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GENERAL OVERVIEW QUESTIONNAIRE

COUNTRY PROFILE QUESTIONAIRE MONTENEGRO

COUNCIL OF EUROPE CONVENTION AGAINST TRAFFICKING IN HUMAN ORGANS

As adopted by the Santiago de Compostela Committee in Plenary meeting on 25-26 October 2023

Replies should be addressed to the Committee Secretariat by **3rd May 2024** (**organtrafficking@coe.int**)

Document prepared by the Committee of the Parties' Secretariat
Directorate General I – Human Rights and Rule of Law

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I. INTRODUCTION

1. The Council of Europe Convention against Trafficking in Human Organs[1] (hereinafter "the Santiago de Compostela Convention" or "the Convention"), which entered into force in March 2018, requires criminalisation of illicit removal of human organs, the use of illicitly removed organs for purposes of implantation or other purposes than implantation, illicit solicitation, recruitment, offering and requesting of undue advantages and preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs. The Convention provides a framework for national and international co-operation across the different sectors of the public administration, measures for coordination at national level, preventive measures at domestic and international level and protection of victims and witnesses. Furthermore, it foresees the establishment of a monitoring body to oversee the implementation of the Convention by the States Parties.

2. The Committee of the Parties to the Convention (also known as the "Santiago de Compostela Committee" or "the Committee of the Parties), established to monitor whether Parties effectively implement the Convention, decided that:

> *1. Following ratification and within six months from the entry into force of the Santiago de Compostela Convention in respect of the Party concerned, every Party to the Convention shall be required to reply to a questionnaire aimed at providing the Santiago de Compostela Committee with a general overview of the legislation practice, institutional framework and policies for the implementation of the Convention at the national, regional and local levels. Thereafter, the Parties should regularly inform the Santiago de Compostela Committee of any substantial changes to the situation described in their replies to the General Overview Questionnaire.*
>
> *2. States having signed the Convention shall be invited to reply to the questionnaire referred to in paragraph 1 of this rule.*
>
> *3. The secretariat shall compile the replies received and make them public on the Committee's website[2].*

3. In accordance with Rule 27 of the Committee's Rules of Procedure:

> *"(…)*
>
> *2. The secretariat shall address such questionnaires to the Parties through the member in the Santiago de Compostela Committee representing the Party to be monitored and who will act as "contact point".*
>
> *3. Parties shall coordinate with their respective domestic authorities to collect replies, which shall be submitted to the secretariat in one of the official languages of the Council of Europe within the time limit set by the Santiago de Compostela Committee. The replies shall be detailed, as comprehensive as possible, answer all questions and contain all relevant*

[1] *Council of Europe Convention against Trafficking in Human Organs* (CETS No. 216), Santiago de Compostela, 25/03/2015.

[2] Santiago de Compostela Committee's Rules of Procedure, Rule 25.

reference texts. The replies shall be made public, unless a Party makes a reasoned request to the Santiago de Compostela Committee to keep a reply confidential.

4. The Santiago de Compostela Committee may also receive information on the implementation of the Convention from non-governmental organisations and civil society involved in preventing and combating trafficking in human organs, in one of the official languages of the Council of Europe and within the time-limit set by the Santiago de Compostela Committee. The secretariat transmits these comments to the Party(ies) concerned.

5. The secretariat may request additional information if it appears that the replies are not exhaustive or are unclear. Where warranted, with the consent of the Party or Parties concerned and within the limits of budgetary appropriations, the Bureau may decide to mandate an on-site visit in the Party or Parties concerned to clarify the situation. The Bureau shall establish guidance as to the procedure governing the on-site visits pending any official guidelines agreed by the Santiago de Compostela Committee.

4. The purpose of this general questionnaire is to collect information to provide the Committee of the Parties with an overview of the situation, which will constitute the general framework within which it will assess replies by Parties to the thematic questionnaire for the first monitoring round (see Rule 25 of the Committee's Rules of Procedure).

