



Montenegro

A DECADE
OF INDEPENDENCE
A MILLENNIUM
OF STATEHOOD
MONTENEGRO
2016



May Montenegro live forever

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The Permanent Mission of Montenegro to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to convey the information of the Government of Montenegro for the preparation of the Report on the promotion and protection of the human rights of migrants in the context of large movements.

The Permanent Mission of Montenegro to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration. TB



Geneva, 18 August 2016

**Office of the High Commissioner for Human Rights
Geneva**

Asylum seekers as a special category of migrants

When referring to international legal framework, the universal system for protection of human rights which is established under the auspices of the most important universal international organization, United Nations, certainly represents the starting point.

International norms and standards in the area of migrants' protection are extremely important because the Constitution of Montenegro proclaims that the generally accepted rules of international law and confirmed international treaties represent an integral part of the internal legal system of Montenegro. International conventions and standards in the area of protection of migrants' rights are legally bounding for Montenegro and they represented the framework for the establishment of migrants' protection system. Besides relevant provisions of the Constitution and general international norms and standards, there are specialized international conventions, relevant laws and strategies which apply to every category of migrants and by means of which the state defines priority goals for the purposes of the improvement of their position and the means for their fulfillment.

Universal Declaration on Human Rights represents the first international tool which acknowledges the right to asylum and envisages that „everyone has the right to seek and to enjoy in other countries the asylum from persecution” (Article 14). Also, the Convention related to the Status of Refugees from 1951 which bounds Montenegro represented, inter alia, the basis for creation of the asylum system in Montenegro.

The Constitution of Montenegro, as the highest legal act, comprises of the whole set of provisions which are important for the protection of migrants' rights. The Article 44 of the Constitution, which guarantees the right to asylum, comprises of two important guarantees for the treatment of migrants. Firstly, there is the right to seek asylum, which prescribes that „*the foreign national who has a well-founded fear of being persecuted for reasons of race, language, religion, nationality, membership of a group or political opinion may seek asylum in Montenegro*“. Then, paragraphs 2 and 3 guarantee another extremely important postulate of international law, which is the prohibition of return. According to these provisions, a foreign national shall not be expelled from Montenegro to where due to his/her race, religion, language or association with a nation he/she is threatened with death sentence, torture, inhuman degradation, persecution or serious violation of rights guaranteed by the Constitution.

The Law on Asylum was adopted on July 17 2006 (“Official Gazette of Montenegro” no: 45/06). It entered into force on July 25 2006 and its application started on January 25 2007. Enactment of the Law on Asylum was a significant step towards the creation of the asylum system in Montenegro, in fulfilling international obligations which arise from the international and European documents.

The basic principles incorporated into the Law on Asylum are prohibition of return and expulsion, non-discrimination, confidentiality and data protection, family reunification, non-punishment for unlawful entry or residence, protection of persons with special needs, respect of gender, respect of legal order, legal protection, cooperation with UNHCR etc.

One of the basic principles of the refugee right is *non-refoulement* according to which a refugee has a right to protection from expulsion or return. *Non-refoulement* is related to prohibition of expulsion or return from the border and territory and it includes expulsion, return or other forms of transfer of refugees and asylum seekers to a territory where their life or freedom would directly be endangered, or to a territory where they are threatened by further expulsion, return or transfer to other area of risk. This rule contains Article 33 of the 1951 Convention relating to the Status of Refugees and as such, it represents an integral part of the Montenegrin legal system.

Asylum is granted to foreign nationals in need of international protection in accordance with the 1951 Convention relating to the Status of Refugees, 1967 Protocol related to the Status of Refugees, 1950 European Convention for Protection of Human Rights and Fundamental Freedoms and other ratified international treaties and generally accepted rules of international law, in accordance with the Law on Asylum.

Foreign national is entitled to the refugee status if, upon his/her asylum application, the fear of persecution for the reasons of his/her race, religion, nationality, membership of a specific social group or political opinion in the state of origin is determined to be well founded and that it is the reason why he/she cannot or does not want to use the protection of the state of origin.

Besides the status of the refugee, the Law on Asylum also recognizes a subsidiary protection, as a supplementary protection of refugees in accordance with the documents on human rights and it is granted to the foreign national who does not fulfill requirements for the granting of the refugee status and who would, in case of return to the state of origin or other state, be subjected to the torture or inhuman or degrading treatment or punishment, or his/her life, safety or freedom would be threatened with general violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances seriously threatening life, safety or freedom.

Also, the Law sets standards of temporary protection as an urgent and exceptional measure of providing protection to foreign nationals in cases of massive, sudden or expected influx from the state where their life, safety or freedom are threatened with the general violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances seriously threatening to life, freedom or safety, and for the reasons of massive influx there is no possibility of conducting individual procedures for determination of a refugee status.

