



T-ES(2014)THE-ME

LANZAROTE CONVENTION

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

Replies to the thematic questionnaire

MONTENEGRO

1st thematic monitoring round

“Sexual abuse of children in the circle of trust”

Replies registered by the Secretariat on 14 February 2014

DATA COLLECTION

Question 1: Data on sexual abuse in the circle of trust

Please indicate whether data are collected for the purpose of observing and evaluating the phenomenon of sexual abuse of children in the circle of trust. If so, please:

- specify what mechanisms have been established for data collection or whether focal points have been identified especially with regard to statistical data on victims and offenders within the circle of trust (**Article 10 (2) (b), Explanatory Report, paras. 83 and 84**);
- include any relevant data in an Appendix.

Answer:

There is no single record or database of children – victims of sexual violence; instead, each institution has its own records.

Database on child protection, which refers to the social and child protection, has been established at local and national levels, in order to contribute to improving the monitoring and planning of child protection, as well as to developing programmes for improvement thereof.

The application has been put into operation in early 2012, so employees of social welfare centres are inserting all new cases, as well as the rights already achieved in previous years.

Within the multidisciplinary teams, each case of violence is processed separately, with all of its characteristics and particularities.

Data exists in all health care institutions in paper form.

The perceived shortcoming of the protection of children is that an insufficient number of cases of sexual abuse and exploitation of children is addressed before courts, and the reason for this, according to professionals, is the problem of provability, i.e. the inability to conduct effective investigations, which often leads to a delay in the proceedings and the situation in which the victims give up. For example, in the period from 2008 to 2011, 61 criminal charges were filed to Basic Courts in Montenegro in relation to sexual exploitation of children, whereas 44 convictions were pronounced for these criminal offences; according to the records of the Basic Public Prosecutor's Office, 58 criminal charges were filed and there were 27 convictions made.¹

During 2012, in cooperation with ombudspersons of the region, with the support of Save the Children from Norway, the second phase of the project "Improvement of the status of the child with a view to protection against all forms of exploitation" was implemented. This phase referred to the protection of children from sexual exploitation. The results of the survey conducted in Montenegro indicate that cases of sexual exploitation and abuse of children were registered in all

¹ "A Report on the sexual exploitation of children in Montenegro", within the regional project of the Children's Rights Ombudspersons' Network in South and Eastern Europe, "Improvement of the status of the child with a view to protection against all forms of exploitation", 2010.

regional units of the Police Administration, public prosecution offices, and in most social welfare centres (57.14%). Half of the Basic Courts reported cases of sexual exploitation of children, which indicates that a small number of cases are addressed before courts.

Often there are situations in which, when there is a suspicion that a child is sexually exploited, the case is not reported due to a lack of physical evidence, the problem of a small community, and the like. Professionals themselves often do not have the support of parents and families with whom the child lives, because in most cases the family does not accept any such indications as possible, giving more trust and attention to the testimony of an adult (a possible perpetrator of the abuse), than to the child's statement. All of the above is very disturbing because it indicates a problem in the procedures of reporting, identification of child victims, inter-agency cooperation, investigation and prosecution of cases of sexual exploitation of children, and child safety in the protection process itself.

PREVENTION

Questions in this section aim specifically at collecting information on policies and strategies to prevent sexual abuse particularly in the child's circle of trust. The questions thus concern awareness-raising of children themselves as well as of persons working in regular contact with them, thus forming a part of their circle of trust.

Question 2: Education for children

The reply to question 8 of the GOQ will be examined by the Committee to assess the implementation of **Article 6** with respect to the theme of the monitoring round. While replying to this question, please therefore only add whether a special attention is drawn to children's education concerning the risks of sexual abuse of children in the circle of trust, and how children should protect themselves and request help in this regard. If so, please provide details. (**Explanatory Report, paras.59-62**).

Answer:

Special attention is focused on educating children about the risks of sexual abuse in the circle of trust. To this end, certain measures to protect children have been envisaged, so that the children may seek assistance from professionals at school or from person that they trust the most. These potential measures include the following:

In order to protect children from all forms of violence and abuse and neglect, and consequently of sexual exploitation and sexual abuse, schools can take certain measures of protection and are establishing cooperation with relevant institutions. One of the most important measures is the implementation of the Protocol on the treatment of child victims of abuse and neglect. In this sense, there are schools that can apply the Protocol on the treatment of child victims of abuse and neglect in correlation between schools and a multidisciplinary operational team within the social welfare centres. This Protocol is dedicated to the care of the child victim within the school and in correlation between the school and a multidisciplinary operational team, with regard to any

degree and type of abuse or neglect. A special part of the Protocol is relating to the sexual abuse and exploitation.

In schools, letterboxes of confidence have been set and marked in a special place in which students can put their complaints against any kind of violence. On the basis of such complaints, the Protocol on the treatment of child victims of all forms of violence, abuse and neglect is activated. The box is opened by associates at school, and they are the first link in addressing all forms of violence in educational institutions.

Children can address the Protector of Human Rights and Freedoms in different ways (email, phone, Facebook, blogs), to seek for protection of their rights.

They can also contact the “Confidential Telephone” and Helpline to seek for assistance.

Within the survey “Sexual exploitation of children in Montenegro”, which the Institution of the Protector of Human Rights and Freedoms began in late 2011, various activities were carried out to educate children and raise awareness of the general and professional public on the concept, types and risks of sexual abuse and exploitation of minors. The Institution of the Protector conducted a series of workshops and focus groups with children of different ages on the topics of sexual exploitation and abuse, about the forms of abuse, the risks and manners of protection and seeking help. In addition, focus groups on the same subject were held with parents of different social structures. Within the campaign, representatives of the Institution held several panel discussions and lectures on the subject in order to inform the professional and general public on the issue, as well as on the risks that our children are exposed to on a daily basis. Special focus groups were conducted with professionals who work directly with children and for children, in order to verify the recognition of the problem, as well as the process of recognizing and working with children who are victims or potential victims of sexual exploitation. In this way, the Protector approached awareness-raising activities aimed at children, their families, professionals in direct contact with children, and the professional and general public in a comprehensive manner, aiming to raise awareness on the concept, types and risks of sexual abuse and exploitation of minors, as well as on the ways to protect them. All the activities were, inter alia, focused on the prevention and the development of prevention mechanisms.

Within the campaign “Answer to the sexual abuse of children SILENCE”, which followed the survey and its promotion, adequate promotional material such as flyers and posters was prepared and distributed to all educational institutions, social welfare centres and places where children spend time. All the activities have been undertaken to stop the “silence” and to encourage both, children and adults, to report cases of abuse and sexual exploitation of children.

The promotional material, as well as the content of the report prepared by the Protector of Human Rights and Freedoms can be found at the official website of the Institution at: <http://ombudsman.co.me/>

Question 3: Recruitment and screening

The reply to question 9 of the GOQ will be examined by the Committee to assess the implementation of **Article 5, para. 3** with respect to the theme of the monitoring round, paying particular attention to the recruitment and screening of persons whose professions involve regular contacts with children.

Answer:

The legislation provides for the issuance of a medical certificate of fitness to work in accordance with the requirements of the competition for employment, but does not require an explicit confirmation of whether the person has been convicted for acts of sexual exploitation and sexual abuse of children, if the work involves regular contact with children.

The Law on Civil Servants and State Employees prescribes the general requirements for employment in public administration bodies, so that the employment may be established if a person is medically fit to perform the job, has not been convicted of a crime that renders him / her unfit to work in public administration, and if no criminal proceedings have been instituted against the person for a criminal offence that is prosecuted ex officio.

In addition to the general conditions and other conditions stipulated in this law, the special law, other regulation or act on internal organisation and job descriptions, other requirements for employment may also be prescribed.

Medical fitness to perform the job is proven by a certificate issued by the authorised health care institution in accordance with the law.

Question 4: Raising awareness on sexual abuse in the circle of trust

Have policies or strategies been implemented for promoting or conducting awareness-raising campaigns where the focus is directed especially towards the risks and realities of sexual abuse of children in the circle of trust? If so, please specify for whom these campaigns were/are run (**Article 8, Explanatory Report, paras. 65-66**). Please include examples by providing links to what has been developed.

