



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

T-ES(2016)RFG-MNE

LANZAROTE CONVENTION

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

FOCUSED QUESTIONNAIRE

Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse

MONTENEGRO

(Replies sent by the State)

Replies registered by the Secretariat on 26 September 2016

INFORMATION

Montenegro's preparations for EU membership concerning policy on asylum and migration management include extensive legislative and institutional changes that already today reflect the overall legal and social order of the country. Thanks to these changes, in a relatively short time Montenegro has strengthened the capacity to manage mixed migration. However, the establishment of an efficient asylum system, based on the principles of respect for human rights and freedom, continues to represent one of the key challenges, given the increase in migration pressure on Montenegro. Although the legal, institutional and administrative structures to manage migratory movements is in place, Montenegro has to undertake significant efforts to align legislation with the EU acquis and international standards in this area, concerning the scope of protection and procedures and accommodation of persons with special needs. On the other hand, the very existence of national regulations and ratified international agreements is not sufficient to ensure adequate application of standards in practice. Therefore, raising the level of institutional and administrative preparedness for the protection, rehabilitation and integration of unaccompanied migrant minors/juveniles and other vulnerable groups of migrants is one of the key priorities in this respect, bearing in mind that the responsibility for the care and accommodation of foreign minors is an international obligation of Montenegro, which has become part of its legal system.

The refugee crisis, which is currently affected by a number of countries that are facing various difficulties in working with migrants, bypassed the state of Montenegro. The stated is provided by statistical information of both, adult migrants and children of which data are listed below.

In the event that Montenegro becomes one of the countries that would be included in the migration crisis, the Action Plan has been adopted in case of a mass influx of migrants and refugees on the border of Montenegro, wherein obligations are described in details of all relevant state institutions, international and non-governmental organizations, the division of obligations and the competences of each of them.

Institutional framework

Primarily, it is necessary to delineate the duties and responsibilities of institutions in Montenegro that are responsible for working with persons in the asylum system.

The Directorate of Asylum at the Ministry of the Interior receives requests for asylum, conducts procedures and makes decisions on the asylum application, makes decisions on the cessation and revocation of asylum, conducts the procedure and makes decisions on the status of persons who already have the status, issues documents to prove identity and travel abroad, legal status and rights in accordance with regulations, keeps track of the situation in the country of origin, conducts the procedure for approval or suspension of additional protection, temporary protection and other activities in the field of asylum.

The Border Police Sector carries out the border control; gives consent for issuing visas at the request of the diplomatic - consular missions of Montenegro; exceptionally issues visas at the border crossing; cancels the stay of up to 90 days and a temporary stay;

cancels the stay of a foreigner on the basis of issued visa for a long stay (type "D" visa); sets deadline for leaving Montenegro to a foreigner who is residing illegally in the country; executes measures of expulsion of foreigners; determines the accommodation of a foreigner in the Shelter for foreign persons; determines the mandatory stay of a foreigner who cannot be forcibly removed immediately; decide on the termination of compulsory residence and others. Within this sector, there are departments of border security, as well as the Department for foreigners, visas and prevention of illegal migrations, and its role, when it comes to underage unaccompanied migrants, relates to the determination of identity, connecting with family and readmission.

The Shelter for foreign persons is organized as an organizational unit of the Department for foreigners, visas and prevention of illegal migrations. The Shelter was built with the support of the European Union and the International Organization for Migration (IOM) and it has the capacity to accept 46 persons, with a separate area for men and women.

The Administration for Care of Refugees performs duties of care for asylum seekers, who are recognized the status of refugees or granted subsidiary or temporary protection. The care of refugees includes assistance in exercising their right to accommodation in the Centre for asylum seekers or other accommodation, as well as providing assistance to asylum seekers and those granted asylum in exercising their right to social protection, health care, education, humanitarian aid, legal assistance, labour and other legal rights.