II. PRELIMINARY REMARKS

5. The provisions of the Santiago de Compostela Convention have been grouped under different sections in this questionnaire without necessarily following the structure of the Convention. This methodological choice in no way intends to prioritise the various provisions of the Convention: equal importance is attached to all rights and principles therein.

6. Parties will be invited to update their replies to this Country Profile Questionnaire when they will receive the next thematic monitoring questionnaire. Responses to a thematic questionnaire should therefore be interrelated and combined with the responses provided in the context of this questionnaire.

7. Parties are kindly requested to:

- answer the questions with regard to central, regional and local levels to the extent possible. Federal states may, in respect of their sovereign entities, answer the questions in a summarised way;

III. GENERAL LEGAL FRAMEWORK AND ALIGNMENT OF THE CONVENTION

Question 1: Non-discrimination

Is discrimination, on grounds such as the ones mentioned in the indicative list in **Article 3**, prohibited in the implementation of the Convention, in particular in the enjoyment of the rights guaranteed by it? If so, please specify.

- Discrimination is prohibited in the legal system on any basis, even in the application of the Convention. The above is defined by Article 8 of the Constitution of Montenegro, which stipulates that any direct or indirect discrimination, on any basis, is prohibited. Also, in Article 159 of the Criminal Code of Montenegro, it is prescribed that whoever, due to national or ethnic affiliation, race or religion, or due to the absence of such affiliation or due to differences in terms of political or other beliefs, gender, language, education, social position, social origin, sexual orientation, gender identity, disability, property status or some other personal characteristic, denies or restricts the rights and freedoms established by the Constitution, laws or other regulations or general acts or confirmed international agreements to another, or gives him privileges or benefits based on this difference, shall be punished by imprisonment for up to three years.

Question 2: Overview of the implementation

Please indicate (without entering into details):

a. the main legislative or other measures to combat against the trafficking in human organs in accordance with the Convention;

- Articles 293a, 293b, 294, 295, 295a and 295b of the Criminal Code of Montenegro criminalize all forms of trafficking in human organs and related crimes. According to the Law on taking and transplanting human organs for the purpose of treatment, it is prohibited to trade in organs, advertise the need for organs and the offer of organs in the media or on any other carrier of advertising messages, as well as mediation in these businesses, as well as giving and receiving compensation for organs. Also, the Law on taking and transplanting parts of the human body for the purpose of treatment prohibits trade in body parts, advertising the need for and the offer of body parts in the media or on any other carrier of advertising messages or mediating in these businesses, as well as giving and receiving compensation for parts bodies. The aforementioned laws precisely define the procedure for taking organs from a living donor, thus preventing any abuse in this regard.

b. whether your country has adopted a national strategy and/or Action Plan to combat against the trafficking in human organs. If so, please specify the main fields of action and the body/bodies responsible for its/their implementation;

- Montenegro has not adopted a national strategy for combating trafficking in human organs, for the reason that not a single case of trafficking in human organs has been recorded in Montenegro, nor is there any doubt that any such case has occurred.

c. If there has not been any adoption of a national strategy and/or Action Plan to combat against the trafficking in human organs, whether there is a strategy and /or Action Plan by a particular Ministry or State Agency that leads on this nationally.

- Competent ministries and state agencies have not adopted a strategy to combat human organ trafficking, for the reason that not a single case of human organ trafficking has been recorded in Montenegro, nor is there any doubt that any such case has occurred.

d. Regarding compliance with the content of the Convention, does your country's domestic law comply with the concepts of:
   1. "trafficking in human organs" (Article 2)
   2. "human organ" (Article 2)
   3. "financial gain or comparable benefit" (Article 4)?

- The laws in Montenegro are absolutely compatible with the aforementioned concepts from the Convention.

e. Does your legal system provide the compensation for an organ donation (Article 4 para. 3)? If so, which concepts are legally included in the term “compensation”?