Answer:

Action Plan: Montenegro has adopted the Action Plan for the Fight against Sexual Exploitation and Sexual Abuse of Children through the implementation of the action plan of the Council of Europe campaign “One in Five” for Montenegro.

<http://www.gov.me/en/News/111538/Montenegro-joins-Council-of-Europe-campaign-to-stop-sexual-violence-against-children.html>

<http://www.gov.me/en/News/112301/Montenegro-initiates-preparations-for-participation-in-CoE-campaign-One-in-five.html>

The national Action Plan for campaign “One of Five” for Montenegro was adopted on 11 April 2012, encompassing the activities from April to November of the same year.

<http://www.gov.me/en/News/113207/Montenegro-national-team-for-CoE-One-in-Five-campaign-adoptsactivities-for-April-November-2012.html>

The national Action Plan for campaign “One of Five” for Montenegro was praised by Ms. Tiina-Maria Levamo from the Council of Europe: “Thank very much for sending us your excellent and thorough campaign plan. We were very impressed by it, and in fact, a thought crossed my mind that your plan could serve as an ideal model for other campaigning countries on how they could plan and report their campaigns”.

<http://www.gov.me/en/News/112301/Montenegroinitiates-preparations-for-participation-in-CoE-campaign-One-in-five.html>

Field of action: The actions of the Council of Europe campaign “One in Five” for Montenegro related to the following areas: health, education, educational and social institutions, public and local government, prosecution offices, judiciary, police, government agencies, private and public sector, as well as the information society and telecommunications.

Bodies tasked with implementation of activities: The campaign “One in Five” for Montenegro has been conducted under the auspices of the Government of Montenegro, while the National team for the implementation of the campaign included a broad structure of social factors, according to the proposal by the Council of Europe: starting from the Parliament of Montenegro, through the relevant Government departments, prosecution offices and the judiciary, the Police Administration, the Union of Municipalities, The Protector of Human Rights and Freedoms of Montenegro, representatives of national and foreign partners, the Office for the Fight against Trafficking in Human Beings, the Interpol representatives in Montenegro, the Old Royal Capital of Cetinje, UNICEF, NGO “Children First” and NGO “Centre for the Rights of the Child in Montenegro”, the Media Self-Regulatory Body, as well as friends: Ministry of Culture and hotel “Maestral”.

<http://www.gov.me/en/News/112301/Montenegro-initiates-preparations-forparticipation-in-CoE-campaign-One-in-five.html>

As part of the Council of Europe project - Building a Europe for and with Children, the Ministry of Health organised, within the campaign “One in Five”, a roundtable on 19 April 2012, entitled “Identification of child victims of sexual violence and their medical and psychological treatment”. In accordance with the Action Plan, the Ministry of Health organised a roundtable discussion on the health of children, where the target group were medical professionals and representatives of other institutions who are the first to come to contact with sexually abused children in their work, as well as those who are involved in the provision of medical care and psychological therapy at a later stage, and representatives of Emergency Medical Service, Clinical Center of Montenegro, Department of neonatology and psychiatry, Police

Administration, NGO sector , Ministry of Labour and Social Welfare, Ministry of Education, Institute of Public Health and the media. On this occasion, the participants of the roundtable stressed the importance of re-focusing on the topic of child abuse, which was launched ten years ago, and agreed on the following conclusions:

- Council of Europe campaign “One in Five” is very useful because it has contributed to raising awareness, sensitivity and gathering information about the severity of the problem of early detection of cases of child abuse;
- Lack of quality services for post-traumatic treatment of children and their families, under-trained professionals, the need for their continuing education;
- Lack of adequate data to show the extent of the problem;
- Inadequate prosecution of identified cases of abuse, inappropriate hospitalisation and treatment, as well as the lack of protocol of behaviour in certain situations;
- Lack of funds to adequately take care of the victims of sexual abuse.

As a contribution to Council of Europe Campaign “One in Five”, the delegation of the Parliament of Montenegro in the Parliamentary Assembly of the Council of Europe and UNICEF Mission in Montenegro implemented a survey “Violence against children in Montenegro - a survey of knowledge, attitudes and behaviour, 2013”, the results of which were presented at a press conference in the Parliament on 26 September 2013.

According to the World Health Organization data, 150 million girls and 73 million boys were subjected to sexual violence, and 1.3 million children are victims of global trafficking today. It is only the functional, educational, social and health system that can protect children from violence, while it is likewise necessary to constantly work to enhance public awareness of the need to combat this problem. It was concluded that this survey should be the starting basis for taking action by the relevant state authorities of Montenegro and all other entities, in order to reduce the level of violence against children and to implement measures aimed at protecting children.

<http://www.skupstina.me/index.php/me/odbor-za-ljudska-prava-i-slobode/aktuelnosti/item/1260-odrzana-konferencije-za-stampu-povodom-prezentacije-nalaza-istrazivanja-nasilje-nad-djecom-u-crnoj-gori-istrazivanje-o-znanju-stavovima-i-ponasanju-2013>

Question 5: Specialised training

Have legislative or other measures been taken to ensure that persons, units or services in charge of investigations are trained in dealing with cases where the alleged perpetrator of child sexual abuse is a member of the victim’s immediate family or has otherwise been in a recognised position of trust, authority or influence over him or her? (**Article 34 (1), Explanatory Report, paras. 233-235 as well as para. 123**).

Answer:

In the past three years, the Judicial Training Centre of Montenegro conducted activities of initial and continuing training of the Montenegrin judges and prosecutors, almost completely fulfilling the expectations set through the Annual programme for the coming year.

During 2010, out of 68 training activities², there was one activity in relation to the training of judges and prosecutors for working with children, on the topic of international standards in the field of juvenile judiciary. When it comes to the prosecutorial organisation, specialised trainings were completed by 54 public prosecutors, deputies, advisers and interns. As for the representatives of the judiciary, the number amounts to 44 (judges, advisers and interns).

During 2011, out of 122 training activities there was one activity in relation to the training of judges and prosecutors for working with children, on the topic of expert analysis of sexual abuse of children. The aforementioned trainings encompassed a total of 52 attendees.

During 2012, out of 140 training activities, there were two activities in relation to the training of judges and prosecutors for working with children, focused on the implementation of the new Law on the Treatment of Juveniles in Criminal Proceedings.

Since the Law itself provides for specialisation of all official participants in the proceedings involving juvenile offenders and juveniles as participants in criminal proceedings, i.e. judges, prosecutors, police officers and lawyers, through the “Justice for Children” project, specialised trainings were organised on the novelties in the adopted legislation and international standards, as well as on specific techniques and methods of behaviour needed to work with children, that are implemented in 2013.

With regard to teachers, professors, and professionals from the education system, as part of the implementation of the elective course of “Healthy Lifestyles”, the Education Office trained 187 teachers from 95 elementary schools in Montenegro, for the realisation of the set objectives, including the thematic area of *Reproductive health with sex education and prevention of sexually transmitted diseases*. Through the training, teachers were familiarised with forms and manifestations of sexual exploitation and sexual abuse. In this manner, teachers were prepared to teach in this area. At the same time, the awareness of what is sexual violence and abuse, and what are its types and how to recognise it in the behaviour and appearance of children was raised.

Likewise, in cooperation with the NGO “Forum of Educationists of Montenegro”, the Education Office implemented four seminars with educationists from primary and secondary schools on the subject of *child neglect and abuse*. During the implementation of the seminar, special emphasis was put on the sexual exploitation and abuse of children, sexual violence through the use of modern technology, and the risks resulting from uncontrolled use of the Internet and social networks. Seminars have included over 80% of educationists in primary schools and a large number of secondary schools educationists. The aim of the seminar was to raise awareness of violence against children, as well as on the procedures aimed at protection against violence in schools and institutions of social protection, as their partners in the process. Raising the level of knowledge and awareness in primary and secondary schools about what violence is, what are its types and how to recognise it in the behaviour and appearance of the children, together with the proposed organisational and procedural activities, aimed to assist the schools in dealing with violence against children and to ensure a more reliable and more consistent implementation of activities to help children – victims of neglect and abuse. Planned education enables both, schools as the system, and individuals within the system, to achieve safer conditions for safe children’s

² Source: Annual reports of the Supreme Court for 2010, 2011, and 2012.

development. Through a multi-sectoral approach to protecting children from abuse and neglect, the school achieves more successful partnerships with institutions that deal with this issue. The seminar paid special attention to child abuse and neglect, risk factors and indicators of recognition of violence in schools, as well as the role of schools in identifying violence. A very interesting area that has been among the topics of training is violence as a result of using modern technology. It has been pointed to the importance of the role of educationists in the prevention of violence in schools.