The Centre for Asylum Seekers is a separate unit of the Administration for Care of Refugees. It was opened on 3 February 2014, and put into operations on 20 February 2014. It is located in Spuž (Danilovgrad) has a capacity to accommodate 65 people (with the possibility of increasing the capacity to 100 beds in accordance with the AP for Chapter 24). In order to evaluate occupancy and adequacy of the capacity in the Centre, a monitoring mechanism is established, with a special focus on vulnerable groups with the support of UNHCR, and based on direct insight and 15-day reports drawn up by the Centre. A semi-annual report is drawn up, too.

The Centre for children and youth "Ljubovic" is a public institution for children and youth, non-institutional type, founded in 2006. Children (under 18 years of age) are placed in the centre, whom, in criminal proceedings, is pronounced a measure of committal to an educational institution or a measure of increased supervision with daily stay in an institution for educating minors; on other basis of a court in criminal proceedings instead of detention; the court's decision in extra-judicial proceedings in the case of behavioural disorders in the child who requires an organized educational influence and separation of the child from the environment in which he lives; measures of referral to an educational institution of non-institutional type, imposed in misdemeanour proceedings; decisions of the guardianship of children without adequate parental care. In addition, in a separate part of the Centre are also placed minor foreigners (under 18 years of age) who illegally entered Montenegro, because there are no special shelters for children foreigners and asylum seekers.

A part of the relevant institutional framework also includes centres for social work which are part of the departments of the Ministry of Labour and Social Welfare (centres

for social work are guardianship authorities) which are responsible for the custody of minor asylum seekers, as well as health centres and other public medical institutions that provide health protection.

Feasibility study for strengthening the capacity for accommodation, protection and rehabilitation of unaccompanied migrant minors and other vulnerable groups of migrants and Guidelines for the treatment of unaccompanied minors (accommodation, protection and rehabilitation) and other vulnerable groups of migrants.

Development of the Study is envisaged by the Action Plan for Chapter 24 (measure 1.2.18) whereby, *inter alia*, the recommendation from the Screening Report for Chapter 24 is operationalized to strengthen capacities for accommodation, protection and rehabilitation of unaccompanied minor migrants and other vulnerable groups of migrants. The activity holder is the Ministry of Labour and Social Welfare of the Government of Montenegro in cooperation with the non-governmental organisations CEDEM and the Civic alliance with the expert support of the European Commission (TAIEX mission).

Beginning with characteristics of the migratory movements and asylum system in Montenegro, the Study is focused primarily on the construction of those parts of the system, whose absence in practice prevents or limits the opportunities for involvement of underage migrants in the system of protection, such as a matter of urgent admission, care and access to rights in the field health care, education and employment. The Study was primarily focused on migrant children, in particular the unaccompanied minors, including asylum seekers, bearing in mind them being separated from a parent, guardian or other adult responsible for them by law or custom, are at increased risk of sexual and labour exploitation, human trafficking and other forms of abuse and violence.

The aim of the study was to examine the feasibility and possibility of investing in capacity building, conditions and procedures of accommodation, care and rehabilitation of juvenile migrants and other vulnerable groups of migrants, in a way that is effective and legitimate and protecting the rights of these persons. By developing the Study are achieved the following specific objectives: 1) an overview of the current situation, identifying the key problems/risks and developing recommendations for improving the situation; 2) documenting the content and viability of existing services and capacity for protection, rehabilitation and integration of juvenile migrants; 3) analysis of existing and planned spending projections for the protection, rehabilitation and integration of juvenile migrants and other vulnerable groups. The Government of Montenegro approved the Strategy on 23 July 2015.

The Ministry of Labour and Social Welfare of the Government of Montenegro approved the *Guidelines* for the treatment of unaccompanied minors (accommodation, protection and rehabilitation) and other vulnerable groups of migrants *on 8 December 2015*.

Since its opening, the Centre for Asylum Seekers has been working on the strengthening capacities of officials to work with unaccompanied minor migrant, as

well as members of other vulnerable groups, through training, which is carried out continuously. Officials of the Centre that have a direct and daily contact with juvenile migrants are psychologist, social workers, an educator and medical staff.