- The Montenegrin legal system does not provide compensation for organ donation, but it is based exclusively on a voluntary basis. However, compensation for wages, travel expenses, costs of staying in a health facility, examinations, laboratory tests, medical treatments during and after organ harvesting, as well as compensation for damage caused by unprofessional and negligent actions contrary to generally accepted medical standards, are not considered compensation.

f. Does your legal system provide for the possibility that persons without the capacity to decide may donate organs? If so, under what conditions, circumstances and requirements?

- Article 41 of the Law on the Removal and Transplantation of Human Organs for the Purpose of Treatment prescribes:
  "Organ transplantation can only be done with the written consent of the recipient who is of legal age, capable of doing business and capable of reasoning.
  For minors and adults who are not capable of business or are incapable of reasoning, consent must be given by both parents, if they are alive, or the guardian.
  For persons who are unable to express themselves, consent can be given by a married or common-law spouse, adult child, parent, adopted child, adoptive parent or relative with whom the donor is in the second degree of blood relationship.

Written consent for transplantation is given as a freely expressed will and in the prescribed manner and is retained with medical documentation.
The form, content and method of giving consent is prescribed by the Ministry."
Also, in Article 27 of the Law on Taking and Transplanting Human Body Parts for the Purpose of Treatment, the same possibility is prescribed for body parts.
It is important to point out that the mentioned provision does not allow someone else to decide completely instead of the donor, but it is also stipulated that the Ethics Committee of the health institution must give a positive opinion, which is certainly an additional protection.

Question 3: National co-operation and information exchange

a. Please describe how co-operation and exchange of information is ensured between representatives of health authorities, law-enforcement (e.g. police) and other competent authorities in order to prevent and combat effectively the trafficking in human organs (**Article 21, para. 1 letter (c)**);

- Article 254 paragraph 1 of the Law on Criminal Procedure stipulates that officials and responsible persons in state bodies, local self-government bodies, public enterprises and institutions are obliged to report criminal offenses for which they are prosecuted ex officio, of which they have been informed or for which they are found to have committed in the performance of their duties. Furthermore, in paragraph 2 of the same article, it is prescribed that the duty from paragraph 1 of this article is also held by all natural and legal persons who, based on the law, have certain public powers or are professionally engaged in the protection and security of people and property, health care of people, i.e. guarding, upbringing or education of minors, if they are found to have committed any criminal offense in connection with their activity.
  It follows from the above that, in addition to the fact that all holders of public authority are obliged to cooperate and exchange information, health workers also have a legal obligation to report to the competent judicial authorities if they are aware that a criminal offense has been committed for which they are being prosecuted ex officio, and it is certainly every form of trafficking in human organs.

b. Which legislative or other structured measures have been taken to set up or ensure:
   1. the existence of a transparent domestic system for the transplantation of human organs (**Article 21 para. 1 letter (a)**);
   2. equitable access to transplantation services for patients (**Article 21 para. 1 Letter (b)**);
   3. adequate collection, analysis and exchange of information related to the offences covered by the Convention **(Article 21 para. 1 letter (c));**

- The Law on Taking and Transplanting Human Organs for the Purpose of Treatment and the Law on Taking and Transplanting Parts of the Human Body for the Purpose of Treatment precisely define the conditions and procedures for giving, testing, characterizing, taking, obtaining, preserving, transporting, exchanging and

transplanting human organs from of a living or deceased person, for the purpose of transplanting into the body of another person, for the purpose of treatment, ensuring quality and safety standards of organs for the purpose of protecting people's health, as well as other matters of importance for these procedures. In particular, Article 12 of the Law on the Removal and Transplantation of Human Organs for the Purpose of Treatment and Article 12 of the Law on the Removal and Transplantation of Human Body Parts for the Purpose of Treatment prescribes the existence of a waiting list for persons for whom it has been determined that the transplantation of body parts is the only method of treatment, as well as that Waiting Lists are compiled and managed by the Ministry of Health, which makes this procedure completely transparent. Also, it is important to point out that according to Article 8 of the Law on Compulsory Health Insurance, every citizen of Montenegro who resides in Montenegro has the status of insured, and the costs of health care are borne by the Health Insurance Fund of Montenegro. All of the above indicates that access to transplantation services is completely equal for all patients, given that there are no special conditions that one must fulfil, except for medical indications.