In order to protect children from all forms of violence and abuse and neglect, and consequently of sexual exploitation and sexual abuse, schools can take certain measures of protection and can establish cooperation with relevant institutions. One of the most important measures is the Protocol on the treatment of child victims of abuse and neglect. In this sense, there are schools that can apply the Protocol on the treatment of child victims of abuse and neglect in correlation between schools and a multidisciplinary operational team within the social welfare centres. This Protocol is dedicated to the care of the child victim within the school and in correlation between the school and a multidisciplinary operational team, with regard to any degree and type of abuse or neglect. A separate part of the Protocol is relating to the sexual abuse and exploitation.

In schools, letterboxes of confidence have been set and marked in a special place in which students can put their complaints against any kind of violence. On the basis of such complaints, the Protocol on the treatment of child victims of all forms of violence, abuse and neglect is activated. The box is opened by associates at school, and they are the first link in addressing all forms of violence in educational institutions.

Question 6: Participation of children, the private sector, the media and civil society

Replies to questions 4 and 11 of the GOQ will be examined by the Committee to assess the implementation of **Article 9** with respect to the theme of the monitoring round. Please therefore only add whether any specific steps have been taken to encourage participation by children, the private sector, the media and/or civil society in the development and implementation of policies, programmes or other initiatives specifically concerning sexual abuse of children in the circle of trust. If so, please specify which and explain how participation takes place. (**Explanatory Report, paras. 67-75**).

Answer:

The principle of participation and the opportunity to hear the views of the child is represented in the laws governing the field of family relationships, social and child welfare, and criminal-law protection. At the level of constitutional principles, this right is granted to all persons within the jurisdiction of Montenegro without any distinctions based on age. The principle of respect for the opinion of the child is included in **the Family Law**. Inter alia, the law provides that the guardianship authority shall, before determining the family placement, allow the child to freely express his / her opinion regarding the family placement and shall take into account this opinion in accordance with the age and maturity child; the child has the right to timely obtain all the

information needed to form an opinion; child who has reached ten years of age can freely and directly express his / her views in all proceedings in which decisions are made about his / her rights, and can address the court or the administrative authority and ask for help in the realisation of this right either independently or through another person or institution), and there are also pupils' parliaments in all schools, and local children's parliaments. In Montenegro, numerous strategies and operational plans were adopted that are aimed at exercising and protecting the rights of the child (Strategy for the Development of Social and Child Welfare System from 2013 to 2017, Strategy of Fostering Development in Montenegro 2012-2016, Strategy for the Integration of Persons with Disabilities in Montenegro 2008-2016, Strategy for Protection against Domestic Violence, Strategy for Inclusive Education in Montenegro, Strategy of Early and Pre-School Education 2010-2015, Strategy for the Development of Primary Education with Action Plan 2011-2017, Strategy for Improving the Position of Roma and Egyptians 2012-2016, National Plan of Activities for Children 2013-2017, etc.).

The implementation of some of these strategic documents has only begun, while the reports on their implementation are in the preparation stage, so at this point it is not possible to clearly define the current state, or the level and type of changes achieved through their previous implementation. However, it is important to point out that civil society representatives have been participating in the drafting and adoption of strategic documents for many years now, which is an important quality in the work and conduct of the state authorities, and which largely facilitates the process of taking into account the children's opinion during the preparation of these documents.

From the perspective of implementation of the principles of participation, the monitoring of the National Action Plan for Children 2013-2017 will be of paramount importance, and so will the provision of on-going consultation of children and members of the Council for the Rights of the Child.

“**Microsoft**” initiated the process of installing Microsoft Live Family Safety on computers in school classrooms. Installation of this programme will ensure that no inappropriate content for children may be displayed on school computers on the Internet. The programme is also used to control and limit access to websites that distract children during classes. Microsoft Live Family Safety programme allows teachers and parents to monitor the behaviour of pupils and children on the Internet.

In cooperation with the Ministry of Education, **Telenor LLC** has been implementing the project “Connecting Generations”, on the topic of safe Internet, with a view to educate pupils about safe Internet use. The project was continued under the name of “Get Internet, Surf Smart”.

The pilot phase of the project “Connecting Generations” lasted from February to September 2012, and it aimed to test the activity and reactions, primarily among children, and then parents and teachers, on the concept of peer education in the field of child safety on the Internet. This phase also provided for the possibility to identify problems and needs directly from the target groups, which was later confirmed by another survey undertaken by the Ministry for Information Society and Telecommunications.

At the 56th session of the Committee for Human Rights and Freedoms of the Parliament of Montenegro, held on 9 December 2011, children from Children's Home Mladost – Bijela and the Centre for Education and Training "1 June" were allowed to attend the session of the Committee, which is how the right from Article 12 of the Convention on the Rights of the Child was exercised. Thus, the children, among whom there were also children with disabilities, were asking questions to representatives of relevant ministries and members of the Committee about the problems that are part of their daily lives.

To mark the International Day of Children's Rights, the Parliament of Montenegro continuously organises sessions of the Children's Parliament, where representatives of the Government of Montenegro answer questions asked by the children from all Montenegrin municipalities. The objective is to contribute to the development of awareness and the promotion of models of children's participation in social processes, and to enable children to participate and make decisions on issues that affect them.

Also, since October 2012, the Parliament of Montenegro has been implementing a programme of Democracy Workshops in which about seven thousand children from various schools from all parts of Montenegro participated so far. During the workshops, a total of 231 children's newspapers and 49 radio broadcasts were prepared, and members of the Parliament of Montenegro are often able to talk to the children in order to present them the work of the Parliament and to get familiarised with the problems that children face.

Question 7: Preventive intervention programmes or measures

Which measures have been taken to ensure that persons, especially those forming a part of a child's circle of trust, who fear that they may commit offences of sexual abuse established in accordance with the Convention, have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed? **(Article 7, Explanatory Report, para. 64).**

Answer:

Article 9a of the General Law on Education (Official Gazette of the Republic of Montenegro 64/02, 31/05, 49/07 and Official Gazette of Montenegro 04/08, 21/09 and 45/10) provides that "physical, psychological and social violence, as well as abuse and neglect of children and pupils, corporal punishment and insults, and sexual abuse of children and pupils or employees, or any other form of discrimination under the law" shall be prohibited within the institution. Furthermore, with a view to reducing the number of conflicts, Article 9b prescribes that "In the procedure of resolving conflicts between children, pupils, parents and employees in the institution, mediators may be engaged, in accordance with the law".

In terms of prevention of bullying among children, the issues related to the prevention of violence were studied in the past period, through the mandatory and elective courses in primary and secondary schools. Within the elective course of "Healthy Lifestyles" for eighth and ninth grade, a separate chapter relates to the prevention of physical and psychological violence. This subject

was studied by about 60% of the pupils' population of the corresponding class in the past two years.

The elective course of "Healthy Lifestyles" for the first and second grade of gymnasias will be studied in secondary vocational schools as a cross-curricular programme or free activities in schools.

Civic Education is a mandatory subject in sixth and seventh grade of primary schools. Within this subject, elective topics such as *Abuse and neglect of pupils*, and *Youth violence* have been envisaged.

Civic Education is studied in all four grades of gymnasias.

In cooperation with NGO "Children First", the Ministry of Education organised a seminar "Protecting children from sexual abuse and exploitation", primarily for members of the expert services of preschool educational institutions and primary schools in Podgorica. The seminar on the same topic was also organised for representatives of social and child protection system, health care, and education (Ministry of Education, Education Office, principals of preschool educational institutions and primary schools), police and judiciary. The seminars were organised within the Council of Europe campaign "One in Five" and the Parliament of Montenegro, and were aimed at preventing and combating all forms of sexual violence against children.