A special attention is paid to the members of this vulnerable group in the Centre in order to provide appropriate adequately care to meet all the needs of these people, in the best interests of the child, and in accordance with the *Guidelines for the treatment of unaccompanied minors*. Members of this category of persons, as well as all members of vulnerable groups are, without exception, provided intensified psychosocial and medical care, additional help with clothing, shoes and hygiene, help in achieving the rights and made available to all the resources of the Centre

FOCUSED QUESTIONS

DATA (Lanzarote Convention, Chapter III)

- 1) How many migrant and asylum-seeking children (accompanied and unaccompanied)¹ are in your country as a result of the refugee crisis?
 - a) Please provide estimates, if exact data is not available, for the period between 1 July 2015 and 30 June 2016,² and specify how many of these children are victims or presumed victims of sexual exploitation and sexual abuse;

The Law on Asylum defines that an unaccompanied minor is an alien younger than 18 years of age who has been left without the attendance of either parent or guardian either before or after his or her arrival in Montenegro, until he or she has been placed under guardianship.

From 1 July 2015 to 30 June 2016 there have been 10 minors with attendance of either parent or one parent who has submitted an asylum application. There were not a single one unaccompanied minor who requested an asylum in Montenegro within the stated period.

The Centre for Asylum Seekers accommodated and took care of five minor persons accompanied by either or one parent in the period from 1 July 2015 to 30 June 2016. There were no victims of sexual exploitation and sexual abuse in the Centre for Asylum Seekers among accommodated and taken care of minors.

- b) Describe how the victims of sexual exploitation and sexual abuse were identified or describe the challenges faced to identify them. Specify whether a distinction is made between victims of sexual exploitation/abuse prior to the entry on your territory (Group 1) and after entry (Group 2) and provide data/estimates of the

¹ Please provide the definition of accompanied/unaccompanied children in your country and, if available, provide separate figures for accompanied and unaccompanied children. If such data is not available, please provide data on migrant and asylum-seeking children.

² If figures for this period are not available, please provide the most recent annual data.

two groups of victims. Please also explain how the age is determined in case of doubt;

Persons who are experts for identification and work with disadvantaged and vulnerable groups realize direct contact and discussions that take place with asylum seekers at the Centre. The team that establishes communication, assesses and monitors all relevant behavioural changes during the stay of asylum seekers in the Centre is composed of 1 psychologist, 4 social workers, 1 teacher and 4 medical workers.

If a person who belongs to a vulnerable group comes to the Centre, as it would *inter alia* be a person who is a victim of sexual exploitation and sexual abuse, the team is required to devote their extra attention on a daily basis in order to provide them with adequate medical and psychosocial assistance.

The very process of identification is difficult because foreign nationals generally do not have identification documents. The identification is made even more difficult by the lack of prescribed procedures and/or protocols for assessing the age of the minor, causing frequent cases that adult migrants declare themselves as older minors to avoid misdemeanour prosecution for illegally crossing the state border and ensure favourable treatment applicable to minors. The practice so far, however, confirmed that the police officers, in most cases, respected the testimony of minors, which is in line with international standards, which provide that, in cases where it is not possible to determine their exact age, accepts as valid the information that is communicated by the minor.

When it is apparent, or when it is probable that a foreigner is under the age of 18, unaccompanied, police officers contact the guardianship authority or centre for social work in order to achieve co-ordinating functions, to participate in the proceedings against that person, and decision-making from the jurisdiction of the social authority, all with the aim of protecting the rights of the minor migrant.

Identification and determination of the age of a minor is done with full respect of the right to human dignity and integrity of the child, it does not approve inappropriate and intrusive nature of the medical techniques for age estimation, and the controversial nature and large deviations of some methods based on skeletal maturity or teeth mineralization.

The Protector of Human Rights and Freedoms of Montenegro is in constant touch with the Centre for Asylum Seekers and PI Centre "Ljubovic". In addition, the Ombudsman cooperates with the Office for Fight against Trafficking in Human Beings and takes common measures to prevent and protect children from sexual abuse.

