee who reported or addressed to the competent persons or bodies due to a reasonable suspicion that a criminal offense was committed with the characteristics of corruption shall be punished by a prison term up to three years.*

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