As of 2005 / 2006, in cooperation with UNICEF, the Ministry of Education is implementing the project "School without Violence – Safe School Environment", with a view to prevent all forms of violence. Attention is paid to the occurrence of sexual violence as part of the violence in general, through an approach that takes into account the developmental characteristics of children. Topics are not covered explicitly, but in a way understandable to children (body touching that is not pleasant, causing discomfort, anxiety, etc.). The project "School without Violence – Safe School Environment" includes training aimed at increasing the knowledge and awareness of parents, teachers and other school staff about the problems of school bullying. To this end, a manual was prepared for schools, as well as brochures for parents and a questionnaire for schools.

In cooperation with the NGO "Children First", the Ministry of Education conducted a survey on the experiences of children in using the Internet, mobile phones and other modern technologies (April 2011). The survey was conducted on a sample of 1,003 primary and secondary school pupils. Some of the data showed the following: contents with explicit depictions of the bodies of men and women were seen by 69.3%, intercourse by 64%, sexual activities with violent behaviour by 60.4%, while 83.4% of the interviewees were exposed to unpleasant comments and insults over the Internet. Furthermore, two-fifths of the interviewees (38.3%) stated that they came across a website containing photos showing sexual intercourse, without wishing to do so. One in ten respondents (11.4%) received a message via the Internet that offered pornographic websites while showing sexual content or containing links to such pages. Almost one third of respondents (31.1%) knew that a page was of pornographic nature, prior to entering the website. This is a piece of data that indicates that children already know which website they are going to visit and what awaits them there. An interesting fact is that the children used a computer at home (82.4% of them) when they received an e-mail or opened a website with disturbing / sexual

content. At the end of the project, labels with content that show children the risks of using the Internet were prepared, providing information on the helpline that they can use to report the cases of possible violence. The Ministry of Education has recommended to all schools to use the labels in their computer labs, placing them next to each computer, so that instructions for behaviour in the case of the so-called cyber violence are made available to children.

The Ministry of Education is a signatory to the Protocol on the procedures, prevention and protection from domestic violence: procedures and institutional cooperation related to domestic violence and violence against women. In relation to the institutions of preschool, primary school and secondary school education, and the resource centres, procedures and professional measures are envisaged in accordance with the rules of ethics and profession.

In partnership with UNDP, the Education Office launched an elective course “Healthy Lifestyles”, studied in the eighth or ninth grade of primary schools and the first or second grade of gymnasias, within two classes a week. Healthy lifestyles are likewise taught in vocational secondary schools as a cross-curricular area, i.e. certain topics from the field are studied in the framework of the existing curriculum, in the following subjects: psychology, sociology, physical education, biology and chemistry. Within the topics related to *Reproductive health with sex education and prevention of sexually transmitted diseases*, the objectives are implemented that are related to understanding forms of sexual violence and the ways in which they can be prevented and suppressed. The above elective course in primary schools is one of the subjects that most students choose. Approximately 60% of eighth and ninth grade pupils have opted to attend these classes. The situation is similar in gymnasias and mixed schools. As for vocational secondary schools, the topics in this area are taught within the framework of regular subjects.

As part of the implementation of the elective course of “Healthy Lifestyles”, the Education Office trained 187 teachers from 95 primary schools in Montenegro, for the realisation of the set objectives, including the thematic area of *Reproductive health with sex education and prevention of sexually transmitted diseases*. Through the training, teachers were familiarised with forms and manifestations of sexual exploitation and sexual abuse. In this manner, teachers were prepared to teach in this area. At the same time, the awareness of what is sexual violence and abuse, and what are its types and how to recognise it in the behaviour and appearance of children was raised.

In cooperation with the NGO “Forum of Educationists of Montenegro”, the Education Office implemented four seminars with educationists from primary and secondary schools on the subject of *child neglect and abuse*. During the implementation of the seminar, special emphasis was put on the sexual exploitation and abuse of children, sexual violence through the use of modern technology, and the risks resulting from uncontrolled use of the Internet and social networks. Seminars have included over 80% of educationists in primary schools and a large number of secondary schools educationists. The aim of the seminar was to raise awareness of violence against children, as well as on the procedures aimed at protection against violence in schools and institutions of social protection, as their partners in the process. Raising the level of knowledge and awareness in primary and secondary schools about what violence is, what are its types and how to recognise it in the behaviour and appearance of the children, together with the proposed organisational and procedural activities, aimed to assist the schools in dealing with violence against children and to ensure a more reliable and more consistent implementation of activities to help children – victims of neglect and abuse. Planned education enables both, schools as the

system, and individuals within the system, to achieve safer conditions for safe children's development. Through a multi-sectoral approach to protecting children from abuse and neglect, the school achieves more successful partnerships with institutions that deal with this issue. The seminar paid special attention to child abuse and neglect, risk factors and indicators of recognition of violence in schools, as well as the role of schools in identifying violence. A very interesting area that has been among the topics of training is violence as a result of using modern technology. It has been pointed to the importance of the role of educationists in the prevention of violence in schools.

In order to protect children from all forms of violence and abuse and neglect, and consequently of sexual exploitation and sexual abuse, schools can take certain measures of protection and can establish cooperation with relevant institutions. One of the most important measures is the Protocol on the treatment of child victims of abuse and neglect. In this sense, there are schools that can apply the Protocol on the treatment of child victims of abuse and neglect in correlation between schools and a multidisciplinary operational team within the social welfare centres. This Protocol is dedicated to the care of the child victim within the school and in correlation between the school and a multidisciplinary operational team, with regard to any degree and type of abuse or neglect. A separate part of the Protocol is relating to the sexual abuse and exploitation.

In schools, letterboxes of confidence have been set and marked in a special place in which students can put their complaints against any kind of violence. On the basis of such complaints, the Protocol on the treatment of child victims of all forms of violence, abuse and neglect is activated. The box is opened by associates at school, and they are the first link in addressing all forms of violence in educational institutions.

A survey on the safety of children on the Internet was conducted in accordance with the Action Plan for 2012, for the implementation of the Strategy for Information Society Development 2012-2016, through which it is planned that the Ministry for Information Society and Telecommunications will conduct a survey on the safety of children on the Internet. A survey was conducted among parents of children of this age on their perceptions of Internet use by children. The project "Survey on the safety of children on the Internet" included two target groups – primary school pupils and their parents, and it is therefore the first survey of its kind in Montenegro, which at the same time includes two target groups of respondents in the context of examining safety on the Internet. Two questionnaires were prepared for the survey, to which answers were provided by 1,073 students and 965 parents, while the methodology used on this occasion contains some of the key indicators for monitoring the safety of children on the Internet used in the 27 EU countries, included in the project EU Kids Online. The survey included pupils from the third to the ninth grade of primary schools, with attention being paid to the equal representation of the number of classes in schools and municipalities, as well as the gender equality of pupils. The survey was conducted in the period from April to May 2012, in three regions, nine Montenegrin municipalities and thirty primary schools. The survey in the southern region included the municipalities of Kotor, Tivat and Bar which makes 23.3% of the total sample. On the other hand, the central region included the municipalities of Podgorica and Nikšić, which represents 39.9% of the sample, while the northern region consisted of Bijelo Polje, Berane, Pljevlja and Rožaje, which makes 36.8% of the sample. The survey among pupils was carried out by the E3 Consulting team and under the supervision of the Ministry of Education and form teachers of classes encompassed by the survey.

The Ministry of Education and Ministry for Information Society and Telecommunications continued to work with Telenor at this stage as well, while the new partner on the project “Get Internet, Surf Smart” is NGO “Parents”. Cooperation with 25 primary schools in 12 Montenegrin cities with which the activities are implemented has enabled us to properly start building real value system of behaviour in the digital world.

Sixty safe Internet ambassadors conducted about 200 peer education workshops. The workshops on the safe Internet were attended by approximately 4000 pupils of the sixth and seventh grade, as well as some classes of eighth and ninth grade of primary schools.