The Ministry of Interior has prepared the Proposal of the new Law on International and Temporary Protection of Foreign Nationals which is fully harmonized with the EU legislation, which is one of the indicators that Montenegro is ready to share the burden and values of other European countries.

Since the EU recognized the principle that rights which are recognized to non-nationals who for the longer period of time legally reside on the territory of some member states should be extended in a way to be more similar to those which are recognized to nationals from that state, Montenegro has also, in this sense, by means of the proposal of the new Law on International and Temporary Protection of the foreigners introduced a new context which encourages the successful integration of these persons into receptive Montenegrin society and that way, the full protection of human, civil, economic, social, cultural and other rights is guaranteed to them.

The Proposal of the new Law on International and Temporary Protection of Foreign Nationals is more designed in the context of human rights than the right of the state which guarantees that right to specific individuals under specific circumstances, thus creating the policy of good integration which begins from the moment foreign national seeks asylum and it is continuously expanding to the period of asylum approval.

With its legislation, Montenegro creates Montenegrin society as an inclusive society that understands the reasons and causes for which people are forced to leave their home country, which accepts a moral and legal obligation to protect refugees by means of creating an environment in which refugees can rebuild their lives and engage in all aspects of social, cultural, political and economic life of the receptive state, specifically in Montenegro, without the need of changing or abandoning their own cultural identity.

Fundamental human rights are recognized to every person on the territory of Montenegro, regardless of their legal connections with this country. The fundamental issue of any integration policy is in what way and to what extent countries allow refugees to gain and exercise their rights.

Even though Montenegro is not heavily exposed to the current migration flows, in case of increased influx of refugees and migrants, each submitted application for asylum will be processed in accordance with the provisions of the Law on asylum, and every decision will be made objectively and impartially, after the establishment of facts and the evidence presented in each case. This is emphasized because Montenegro has a humanitarian tradition of providing refuge for victims of persecution as a result of war, and the protection of refugees remains to be the responsibility of the state.

Shelter for Foreigners

Pursuant to the Law on Foreigners, a foreigner may enter, move around and stay in Montenegro with a valid travel document or a valid travel document which includes a visa, a temporary residence permit, a temporary residence and work permit and permanent residence permit. A foreigner whom our country is obliged to accept on the basis of international agreements, when required by humanitarian reasons, the reasons of protecting public order or public health, may enter Montenegro without valid travel documents.

A foreigner shall not be forcibly removed to a country where his/her life or the freedom of race, religion, language or nationality, membership of a particular social group or political opinion would be under threat, or where he/she would be subjected to torture or to inhuman and degrading treatment and punishment.

In order to create conditions for exercising the control of movement and residence of foreigners in accordance with EU standards and recommendations, as well as a more efficient prevention of illegal migrations, the Ministry of Interior has recently taken actions to establish a shelter for foreigners in Montenegro, with the capacity of 46 persons. The new Shelter for Foreigners in Spuž- Municipality of Danilovgrad was put into service on December 13, 2013.

With their placement in the Shelter for the period of 2015 and the six months of 2016, the freedom of movement was limited to 195 illegal migrants.

All persons were introduced to their rights and provided with a brochure in seven languages on the right to asylum, as well as a brochure on the right to voluntary return upon a personal request. A minor foreigner shall be placed in a shelter with his/her parents, or other legal representative, unless it is deemed that other accommodation is more suitable for him/her.

Protection and rehabilitation of unaccompanied minor migrants and other vulnerable migrant groups

At the end of 2014, a Feasibility study for strengthening the capacity for accommodation, protection and rehabilitation of unaccompanied minor migrants and other vulnerable migrant groups of was made in cooperation with the "TAIEX", and it showed that "Youth Centre Ijubovic", which organizationally belongs to the Ministry of Labor and social Welfare, has all the necessary capacities for the accommodation of unaccompanied minor migrants, while unaccompanied minor foreigners who are asylum seekers are placed in the Center for asylum seekers which also provides all human rights laid down in international conventions.

A minor foreigner may not be returned to the country of origin or to a third country that is willing to accept him/her, if it is contrary to the Article 1A (2) of the Refugee Convention and the Article 1, Paragraph 2 of the Protocol relating to the Status of Refugees of 1967, the Articles 3, 5, and 8 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment with the Additional Protocol 2, and the Articles 9 and 37 of the Convention on the Rights of the Child as well.

At the moment, there is not a program of assisted voluntary return in Montenegro, while in the past there was a Memorandum of Understanding between the Ministry of Interior and the IOM on the AVR, and the practice has shown that there is a need for its reimplementation.

Negotiations with the IOM on the AVR, which would be financed by the "Frontex", are in progress.

Also, the Working Group is currently working on the Amendments to the Law on Foreigners, in which the EU regulations will be implemented.