- c) Indicate also how the data collected is used to offer a coordinated response between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children;

When it comes to asylum seekers and people with approved status, with a special focus on vulnerable groups for which is applied intensified and meaningful treatment, all agencies in charge for the safety of these persons have a networked, coordinated and, now, exactly defined principle of functioning. National authorities, international

institutions and non-governmental organizations are involved in dealing with these persons. Each of these institutions has its own jurisdiction, which is obliged to fulfil both legally and morally. In addition to competencies of which is the duty to execute in the context of their own, no institution is working alone when this group of persons is in question, but it is a team and coordinated work, to avoid the possibility to omit any part of the procedure and to eliminate the possibility to breach the rights or jeopardize those persons in any way.

- d) Identify the institution(s) responsible for the collection of above data.

Institutions primarily responsible for the collection and the establishment of further cooperation with other relevant institutions are the Ministry of Interior and Ministry of Labour and Social Welfare. This kind of cooperation has not been established so far, because cases of sexual exploitation and sexual abuse of minors have not been identified yet.

PREVENTION (Lanzarote Convention, Chapter II)

- 2) What are the specific measures taken to prevent that children affected by the refugee crisis fall victims of sexual exploitation and sexual abuse?
 - a) Highlight in particular the measures (e.g. awareness raising material, specialised training, screening of professionals, etc.) which have proven to be effective;
 - b) Underline any lessons learnt from specific challenges (e.g. in raising awareness on sexual violence amidst other urgent priorities, etc.) that had to be faced to improve prevention.

Trainings for employees aimed to prevent, identify and work with those people are constantly being implemented in the state institutions in charge of work with these persons.

Unaccompanied children affected by the refugee crisis are granted primarily a legal guardian who is required to represent legally the child and to protect the interests of the child. After being cared for in the Centre for Asylum Seekers, the professional staff of the Centre performs round-the-clock care for unaccompanied minors who are assigned a guardian and minors accompanied by one or both parents. The staff is obliged to follow the movement of the child on a daily basis, socializing with other persons residing in the Centre, psychophysical condition of the child and any changes that occur during their stay at the Centre.

Children undergo occupational therapy, training of children are conducted by official staff of the Centre and the officers of the Ombudsman's office, officials of UNHCR, UNICEF, Red Cross, etc., as well as non-governmental organizations specialized in working with these individuals as well as e.g. Women's Safe House, which has a multi-year experience in working with members of this group.

Flyers and various types of other written materials are available in the Centre for Asylum Seekers at the visible and accessible to all of cared persons place in languages the most migrants communicate. They contain all the necessary information about the institutions, which they can address to and with basic information about all the challenges and difficulties that may encounter during migration and how to protect them.

Expert visits with the support of TAIEX, held by Cedric Dartois, are maintained several times, on the theme of terms for admission of vulnerable groups.

The Head of the Office for Fight against Trafficking in Human Beings and the Human Resources Management Administration (HRMA) organized training on the theme: "Strengthening skills for early identification of potential cases of trafficking in human beings in Montenegro"

The Institute for Human Rights, in cooperation with the Commissioner for Migration of the Republic of Serbia and with financial support from the Swiss Federal Office for Migration, organised a training held on the theme "Protection of migrants and refugees".

The Women's Safe House also organized and held the Training for character recognition and treatment of victims of trafficking and victims of violence.

Training "Supporting Western Balkan Countries in Efficiently Responding to the Challenges Posed by Migration of Unaccompanied Minors" was organized by the IOM Office.

Regional Workshop "The regional dialogue on a common approach and action in addressing migration of unaccompanied minors from and through the Western Balkans" was organized by IOM.

Training "The Fight against Trafficking in Human Beings" was organized by Human Resources Management Administration (HRMA).

Stated trainings testify about the cooperation of state and international institutions, and nongovernmental organizations, as well as on how much priority is given to vulnerable groups and improving the work with these people in order to conduct an assessment on the more adequate manner possible and the work with these individuals to be as quality as possible.