NGO Prima from Podgorica is implementing a project relating to the prevention of violence on the Internet among young people through workshops with primary and secondary school pupils in Montenegro and the movie “Tagged”, which is displayed to them.

“Microsoft” initiated the process of installing Microsoft Live Family Safety on computers in school classrooms. Installation of this programme will ensure that no inappropriate content for children may be displayed on school computers on the Internet. The programme is also used to control and limit access to websites that distract children during classes. Microsoft Live Family Safety programme allows teachers and parents to monitor the behaviour of pupils and children on the Internet.

In cooperation with the Ministry of Education, **Telenor LLC** has been implementing the project “Connecting Generations”, on the topic of safe Internet, with a view to educate pupils about safe Internet use. The project was continued under the name of “Get Internet, Surf Smart”.

The pilot phase of the project “Connecting Generations” lasted from February to September 2012, and it aimed to test the activity and reactions, primarily among children, and then parents and teachers, on the concept of peer education in the field of child safety on the Internet. This phase also provided for the possibility to identify problems and needs directly from the target groups, which was later confirmed by another survey undertaken by the Ministry for Information Society and Telecommunications.

PROTECTION

The questions in this section aim at identifying what specific legislative or other measures have been taken to protect in particular children victims of sexual abuse in the circle of trust.

Question 8: Reporting suspicion of sexual abuse

The reply to question 13 of the GOQ will be examined by the Committee to assess the implementation of **Article 12** with respect to the theme of the monitoring round. While replying to this question, please therefore only add whether specific legislative or other measures have been taken to encourage reporting of sexual abuse of children in the circle of trust to the competent authorities. (**Explanatory Report, para. 91**).

Answer:

There is legislation that makes reporting suspicions and acts of sexual exploitation and abuse obligatory. These issues are addressed in the following laws: the Law on Protection from Domestic Violence, Family Law, Criminal Code, Law on Health Protection, Law on the Protection of Patients' Rights, as well as in the Protocols on the treatment, prevention, and protection from domestic violence.

In the abovementioned laws, the obligations and rules for professionals who work with children have been defined, and do not present obstacles in reporting when there are reasonable grounds to suspect that a child is a victim of sexual exploitation and sexual abuse.

As part of the Law on Health Care, Law on Protection from Domestic Violence, Law on the Protector of Human Rights and Freedoms, as well as other laws, the procedures protecting the privacy of victims are defined, and do not represent an obstacle for taking measures to protect the child and detect the perpetrator.

Criminal Code, Amendments from 2010:

Article 386 of the Criminal Code stipulates that: Anyone who knows that a person has committed a criminal offence punishable under law by an imprisonment sentence of forty years or who knows that such a criminal offence has been committed but fails to report it before such a criminal offence and offender are detected, shall be punished by an imprisonment not exceeding two years.

(2) The sentence referred to in paragraph 1 of this Article shall also be imposed on an official or responsible person who knowingly fails to report the crime s/he has been informed about in the performance of his/her official duty, if it is a criminal offence punishable under law by imprisonment of five years or more.

Article 416 – Abuse of an official position

(1) A person in official capacity who obtains for him/herself or another person any benefit, causes damage to another or gravely violates the rights of another by unlawfully using his/her official position or authorisations, overstepping the limits of his/her official authorisation or omitting to perform his/her official duty, shall be punished by an imprisonment sentence for a term of six months to five years.

Article 417 – Unconscientious performance of office

(1) An official who by violation of law or other regulations or general acts, by failure to do supervision or in some other manner obviously unconscientiously acts in the performance of his/her office, although he was aware or was obliged to and had to be aware that such acts may cause serious violation of rights of another or damage to property of another, when such a violation or damage exceeding the amount of three thousand euro actually takes place, shall be punished by a fine or imprisonment not exceeding three years.

One of the basic principles of the Law on the Treatment of Juveniles in Criminal Proceedings is the right to respect for privacy of a juvenile at all stages of the proceedings. The public prosecutor for juveniles, the judge for juveniles, and the council of judges for juveniles and other

persons involved in the process must be careful that there is no violation of the privacy rights of a juvenile.

b. Are there any rules encouraging any person who knows about or suspects, in good faith, sexual exploitation and sexual abuse of children to report the facts to the competent authorities? If so, please specify under which conditions and to which authorities (**Article 12, para. 2, Explanatory Report, para. 91**). Please provide examples of good practice.

Answer:

There is legislation that makes reporting suspicions and acts of sexual exploitation and abuse obligatory. These issues are addressed in the following laws: the Law on Protection from Domestic Violence, Family Law, Criminal Code, Law on Health Protection, Law on the Protection of Patients' Rights, as well as in the Protocols on the treatment, prevention, and protection from domestic violence.

In the abovementioned laws, the obligations and rules for professionals who work with children have been defined, and do not present obstacles in reporting when there are reasonable grounds to suspect that a child is a victim of sexual exploitation and sexual abuse.

As part of the Law on Health Care, Law on Protection from Domestic Violence, Law on the Protector of Human Rights and Freedoms, as well as other laws, the procedures protecting the privacy of victims are defined, and do not represent an obstacle for taking measures to protect the child and identify the perpetrator.

Since 2003, NGO "Children First" from Podgorica realises intervention, development and prevention programmes relating to children and families. One of the social services that is implemented now is the advisory children's helpline "Confidential Telephone", which became a full member of the global network of helplines for children "Child Helpline International".

Advisory children's helpline "Confidential Telephone" is implementing the training of advisers in partnership with NGO "Brave Telephone" (Zagreb, Croatia) and the Serbian National Children's Helpline (Belgrade).

Question 9: Assistance to and special protection for victims

9a. If, and to what extent, does internal law provide for the possibility of removing the victim from his or her family environment when parents or persons who have care of the child are involved in his or her sexual abuse? If internal law so provides:

- are the conditions and duration of such removal to be determined in accordance with the best interests of the child? (**Article 14 (3), Explanatory Report, para. 99**);

Answer:

Child victims and their families are provided comprehensive protection and support through the multi-disciplinary approach.

In accordance with the Law on the Protection against Domestic Violence, **the Strategy for Protection from Domestic Violence** has been adopted in July 2011, while the **Protocol on procedures in domestic violence cases** was signed in November 2011. Signatories to the Protocol are: The Supreme Court, Ministry of Justice, Supreme Public Prosecutor's Office, Ministry of Education, Ministry of Health, Ministry of Labour and Social Welfare, Police Administration and the Misdemeanour Council.

The objective of the Protocol is to establish and foster the establishment of multi-disciplinary cooperation with clearly defined procedures for each system. The protocol has been prepared in such a manner to respect the fundamental principles arising from all conventions and laws referred to in the Strategy for Protection from Domestic Violence, encompassing the comprehensive protection of the family from violence.

The Protocol regulates the joint work of all systems in the implementation of laws and conventions, and provides the obligation to take the necessary measures to ensure organisation, equipment and education of a sufficient number of specialised professionals dealing with domestic violence.

Actions taken by the social welfare centres when children are involved in domestic violence cases encompass the following:

In the case of knowledge / suspicion of the committed domestic violence in which the child is a victim (direct or indirect), the professional worker of the social welfare centre urgently / immediately reports the case to the police; urgently determines the plan of assistance and measures for the protection of child victim of domestic violence – while being guided by the principle of the best interests of the child in each specific case; appoints a guardian for the child if the parents are not able to perform this role, or if there is a conflict of interest between parents and child (special guardian); makes a decision on the removal of the child from the family only in exceptional cases, i.e. when it is impossible to find another safe place for the child victims of domestic violence; considers appropriate accommodation in a foster home if this is established as necessary and the only good solution for the child victim; continuously monitors the case and at least once a month visits the family in which the child victim of violence is staying; establishes and continuously maintains contact with experts in the health and educational institutions (preschool, primary and secondary schools) in the event that a child is a victim of domestic violence (either directly or indirectly); initiates civil proceedings before a competent court.

The social welfare centre also initiates and forms, together with representatives of state and non-governmental sectors, a professional team, tasked to: determine the plan of assistance and measures to protect the child victim of domestic violence and to coordinate the activities in the process of protection.