Also, as stated in the previous answers, all state authorities are obliged to cooperate and exchange information when it comes to criminal offenses covered by the Convention, which are also prescribed by the Criminal Code of Montenegro, namely Articles 293a, 293b, 294, 295 , 295a and 295b.

c. Please indicate the healthcare professionals and relevant officials (including police, legal professionals) as well as civil society in the prevention of and combat against trafficking in human organs. Please indicate how healthcare professionals and relevant officials (including police, legal professionals) are trained for this purpose and how resources are secured for them (**Article 21, para. 2**);

- All state bodies are financed from the budget of Montenegro, which is managed by the Ministry of Finance. When it comes to special trainings, none have been conducted with regard to the fight against trafficking in human organs, for the reason that there was no need for special trainings, which all stems from Article 21 paragraph 2 of the Convention. Namely, the mentioned article is not of an imperative nature, but it is prescribed by them that everything mentioned should be carried out if required. Given that there are no confirmed cases of trafficking in human organs in Montenegro, nor is there any suspicion of a case, there has, therefore been no need for special training.

d. Please describe how campaigns about the unlawfulness and dangers of trafficking in human organs are promoted ((**Article 21, para. 2 letter (b)**);.

- Special campaigns have not been conducted, considering that the above is prescribed by law as a criminal offense, so it is understood that any activity in that direction is prohibited. Also, according to the mentioned article of the Convention, campaigns are provided as optional, that is, as needed, and given that Montenegro does not have problems of this nature, there has been no need to implement

campaigns of this type. It should be noted that one type of campaign is the implementation of the Convention in the national legislation, about which the entire public has been informed via the media, which is certainly confirmation of the commitment of the state of Montenegro in the fight against trafficking in human organs.

e. Is prohibited any advertisement of the need for, or availability of human organs, with a view to offering or seeking financial gain or comparable advantage? (**Article 21, para. 3**);

- Article 3 of the Law on Taking and Transplanting Human Organs for the Purpose of Treatment stipulates that it is prohibited to trade in organs, advertise the need for organs and the offer of organs in the media or on any other carrier of advertising messages, as well as mediation in these businesses. Also, Article 295 of the Criminal Code stipulates that anyone who advertises the purchase or sale of a human organ, tissue, cell, embryo, foetus or the body of a deceased person will be sentenced to up to three years in prison.

Question 4: International cooperation

a. Please indicate the national contact point responsible for the exchange of information pertaining to trafficking in human organs (**Article 22, letter (b)**).

- The national contact point is Mr. Radovan Nikolic.

b. Please, indicate the national authorities involved in the fight against organ trafficking and their contact details.

- The bodies involved in the fight against trafficking in human organs are the Ministry of Health, the Ministry of Justice and the Ministry of Internal Affairs. There are no specific contact details, but all information is exchanged directly through the Cabinet of Ministers.

IV. PROSECUTION OF PERPETRATORS OF TRAFFICKING IN HUMAN ORGANS

Question 5: Criminal Law offences

a. Please indicate whether the intentional conducts in the box below are considered criminal offences in internal law.

- Yes.

b. Do the offences in your internal laws require intentional conduct? If no, please provide information.

- There are several degrees of guilt in our criminal legislation, so the possible punishment is determined depending on that. Certainly, the nature of these criminal acts implies one of two forms of intent.

c. Please highlight whether there are any other offences not included in the box below that involves trafficking in human organs in your country? Please provide their definitions and specify in which act these are included;

- Do not exist. All of the above is covered by the Criminal Code, and that's all that pertains to this type of crime.

d. According to the explanatory report para 29 it is left open for Parties to decide whether to apply Article 4, paragraph 1, Articles 5, 7 and 9 to the donor and/or the recipient. Please specify whether your internal law criminalize donors and/or the recipients for these criminal offences. Please explain the reasoning behind the regulation.