PROTECTION (Lanzarote Convention, Chapter IV)

- 3) Has a coordinated child protection approach been put in place to cater for the specific needs of migrant and asylum-seeking children victims of sexual exploitation and/or sexual abuse?
 - a) Describe the measures taken to address the situation and cater for the children's specific needs (multiple traumas, language/cultural differences, etc.), including with respect to guardianship/placement;

Children always have access to the asylum procedure, regardless of their age. Basic and guiding principle of the protection of children, even in the asylum procedure, is the principle of "the best interests of the child". Children, who are seeking asylum, particularly if they are not accompanied by adults, are entitled to special care and protection. Children belong to the vulnerable category of persons and/or persons with special needs, and therefore, special procedures and mechanisms of protection should be used to treat them accordingly. Due to their vulnerability and special needs, requests for asylum of minors have priority in solving and decisions are made within 30 days from the date of application. During the procedure, it is taken into account the accommodation, mental and physical condition and the best interests of the minor and

measures to locate his/her family. In the asylum procedure, the special attention is paid to preserve the unity of the family. Interviews with children in the process of determining refugee status are performed by the officers of the Directorate of Asylum who have undergone special training programs to talk with this category of people, appropriate to their age and possessed adequate knowledge of the psychological, emotional and physical development and behaviour of children. Communication with a child is executed separately, through an interpreter and in the presence of a guardian. The opinion of a child is paid due attention in accordance with the age and maturity. Although the same definition of a refugee applies to all individuals regardless of their age, in the examination of the facts stated in the application of an unaccompanied minor, special attention is paid to the circumstances, such as the child's stage of development, possibly limited knowledge of conditions in the country of origin and their significance for the legal concept of refugee status, as well as their special vulnerability. Children can show their fears in ways that are different from adults. Therefore, an examination of their applications are paid special attention, applying procedural safeguards measures created for determining the best interests of the child. Finally, the decision is based on an examination of a unique set of factors in each case, as they were presented by each child, including his/her personal, family and cultural background.

- b) Indicate also what measures have been taken to protect the children concerned from further exploitation/abuse and to assist the victims in seeking redress (please highlight any differences between Groups 1 and 2 of children as outlined above);
- c) Underline any lessons learnt from specific challenges (in reporting suspicion of sexual exploitation and abuse, in tailoring assistance to the victims, etc.) that had to be faced to improve protection.

In the case of identification of a minor as a victim of sexual exploitation and sexual abuse, the Centre for Asylum Seekers would contact other relevant institutions that are obliged to provide support and protection to these persons under urgent procedure. The Centre for Asylum Seekers would, if necessary, contact primarily the relevant competent service of the Ministry of Internal Affairs and the Centre for Social Work, which is under the competence of the Ministry of Labour and Social Welfare. This group of people would be provided separate accommodation, adequate medical care and psychosocial assistance in the Centre for Asylum Seekers. The overall procedure and work with these individuals would be performed in the presence of a guardian, in a language that is understandable to the child with the provision of an interpreter, in order to exclude the language barrier and with a team, which has expertise in dealing with these persons, such as psychologists, social workers and medical staff.

As stated, the Centre for Asylum Seekers, would contact other relevant institutions that are obliged to provide support and protection to these people under urgent procedure. The Centre for Asylum Seekers, if necessary, would contact primarily the relevant persons of the Ministry of Internal Affairs, in order to process legally such cases.

COOPERATION (Lanzarote Convention, Chapter IX)

- 4) Provide examples of successful cooperation with other Parties to the Lanzarote Convention for the purpose of:

- a) Preventing and combating sexual exploitation and sexual abuse of children affected by the refugee crisis;
- b) Protecting and providing assistance to victims;
- c) Investigations or proceedings concerning the offences established in accordance with the Lanzarote Convention.

The competent authorities of Montenegro have excellent communication with representatives of the competent authorities of neighbours and other signatories to the Lanzarote Convention, on which occasion, there have been the exchange of data and information concerning the prevention and fight against sexual exploitation and sexual abuse of children affected by the refugee crisis, examples of protection and assistance to victims, as well as investigations relating to criminal offenses in accordance with this Convention. Given that Montenegro is not affected by refugee crisis, and that there was no identified victims of sexual abuse and sexual exploitation, we have no cases that could be demonstrated statistically in relation to the above.

ANY OTHER ADDITIONAL INFORMATION

- 5) Please provide any other additional information which may be useful to identify areas for targeted cooperation aimed at ensuring that children affected by the refugee crisis are effectively protected from sexual exploitation and sexual abuse and in guaranteeing their human dignity and physical and psychological integrity.