The professional team: obtains relevant information about the case; assesses the level of risk (using a risk assessment matrix); launches procedures important for protection of the child; provides implementation of procedures for protection of the child; provides professional assistance to the child victim of domestic violence as well as assistance to the entire family, especially if a family has more children; prevents the possibility of secondary victimisation of the child during the implementation of protective measures. (in order to reduce secondary victimisation of the child: the number of interviews with the child is limited to two, and whenever possible, modern technical aids are used for taking the testimony – two-way mirrors and audio and video equipment to record the testimony of the child and use the recording in court, to avoid exposing the child to new traumatic experiences); keep records of all activities implementing the protection measures; establishes electronic databases.

The basic principle of the Law on the Treatment of Juveniles in Criminal Proceedings is the respect for the best interests of the juvenile, as well as the observance of human rights and fundamental freedoms, prohibition of discrimination on any grounds, comprehensibility of language, the use of technology adapted to the age and level of development of the juvenile; respect for the right to privacy of the juvenile at all stages of the proceedings, observance of the right of the juvenile to freely express his / her opinion, avoiding restrictions of personal liberty of the juvenile as much as possible, urgency of proceedings involving juveniles, judicial review of the enforcement of criminal sanctions against juveniles; rehabilitation and erasing the conviction.

The health care system is the proponent of psychotherapeutic work with children victims of abuse; however, through their protection, assistance and reintegration programmes, social welfare centres assist child victims to overcome the trauma as well.

Article 28 of the **Law on the Protection from Domestic Violence** prescribes that, in order to eliminate risk to victim's physical integrity, police officer may order the abuser to leave residence or other premises or prohibit his return to residence or other premises. The order is issued for maximum three days.

Article 21 of the same Law prescribes that removal from residence ordered to the violence perpetrator living with the victim is ordered for a minimum of thirty days and a maximum of six months.

Article 22 prescribes that restraining order is issued for minimum thirty days and maximum one year.

- have legislative or other measures been taken to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care? (**Article 14 (4), Explanatory Report, para. 100**).

Answer:

In accordance with the Law on Protection from Domestic Violence, multidisciplinary teams have been formed within all ten social welfare centres in Montenegro, whose jurisdiction was extended to include all victims of domestic violence, not just children. The teams provide a complete and coordinated protection of victims of domestic violence. When it comes to social protection, the

Law stipulates that social protection for victims includes tangible and intangible assistance, housing and social services, in accordance with the law governing social and child protection, as well as free legal aid, exercised in accordance with the Law on Free Legal Aid.

The health care system is the proponent of psychotherapeutic work with children victims of abuse; however, through their protection, assistance and reintegration programmes, social welfare centres assist child victims to overcome the trauma as well.

9b. Does internal law provide that sanctions for offences of child sexual abuse within the circle of trust include denying the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed? (**Article 27 (3) (b), Explanatory Report, para. 187**).

Answer:

One of the sanctions or penalties that may be imposed on the legal person for a criminal offence is the termination of a legal entity status. The court may impose this sentence if the activity of a legal entity as a whole or in substantial part served the function of commission of a criminal offence (Law on the Liability of Legal Entities for Criminal Offences). Article 73 of the Criminal Code prescribes that the court may prohibit an offender from performing a certain profession, activity, all or some of duties related to the disposition, utilisation, management or handling of someone else's property or taking care of that property, if it is reasonably deemed that her/his further performance of that activity would be dangerous. The duration of this measure may not be shorter than one year nor longer than ten years.

PROSECUTION

The questions in this section focus on those provisions that deal with criminalising and sanctioning intentional conduct which amounts to sexual abuse within the child's circle of trust as well as some theme-specific issues relating to whether the investigative, prosecutorial and court stages of proceedings take adequate account of the special nature of cases that have a circle of trust component.

Question 10: The offence of sexual abuse

The reply to question 16 of the GOQ will be examined by the Committee to assess the implementation of **Article 18** with respect to the theme of the monitoring round. The reply to question 1 of the GOQ will also be considered while assessing the situation in the Party with respect to **Article 18**. While replying to this questionnaire, please therefore only add:

a. what is understood by "intentional conduct" in internal law? (**Explanatory Report, para. 117**);

Answer:

According to Article 5 of the Criminal Code, criminal offence is an act laid down by law as a criminal offence, which is unlawful and which has been committed. According to Article 15, a criminal offence has been committed with guilty mind when the offender was aware of his/her act and wanted it to be committed or when the offender was aware that he/she could commit an act thereof and he/she consented to it. Guilty mind presents a higher degree of culpability than negligence, and is always required for the criminal offence to exist.

Sexual Abuse (Article 18):

1. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
2. Engaging in sexual activities with a child where:
 - use is made of coercion, force or threats; or
 - abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

There is no explicit provision on the prohibition of engaging a child – person under 18 years into sexual activity, other than the one mentioned in response to question 1.

Criminal Code, amendments from 2010:

Article 216 - Customary Marriage with a Juvenile

- (1) An adult person who lives in a customary marriage with a juvenile, shall be punished by an imprisonment sentence of three months to three years.
- (2) A parent, adoptive parent or a guardian who enables a minor to live in a customary marriage with another person or instigates him/her into it shall be punished by the sentence referred to in paragraph 1 of this Article.
- (3) Where an offence referred to in paragraph 2 of this Article was committed for gain, the offender shall be punished by an imprisonment sentence of six months to five years.
- (4) If a marriage is concluded, prosecution shall not be undertaken, and if it was undertaken, it shall be discontinued.

Article 207 - Sexual Intercourse by Abuse of Position

- (1) Anyone who by abuse of his/her position instigates to sexual intercourse or an equal act a person who is in a subordinate or dependent position to him/her, s/he shall be punished by an imprisonment sentence of three months to three years.
- (2) A teacher, instructor, guardian, adoptive parent, parent, stepfather, stepmother or some other person who by abuse of his/her position or authorisations performs sexual intercourse or an equal act with a juvenile entrusted to him/her for teaching, education, care and attendance, shall be punished by an imprisonment sentence of one to ten years.

(3) Where an offence referred to in paragraph 2 of this Article was committed against a child, the offender shall be punished by an imprisonment sentence of two to twelve years.

(4) Where an offence referred to in paras. 1 to 3 of this Article resulted in pregnancy, the offender shall be punished for offences referred to in paragraph 1 by an imprisonment sentence of six months to five years, for offences referred to in paragraph 2 by an imprisonment sentence of two to twelve years, and for offences referred to in paragraph 3 by an imprisonment sentence of three to fifteen years.

(5) Where through an offence referred to in paragraph 3 of this Article a child died, the offender shall be punished by an imprisonment sentence of five to eighteen years.

Child Prostitution (Article 19):

1. Recruiting a child into prostitution or causing a child to participate in prostitution;
2. Coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
3. Having recourse to child prostitution.

Article 209 - Pimping and Enabling having a Sexual Intercourse

(1) Anyone who procures a juvenile for sexual intercourse, an act equal to it or some other sexual act, shall be punished by an imprisonment sentence of three months to five years.

(2) Anyone who provides for performing sexual intercourse, an act equal to it or some other sexual act to a juvenile, shall be punished by an imprisonment sentence not exceeding three years.

Article 210 - Mediation in Prostitution

(1) Anyone who instigates or incites another person to prostitution or participates in handing over a person to another person in view of prostitution or who by means of media and other similar means promotes or advertises prostitution, shall be punished by a fine or an imprisonment sentence not exceeding one year.

(2) Where an offence referred to in paragraph 1 of this Article was committed against a juvenile, the offender shall be punished by an imprisonment sentence of one to ten years.

Child Pornography (Article 20)

1. Producing child pornography;
2. Offering or making available child pornography;
3. Distributing or transmitting child pornography;
4. Procuring child pornography for oneself or for another person;
5. Possessing child pornography;
6. Knowingly obtaining access, through information and communication technologies, to child pornography.