- The Criminal Code does not specifically include the donor and the recipient as perpetrators, but the norm applies to anyone who commits one of the listed criminal acts.

***Article 4* – Illicit removal of human organs**

1 Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the removal of human organs from living or deceased donors:

a where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;

b where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage;

c where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage.

(…)

Article 5 – Use of illicitly removed organs for purposes of implantation or other purposes than implantation

Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the use of illicitly removed organs, as described in Article 4, paragraph 1, for purposes of implantation or other purposes than implantation.

Article 7 – Illicit solicitation, recruitment, offering and requesting of undue advantages

1. Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the solicitation and recruitment of an organ donor or a recipient, where carried out for financial gain or comparable advantage for the person soliciting or recruiting, or for a third party.

2. Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, with a view to having a removal or implantation of a human organ performed or facilitated, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1, or Article 5 and where appropriate Article 4, paragraph 4 or Article 6.

3. Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the request or receipt by healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, of any undue advantage with a view to performing or facilitating the performance of a removal or implantation of a human organ, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1 or Article 5 and where appropriate Article 4, paragraph 4 or Article 6.

Article 8 – Preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs

Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally:

a) the preparation, preservation, and storage of illicitly removed human organs as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 4;

b) the transportation, transfer, receipt, import and export of illicitly removed human organs as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 4.

Article 9 – Aiding or abetting and attempt

1. Each Party shall take the necessary legislative and other measures to establish as criminal offences, when committed intentionally, aiding or abetting the commission of any of the criminal offences established in accordance with this Convention.

2. Each Party shall take the necessary legislative and other measures to establish as a criminal offence the intentional attempt to commit any of the criminal offences established in accordance with this Convention.

3. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply, or to apply only in specific cases or conditions, paragraph 2 to offences established in accordance with Article 7 and Article 8.

Question 6: Jurisdiction

a. With regard to the offences referred to in question 5, letters a, b and c, please indicate which jurisdiction rules apply. Please specify under which conditions, if required (**Article 10, Explanatory Report, paras. 64-75**).

- Article 25 paragraph 1 of the Law on Criminal Procedure stipulates that the local jurisdiction is, as a rule, the court in whose territory the criminal offense was committed or attempted, while paragraph 2 of the same article stipulates that a private lawsuit can be filed in the court in whose territory the defendant has a domicile or abode. Paragraph 3 of the same article stipulates that if the criminal offense was committed or attempted in the area of several courts or on the border of those areas, or it is uncertain in which area it was committed or attempted, the court that first initiated the proceedings based on the charge of the authorized prosecutor is responsible, and with regards to the investigation the court that first acted based on the prosecutor's proposal is responsible for the investigation. Furthermore, Article 26 of the cited law stipulates that if a criminal offense is committed on a domestic ship or domestic aircraft, while it is in a domestic port, the court in whose territory that port is located is responsible. In other cases, when the criminal offense was committed on a domestic ship or domestic aircraft, the jurisdiction is the court whose territory is the home port of the ship or aircraft or the domestic port where the ship or aircraft first stops.
  The aforementioned articles of the Law on Criminal Procedure clearly define the local jurisdiction of Montenegrin courts I for criminal offenses from question 5, as well.

b. According to your national legislation, is your country competent to investigate and prosecute suspected organ trafficking abroad? If yes, please specify in which cases.

- Montenegrin judicial authorities can investigate and prosecute only criminal offenses committed on the territory of Montenegro. However, in accordance with the conditions and procedure for providing international legal assistance in criminal matters, Montenegro may certainly cooperate with other countries, which is regulated by the special Law on International Legal Assistance in Criminal Matters

Question 7: Corporate liability

Does your system provide that a legal person may be held liable for an offence established in accordance with **Article 11**? Please specify under which conditions.

- In Montenegro, the liability of legal persons is regulated by the Law on the Liability of Legal Persons for Criminal Offenses. A legal person is responsible for the criminal offense of a responsible person who committed a criminal offense acting on behalf of a legal person within the scope of his powers, with the intention of obtaining some benefit for that legal person, or when the actions of the responsible person were in conflict with the business policy or orders of the legal person.

Question 8: Sanctions and measures

a. Please indicate which sanctions internal law provides for the criminal offences established in accordance with the Convention with regard to both natural and legal

persons. Please specify whether the sanctions are criminal, civil and/or administrative sanctions (**Article 12, Explanatory Report, paras. 83-87**);

- The criminal acts established by the Convention are regulated by the Criminal Code of Montenegro, and therefore the sanctions are of a criminal-legal nature, and these are predominantly prison sentences.

b. Which legislative or other measures have been taken to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with the Convention? Please provide details and describe any good practice resulting from the taking of these measures (**Article 14, Explanatory Report, paras. 95-100**).

- In Montenegro, in practice so far, not a single final judgment related to criminal offenses established by the Convention has been passed, and therefore there has been no need for the aforementioned.

Question 9: Aggravating Circumstances

Please indicate which of the circumstances referred to in **Article 13**, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration in your legal system as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention (**Explanatory Report, paras. 88-94**).

- Article 293a paragraph 4 of the Criminal Code of Montenegro stipulates that if as a result of the offense referred to in para. 1 and 2 of this article, death or severe damage to health has occurred, or the offense was committed by several persons in an organized manner or by abuse of official position, or it was committed against a child, the perpetrator shall be punished with imprisonment of five to fifteen years. In addition to the aforementioned paragraph, which as a qualified form of this criminal offense includes the circumstances from Article 13 of the Convention namely a, b, c and e, while the circumstance under d is provided as an aggravating circumstance when determining the punishment for all criminal offenses, including the criminal offenses established by the Convention, according to Article 43 of the Criminal Code of Montenegro.

Question 10: Investigations and criminal measures

a. Which legislative or other measures have been taken to ensure that investigations or prosecutions of offences established in accordance with the Convention shall not be subordinate to a complaint and that the proceedings may continue even if the victim has withdrawn his or her statement? (**Article 15, Explanatory Report, para. 101**).

- For criminal offenses established by the Convention, prosecution is undertaken ex officio, which therefore ensures that the proceedings are conducted regardless of whether there are threats or pressures from the perpetrators of the criminal offense, as well as whether the victim retracted his statement. With the aforementioned, Article 15 of the Convention has been fully implemented.

b. Please describe which circumstances or other measures have been taken to ensure effective criminal investigation and prosecution of offences established in accordance with the Convention (e.g. carrying out financial investigations, the use of covert operations, other special investigative techniques (**Article 16**)).

- The law on criminal procedure precisely defines the procedures when conducting investigative actions, as well as the obligation of the police to cooperate with the state prosecutor and the investigating judge, as well as that if it is judged that the execution of the evidentiary action cannot be delayed, the assistance of a company or other legal entity can be requested. There are various measures available to the competent state authorities, in order to ensure the presentation of evidence in the proceedings, which include the above.

Question 11: Measures of protection for the victim

a. Please describe the measures taken to (**Article 18**):
    1. ensure that victims have access to information relevant to their case and which is necessary for the protection of their health;
    2. assist victims in their physical, psychological and social recovery;
    3. provide for the right of victims to compensation from the perpetrators.

- Pursuant to the provisions of the Law on Criminal Procedure, the injured party has an active role in the proceedings itself and all rights, starting with the right to review the case files, and pursuant to Article 203a of the cited law, which prescribes that the injured party and his attorney have the right to review the case files. Also, in Article 17 paragraph 1 point 11 of the Law on Health Care, it is prescribed that funds for health care are provided from the budget of Montenegro for victims of human trafficking, and victims of human organ trafficking in a broader context fall into this category, so it can be stated that health care for victims of trafficking in human organs is provided. Also, Chapter XV of the Code of Criminal Procedure regulates property claims of the injured party, so the possibility is certainly provided that, either through criminal or civil proceedings, the injured party may exercise the right to a property claim.

b. Please describe the measures taken to inform victims of their rights, the services at their disposal, the follow-up given to their complaint, the charges, the state of the criminal proceedings, and their role as well as the outcome of their cases (**Article 19, para. 1, letter (a) and para. 2**).