Article 211 - Displaying Pornographic Material to Children and Production and Possession of Child Pornography

(1) Anyone who sells, displays or makes available texts, pictures, audio-visual or other objects of pornographic content to a child by public displaying or in some other manner or displays to a child a pornographic show, shall be punished by a fine or an imprisonment sentence not exceeding six months.

(2) Anyone who uses a minor to produce pictures, audio-visual or other objects of pornographic content or for a pornographic show, shall be punished by an imprisonment sentence for a term of six months to five years.

(3) Anyone who procures, sells, shows, attends the displaying of, publicly exhibits or in electronic or some other manner makes available pictures, audio-visual or other objects of pornographic content resulting from the commission of acts referred to in paragraph 2 of this Article, or who owns such objects, shall be punished by an imprisonment sentence not exceeding two years.

(4) If the offence referred to in paras. 2 and 3 of this Article has been committed against a child, the offender shall be punished for the offence referred to in paragraph 2 by an imprisonment sentence for a term of one to eight years, and for the offence referred to in paragraph 3 by an imprisonment sentence of six months to five years.

(5) If the offence referred to in paragraph 2 of this Article was committed by use of force or threat, the offender shall be sentenced by an imprisonment sentence for a term of two to ten years.

(6) A person who owns points of pornographic content shall not be punished for the offence referred to in paragraph 3 of this Article if the senior juvenile depicted in them has given his/her consent therefor and if that person keeps such points exclusively for his/her own use.

Participation of a Child in Pornographic Performances (Article 21)

1. Recruiting a child into participating in pornographic performances or causing a child to participate in such performances;
2. Coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes;
3. Knowingly attending pornographic performances involving the participation of children.

Corruption of Children (Article 22)

Intentional causing, for sexual purposes, of a child who has not reached the age set in application of Article 18, paragraph 2, to witness sexual abuse or sexual activities, even without having to participate.

Solicitation of Children for Sexual Purposes („grooming“) (Article 23)

Intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.

Aiding or Abetting and Attempt (Article 24)

1. Intentionally aiding or abetting the commission of any of the offences established in accordance with this Convention;
2. Attempt to commit any of the above offences.

Answer 10a:

Criminal offence has been committed with guilty mind (intent) when the offender was aware of his/her act and wanted it to be committed or when the offender was aware that he/she could commit an act thereof and he/she consented to it. An offender is guilty of a criminal offence if s/he is of sound mind and if s/he acted with guilty mind, and if s/he was aware or was obliged to be aware and could have been aware that his/her act is prohibited.

10b. what is understood by “sexual activities” in internal law? (**Explanatory Report, para. 127**).

Answer:

“Sexual activities” in the context of the criminal legislation refer to the criminalisation of sexual act with a child, including rape, sexual intercourse or an equal act through the use of force or threat, procuring a juvenile for sexual intercourse, mediation in prostitution, child pornography, instigating a juvenile to attend the criminal offence committed against sexual freedoms, inciting a child to commit a criminal offence against sexual freedoms, sexual intercourse, or an equal act which is committed through the abuse of position or prohibited sexual acts.

Question 11: Corporate liability

The reply to question 17 of the GOQ will be examined by the Committee to assess the implementation of **Article 26** of the Convention with respect to the theme of the monitoring round. If, in addition, any other measures are foreseen, please specify.

Answer:

Liability of legal entities for criminal offences is regulated by the Law on Liability of Legal Entities for Criminal Offences. This Law sets several conditions which must be cumulatively met in order for the liability of legal entities to exist: 1. it is necessary that the criminal offence was committed by a natural person; 2. That person must have the position of the person responsible in the legal entity; 3. The person responsible acted on behalf of the legal entity; 4. The person responsible acted within his / her powers; and 5. The liability of legal entities exists only where there was certain intention of the person responsible, i.e. intention to provide some benefit for the legal entity. In addition to the above requirements, the liability of the legal entity also exists when the actions of the person responsible was contrary to the business policy or instructions of the legal entity. Liability of a legal entity does not exclude criminal liability of the person responsible for the committed criminal offence.

The Law on the Liability of Legal Entities for Criminal Offences provides for three types of sanctions against legal entities: 1) penalty; 2) a suspended sentence; and 3) security measures. The penalty can be a fine and termination of the legal entity status.

Answer:

According to the Law on the Protection from Domestic Violence, especially considered as constituting a violation of physical, psychological, sexual or economic integrity, mental health and peace of other family member shall be any of the following acts whereby a family member:

- 1) uses physical force, irrespective of whether it inflicts a bodily injury on other family member;
- 2) threatens to use force or induces danger that may provoke a feeling of personal insecurity or cause physical pain in other family member;
- 3) assaults verbally, swears, calls names or otherwise insults other family member;
- 4) denies other family member freedom of communication with third persons;
- 5) exhausts through labour, deprives of sleep or other rest, threatens to expel from residence or take away children;
- 6) sexually abuses other family member;
- 7) stalks and otherwise severely abuses other family member;
- 8) damages or destroys joint property or property of other family member or attempts to do so;
- 9) denies means of subsistence to other family member;
- 10) behaves rudely and so disturbs family peace of a family member that he does not share family community with.

According to Article 36, a fine amounting to minimum 150.00 euro or a prison term of minimum ten days shall be imposed on abuser if he does any of the above offences.

Also considered as constituting violation of physical, psychological, sexual or economic integrity, mental health and peace of other family member shall be insufficient care by a family member to provide any of the following:

- 1) food, personal hygiene, clothing, medical care or to ensure regular school attendance or his failure to prevent the child from being in harmful company, as well as from vagrancy, beggary or theft or otherwise severely neglect his duties concerning child development and education;
- 2) food, personal hygiene, clothing or medical care to other family member who he has a duty to take care of, where this family member needs special care for reason of his illness, disability, old age or other personal characteristics, which prevent him from taking care of himself.

Considered as constituting major form of domestic violence shall be failure to report (hiding) family member with special needs. According to Article 37, a fine amounting to minimum 250.00 euro or a prison term of minimum ten days shall be imposed on abuser if he does any of the above offences.

Article 9 – Duty to report violence

A state administration agency, other agency, a health, education or other institution have the duty to report to police the incidence of violence that they learn of in the discharge of affairs within

their authority or in conduct of their activities. Under the duty to report violence to the police is the head of the agency or institution from paragraph 1 of this article, as well as a health and social care worker, teacher, pre-school teacher and other person who learns of violence in the discharge of his affairs. A misdemeanour body and the police are under the duty to notify the social work centre of such incidence of violence.

Article 39 – Misdemeanour liability of a third person

A fine ranging from 100 to 500 euro shall be imposed on:

- 1) the head of a state administration body, other body, a health care and social care institution, teacher, pre-school teacher and other person for not reporting to the police an incidence of violence he learns of in the discharge of his affairs (article 9, para. 2);
- 2) a person who is informed in the discharge of his affairs that the abuser does not comply with the order of protection issued but does not report this to a misdemeanour body, social welfare centre, or other social and child care institution, police or public prosecutor (article 32, para. 2).

Question 12: Aggravating circumstances

Does internal law ensure that if an offence of sexual abuse, established in accordance with the Convention, is committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority or any other person in the child's circle of trust, that such circumstances may be considered an aggravating factor in the determination of sanctions, in so far as they do not form a part of the constituent elements of the offence? If so, does internal law provide different sanctions depending on whether the relationship of the perpetrator to the child is within the context of family relations or of a professional or voluntary activity (e.g. care providers in institutions, teachers, doctors, etc.)? (**Article 28 (c) and (d), Explanatory Report, paras. 198-199**).

Answer:

Yes, in addition to the criminal offence of Sexual Intercourse by Abuse of Position, which in its severe form includes the abuse of position by people in the child's circle of trust, the court shall, in accordance with the rules of fixing a sentence, in particular take into account: the degree of culpability, the motives for committing the crime, the degree of jeopardizing or severity of injury of the victim, the circumstances under which the offence was committed, the attitude of the perpetrator to the victim, his / her prior convictions, etc. The new Amendments to the Criminal Code introduced a special circumstance for fixing a sentence, for a criminal offence motivated by hatred.