- Article 14 of the Law on Criminal Procedure stipulates that any person (including the injured party) who participates in the proceedings, and who, due to ignorance, could miss an action in the proceedings or, as a result, does not exercise his rights, the court, the state prosecutor and state authorities participating in the procedure will be notified of their rights in accordance with this Code and of the consequences of failing to act.

c. Please also indicate which measures have been taken to enable the victim to be heard, to supply evidence and the means of having his/her views, needs and concerns presented, directly or through an intermediary, and considered (**Article 19, para. 1, letter (b)**);

- Article 58 of the Criminal Code stipulates that the injured party has the right to present all the facts during the investigation and to propose evidence that is important for the criminal case and his property claim, as well as that at the main trial the injured party has the right to propose evidence, ask questions of the accused , witnesses and experts, to present remarks and explanations regarding their statements and to make additional statements and proposals.

d. What kind of support services are provided to victims so that their rights and interests are duly presented and taken into account? (**Article 19, para. 1, letter (c)**)

- The injured party has the right to be informed about his rights during the entire procedure, and if necessary, he can exercise the right to free legal aid, in accordance with the provisions of the Law on Free Legal Aid. Also, the state prosecutor must inform the injured party of his/her respective rights during the procedure, in accordance with Article 58 paragraph 5 of the Criminal Procedure Law.

e. Please describe the measures taken to provide the safety of the victims, their families and witnesses from intimidation and retaliation (**Article 19, para. 1, letter (d)**);

- Article 120-123 of the Criminal Code prescribes special protection of witnesses in the proceedings, while Article 124 of the cited Code prescribes that the provisions of Art. 120 to 123 of the cited code are accordingly applied to the injured party in criminal proceedings.

f. Please specify under which conditions victims of the offences established according to the Convention have access to legal aid provided free of charge (**Article 19, para. 3**).

- Article 13 of the Law on free legal aid stipulates that the right to free legal aid is exercised by: the beneficiary of the material security of the family in accordance with the law governing social and child protection; child without parental care; disabled person; a victim of the criminal offense of violence in the family or in the family community and human trafficking, as well as a victim of domestic violence

in accordance with the law regulating protection against domestic violence; a person of poor financial condition.

g. Which legislative or other measures have been taken to ensure that victims of an offence established in accordance with the Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their state of residence? (**Article 19, para. 4, Explanatory Report, para. 120**).

- Victims of crimes established by the Convention can submit a report through the diplomatic representation of the country of their residence, which will be forwarded without delay to the competent state authorities of that country.

h. Please describe how your internal law allows for groups, foundations, associations or governmental or non-governmental organisations assisting and/or supporting victims to participate in legal proceedings (for example, as third parties) (**Article 19, para. 5**). Please specify under which conditions, if so required;

- The aforementioned entities cannot take an active part in court proceedings, but only as observers. The injured party can hire a lawyer to represent him, and he is the only one who can actively participate in the proceedings.

V. PREVENTION OF AND COMBAT AGAINST TRAFFICKING IN HUMAN ORGANS

Question 12: Ensure quality and safety requirements for the transplantation system

a. Which legislative or other measures have been taken to establish the existence of a transparent domestic system for the transplantation of human organs? (**Article 21 para. 1 letter (a), Explanatory Report, para. 125-126**)

- The Law on Taking and Transplanting Human Organs for the Purpose of Treatment and the Law on Taking and Transplanting Parts of the Human Body for the Purpose of Treatment precisely define the conditions and procedures for giving, testing, characterizing, taking, obtaining, preserving, transporting, exchanging and transplanting human organs from of a living or deceased person, for the purpose of transplanting into the body of another person, for the purpose of treatment, ensuring quality and safety standards of organs for the purpose of protecting people's health, as well as other matters of importance for these procedures. In particular, Article 12 of the Law on the Removal and Transplantation of Human Organs for the Purpose of Treatment and Article 12 of the Law on the Removal and Transplantation of Human Body Parts for the Purpose of Treatment prescribes the existence of a waiting list for persons for whom it has been determined that the transplantation of body parts is the only method of treatment, as well as that

Waiting Lists are compiled and managed by the Ministry of Health, which makes this procedure completely transparent.

b. Which legislative or other measures have been taken to ensure equitable access to transplantation services for patients? (**Article 21 para. 1 letter (b)**)

- According to Article 8 of the Law on Compulsory Health Insurance, every citizen of Montenegro who resides in Montenegro has the status of insured, and the costs of health care are borne by the Health Insurance Fund of Montenegro. All of the above indicates that access to transplantation services is completely equal for all patients, given that there are no special conditions that one must fulfil, except for medical indications.

c. Which legislative or other measures have been taken to ensure adequate collection, analysis and exchange of information related to the offences covered by the Convention in co-operation between all relevant authorities? **(Article 21 para. 1 letter (c))**

- Also, as stated in the previous answers, all state authorities are obliged to cooperate and exchange information when it comes to criminal offenses covered by the Convention, which are also prescribed by the Criminal Code of Montenegro, namely Articles 293a, 293b, 294, 295 , 295a and 295b.

d. Which legislative or other measures have been taken to ensure the prohibition of the advertising of the need for, or availability of human organs? **(Article 21 para.3)**

- Article 3 of the Law on Taking and Transplanting Human Organs for the Purpose of Treatment stipulates that it is prohibited to trade in organs, advertise the need for organs and the offer of organs in the media or on any other carrier of advertising messages, as well as mediation in these businesses. Also, Article 295 of the Criminal Code stipulates that anyone who advertises the purchase or sale of a human organ, tissue, cell, embryo, foetus or the body of a deceased person will be sentenced to up to three years in prison.

e. Which measures have been taken to provide (**Article 21 para. 2 letter a, Explanatory Report, para. 127**):

1. information for healthcare professionals and relevant officials (including police, legal professionals in the prevention of and combat against trafficking in human organs?

2. information for civil society in the prevention of and combat against trafficking in human organs?

- In order to answer this question, we must bear in mind several facts, namely:
  - The legislative framework in Montenegro is fully transparent when it comes to organ transplantation and exercising the right to transplantation;
  - Transplantation programs are not carried out in Montenegro;
  - In Montenegro, no case or suspicion of human organ trafficking has been recorded so far;
  - In Montenegro, there are only a few health professionals who deal with transplantation processes.

  Considering all of the above, it is clear that there is complete information among that small number of health workers who deal with transplantation processes.
  Also, all interested organizations can receive relevant information at any time from government authorities.
  Also, it is important to emphasize that the mentioned measures are of an optional nature, and that it is left to the signatory states to assess the need for their implementation.

f. Which policies or strategies have been implemented to promote or conduct awareness-raising campaigns targeted at the general public where the focus is directed especially towards the risks and realities of the unlawfulness and dangers of trafficking in human organs?

1. Please describe the material used for the campaign/programme and its dissemination.

2. If possible, please provide an assessment of the impact of the campaign/programme. If there are currently plans for launching a (new) campaign or programme, please provide details (**Article 21, para. 2 letter b**);

- So far, no special campaigns have been carried out, bearing in mind that not a single case of trafficking in human organs has been recorded in Montenegro, nor is there any doubt that a case has occurred. The mentioned measure is optional, and it is left to the signatory state to assess the need for its application.

VI. INFORMATION

Please specify which state body/agency was responsible for collecting the replies to this questionnaire and which state bodies/agencies (and, at the discretion of the country, where relevant, civil society and external contributors) contributed to responding to this questionnaire.

- **Body/agency responsible for collecting the replies**:

- Ministry of Health
- Health Insurance Fund of Montenegro

- **<u>State bodies/agencies (where relevant, civil society and external contributors) that contributed to responding to this questionnaire</u>:**

    - Ministry of Interior affairs