Question 13: Best interest of the child

13a. Please specify whether in situations where the alleged perpetrator is a member of the victim's family or has otherwise been in a recognised position of trust or authority towards him or her, legislative or other measures have been taken to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child victim of sexual abuse. (**Article 30, para. 1, Explanatory Report, para. 215**);

Answer:

Within the framework of Gender Equality Programme IPA 2010, in November 2011, the Protocol on the procedures, prevention and protection from domestic violence was passed in Podgorica, with a special focus on child victims. The Protocol prescribes rules of procedures of all relevant institutions involved in the protection of children from violence, which primarily include respect for the rights of the child and the conduct of proceedings in his / her best interest. The Law on Protection from Domestic Violence prescribes urgency of procedures, taking into account the interests and welfare of the victim. Also, the same Law prescribes the duty to report violence, establishing victim assistance plan by a professional team of representatives of institutions dealing with family (social welfare centre, non-governmental organisations). Victims have the right to free legal aid. Protection of victims is exercised in accordance with the Strategy for Protection against Domestic Violence passed by the Government of Montenegro.

The basic principle of the Law on the Treatment of Juveniles in Criminal Proceedings is the respect for the best interests of the juvenile, as well as the observance of human rights and fundamental freedoms, prohibition of discrimination on any grounds, comprehensibility of language, the use of technology adapted to the age and level of development of the juvenile; respect for the right to privacy of the juvenile at all stages of the proceedings, observance of the right of the juvenile to freely express his / her opinion, avoiding restrictions of personal liberty of the juvenile as much as possible, urgency of proceedings involving juveniles, judicial review of the enforcement of criminal sanctions against juveniles; rehabilitation and erasing the conviction.

13b. The reply to question 22(d) of the GOQ will be examined by the Committee to assess the implementation of **Article 31, para. 4** of the Convention with respect to the theme of the monitoring round;

Answer:

Article 67 of the **Family Law** provides that the child capable of forming his / her own opinion shall have the right to freely express this opinion. Child who has reached ten years of age can address the court or the administrative authority and ask for help in the realisation of this right either independently or through another person or institution. The competent authority shall establish the child's opinion in an informal conversation that takes place in an appropriate place, in cooperation with the school psychologist or guardianship body, family counselling body or other institution specialised in family relationships, and in the presence of persons selected by the child.

Article 246 of the same Law stipulates that for a minor whose parents exercise their parental rights in relation to him/her a special guardian shall be appointed for the purposes of a dispute conducted between him/her and his/her parents, for the purposes of making certain business arrangements between them, as well as in other cases when their interests are conflicting.

Article 356 prescribes that, where there are conflicting interests between the child and his/her legal representative, the child shall be represented by a “guardian in case of conflict of interests” (collision guardian).

Article 357 prescribes that, if the court estimates that in the dispute related to protection of a child’s rights and in the dispute related to exercising parental rights the child as a party is not represented in an appropriate manner, the court shall be obliged to appoint a temporary representative for the child. If the court establishes that in the dispute related to protection of a child’s rights and in the dispute related to exercising parental rights the party is a child capable of forming an opinion, the court shall be obliged to take the statement of the opinion of the child in the manner and on the place which is in line with the child’s age and maturity, unless that would be obviously in conflict with the best interest of the child.

Article 358 prescribes that, if the collision guardian or temporary representative establishes that in the dispute related to protection of a child’s rights and in the dispute related to exercising parental rights i.e. deprivation of parental rights he/she is representing a child who is capable of forming an opinion, he/she shall be obliged to provide that the child timely obtains all the information that he/she might need; to provide explanation to the child related to the possible consequences of the actions he/she is undertaking; to convey to the court the opinion of the child, if the child did not directly express the opinion at the court, unless that would obviously be in conflict with the best interest of the child.

Provisions of the Articles 356-358 of this Law (on collision guardian and temporary representative) shall also apply in other court proceedings related to family relations if these proceedings also refer to the rights of a child. Bodies conducting other proceedings shall also be obliged to apply provisions of the Articles 356-358 of this Law if these proceedings also refer to the rights of a child.

13c. Please also indicate whether internal law provides that sanctions, as a result of offences committed by a person considered to be in the victim’s circle of trust, include withdrawal of parental rights or monitoring or supervision of convicted persons (**Article 27, para. 4, Explanatory Report, para. 191**).

Answer:

The Criminal Code prescribes for criminal sanctions as a result of criminal offences committed by persons considered to be in the child’s circle of trust. The Family Law prescribes that a parent who abuses the child in a physical, sexual or emotional manner; exploits the child by forcing it to excessive work or to work that threatens morality, health and education of the child, or work which is forbidden by law; instigates the child to perpetrate criminal acts, etc., shall be deprived of the parental right.

The Law on the Treatment of Juveniles in Criminal Proceedings prescribes, in Article 94 – Impossibility of Confrontation, that a child under 14 years of age who is injured by the criminal offence or heard as a witness cannot confront the defendant (while children older than 14 years can confront the defendant), and that “the competent authorities taking action in the proceedings in which a juvenile is participating shall take all necessary measures to ensure that, in their official premises, meeting between the juvenile and the defendant is avoided”.

Question 14: Child-friendly justice

14a. Please specify whether in situations where the alleged perpetrator is a member of the victim’s immediate family or has otherwise been in a recognised position of trust or authority towards him or her, a protective approach towards victims has been adopted to ensure that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate (**Article 30, para. 2 and Explanatory Report, paras. 211-215**);

Article 1 of Law on Treatment of Juveniles in Criminal Proceedings provides that the Law governs the treatment of the juvenile as a perpetrator of the criminal offence, children and juveniles as participants in the proceedings, which is based on respect for human rights and fundamental freedoms while respecting the best interests of juveniles, taking into account their maturity, level of development, abilities and personal characteristics, as well as the severity of the criminal offence, with the aim of their rehabilitation and social reintegration. Title IV of the Law on the Treatment of Juveniles in Criminal Proceedings contains separate provisions on the protection of juveniles as participants in criminal proceedings, and these provisions apply to juveniles injured by the criminal offence and juveniles heard as witnesses in criminal proceedings. In criminal proceedings in which the participant is a juvenile injured by the criminal offence or where the juvenile is questioned as a witness, actions are, as a rule, taken by people who have acquired special knowledge in the field of children’s rights and about the rules of treatment of juvenile offenders and juveniles as participants in criminal proceedings, taking into account the age, personal characteristics, education and living circumstances of the juvenile.

14b. Which legislative or other measures been taken to ensure that investigations or prosecution of offences established in accordance with the Convention shall not be dependent upon the report or accusation made by a victim and that the proceedings may continue even if the victim has withdrawn his or her statement, especially in cases where the alleged perpetrator is a member of the victim’s immediate family or has otherwise been in a recognised position of trust or authority towards him or her? (**Article 32, Explanatory Report, para. 230**);

All criminal offences prescribed by the Convention and which are incorporated in the criminal legislation of Montenegro are prosecuted *ex officio*, which means that the criminal prosecution or criminal proceedings for any of these criminal offences does not depend on the victim’s statement.

14c. Have legislative or other measures been taken to ensure that a judge, in a criminal trial regarding an offence which can be considered to involve sexual abuse of a child within the circle of trust, may order the hearing to take place without the presence of the public or that the victim may be heard in the courtroom without being present? (**Article 36, para. 2 and Explanatory Report, para. 242**).

Article 314 of the Criminal Procedure Code provides that from the opening of the session until the conclusion of the main hearing, the Panel may at any time, ex officio or upon the motion of the parties but always after hearing their statements, exclude the public from the entire main hearing or one part of it, if that is necessary for keeping information secret, protecting public order, protecting morality, protecting the interests of a juvenile or protecting the personal or family life of the accused or the injured party. As regards the hearing of the victim, Article 93, paragraph 6 of the Law on the Treatment of Juveniles in Criminal Proceedings prescribes that, if there are justified reasons, juveniles can be heard as victims, or injured parties, in their apartment or another room, or the office or institution in which they reside, regardless of the technical equipment thereof.



T-ES(2014)ADD-ME

LANZAROTE CONVENTION

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

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

MONTENEGRO

Registered by the Secretariat on 7 October 2014

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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