

QUESTIONNAIRE (paragraph 4 of A/HRC/21/30)

2. i

Montenegro is not recognized as a country with severe forms of xenophobia or the existence of general trends in that area, and with its legal framework and its policies is taking a series of positive steps towards combating racism and intolerance.

Specifically, from the restoration of its independence in June 2006, Montenegro has ratified most of the relevant international legal instruments, which are of importance for the protection from xenophobia, including the Protocol 12 to the European Convention on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Additional Protocol to the Convention on Cyber Crime. Comprehensive protection of national / ethnic minorities is stipulated in the Constitution and the Law on Minority Rights and Freedoms. (The list of rights that are guaranteed includes the use of their own language and alphabet in private, public and official context, authentic representation in the Parliament, proportional representation in public services, state authorities and local self-government authorities, as well as the right to establish Councils for protection and promotion of minority rights).

Government policies are aimed at achieving full respect for certain rights that are guaranteed by the established legal framework, including authentic representation in the Parliament of Montenegro, proportionate representation in public services, state authorities and authorities of local self-governments, as well as the equitable distribution of funds to the councils of national minorities from the state Budget.

Besides this, big efforts are being made to resolve issues regarding the position and status of displaced and internally displaced persons. The Strategy for permanent solution of these issues (which is accompanied by action plans on annual basis) foresees two ways: integration into Montenegrin society and voluntary return (based on the freely expressed will).

To achieve the objectives from the Strategy was necessary to harmonize legislation primarily related to the laws from the area of health care, education and employment of displaced and internally displaced persons with the Law on Foreigners.

At this point, displaced and internally displaced persons in Montenegro exercise the same rights as Montenegrin citizens in the area of labor, employment, education, social and child protection and insurance, as well as pension and disability insurance.

2. ii

LEGAL FRAMEWORK
CONSTITUTIONAL PROVISIONS

Article 7 of the Constitution of Montenegro prohibits inducing or encouraging hatred and intolerance on any ground. Article 8 prohibits direct or indirect discrimination on any ground. This Article also provides for special measures to be taken in the interest of the achievement of equality of persons on any ground. Such measures are to be used until the realization of the purpose for which they were taken. Article 17 states that everyone is treated equally before the law, regardless of any special or personal characteristics. Article 79 of the Constitution protects the identity "of members of minority nations and other minority national communities". The list of rights that are guaranteed to members of minority nations and other minority national communities includes the use of their own language and alphabet in private, public and official context, authentic representation in the Parliament, proportional representation in public services, state authorities and local self-government authorities, as well as the right to establish Councils for protection and promotion of minority rights.

CRIMINAL LEGISLATION

Xenophobia in the Criminal Code is sanctioned through criminal acts:

- Inciting national, racial and religious hatred (article 370) - The basic form of this criminal act is provoking and inciting national, racial or religious hatred. The qualified form of this criminal act is the same act committed by coercion, harassment, violation of safety, exposure of national, ethnic or religious symbols to mockery, damage to other people's belongings, desecration of monuments, memorials or graves. Envisaged revision of the Criminal Code shall provide for sanctioning of persons who publicly approve, deny or significantly diminish the criminal act of genocide, crimes against humanity and war crimes.
- Racial and other discrimination (Article 443). This Article provides for the sanctioning of persons who on the basis of race, colour, nationality, ethnic origin, or other personal characteristic violate basic human rights and freedoms guaranteed by the generally accepted rules of international law, perform persecution of organizations or individuals for their commitment toward equality of people, spread ideas about the superiority of one race over another or promote racial hatred or incite to racial discrimination.

In the Law on Amendments to the Criminal Code which is planned to be adopted in the first quarter of the current year, is envisaged the expansion of Article 42, which refers to the general rules on sentencing, in a way that as aggravating circumstance for the criminal act shall be considered hatred as a motive from which the criminal act has been made.

Procedural laws have consistently implemented the constitutional provisions guaranteeing the prohibition of discrimination which relates to the right of a person to be promptly informed in its own language about the reasons for his/her deprivation of liberty and in the same time informed that he/she is not required to state anything, that he/she is entitled to a defence counsel of his/her own choice, and is entitled to require his/her immediate family to be notified about the deprivation of liberty, the right to use his/her own language in the proceedings, the right on the counsel, the remedy, that a judicial decision can not be based on evidence obtained through violations of human rights and fundamental freedoms guaranteed by the Constitution and ratified international treaties, etc.

ACCESS TO COURTS

Montenegrin Constitution prohibits all direct or indirect discrimination on any ground, which also refers to the prohibition of discrimination in access to courts. The Constitution also guarantees the right of each individual to equal protection of its rights and freedoms. Everyone is equal before the law, regardless of any special or personal characteristic. Everyone has the right of recourse to international organizations for the protection of its rights and freedoms guaranteed by the Constitution. Equal access of domestic and foreign legal and natural persons to courts includes also equality of rights on legal assistance guaranteed by the Constitution to everyone.

Montenegro, with countries within the European Union and other countries, is a signatory to a number of multilateral and bilateral agreements dealing with the free access to courts, such as the European Convention on Human Rights and Fundamental Freedoms, the European Convention on Mutual Assistance in Criminal Matters from 1959 with Additional Protocol, the Hague Convention on Civil Procedure from 1905 and 1954 and the Hague Convention on International Access to Courts from 1980, the International Covenant on Civil and Political Rights from 1966, the Universal Declaration of Human Rights from 1948, bilateral agreements on legal assistance in civil and criminal matters with the Czech Republic and Slovakia from 1964, Algeria from 1982, Bosnia and Herzegovina from 2011, Croatia from 2011, Serbia from 2009, Iraq from 1986, Cyprus from 1984, Macedonia from 2004, Mongolia from 1981, Poland from 1962, Russia from 1962, Austria from 1954, Belgium from 1971, Bulgaria from 1956, Greece from 1959, Hungary from 1982, Romania from 1960, Italy from 1960, Turkey from 1934 and Britain from 1936, as well as specific agreements on facilitating the application of the Hague Convention on Civil Procedure from 1954, which were concluded with France in 1969 and Sweden in 1990.

The Law on Courts ("Official Gazette of Montenegro", no. 52/08) in Article 5 prescribes that everyone has the right to address the court for the exercise of its rights. Everyone is equal before the court.

The Law on Civil Procedure also provides for the equality of the parties and obligates the court to give to each party the opportunity to comment on the claims and allegations of the opposing party. A party to the proceeding may be any natural or legal person. If the proceeding is not conducted in the language of the party or other participants in the proceeding, upon their request, will be provided interpretation in their language, or language they understand, of all submissions and written evidences, as well as of what is said during the hearing.

The Law stipulates that the parties and other participants in the proceedings will be taught about the right to follow the oral proceedings before the court in their own language through an interpreter. The parties and other participants in the process who do not understand or speak the language in official use in the court are entitled to use their own language or the language they understand.

The Criminal Procedure Code ("Official Gazette of Montenegro", no. 57/2009 and 49/2010), in Article 7, paragraph 2 prescribes that in the court in which area of jurisdiction the members of minority nations and other minority national communities make significant part of the population, in official use in criminal proceedings will be also their language, in accordance with the law.

Article 8, paragraph 2 of the same Law establishes the right of the parties, witnesses and other persons participating in the proceeding to have the right to use their language in the proceeding. If the proceeding is not conducted in the language of such person, there will be provided the interpretation of what he/she or others are saying, as well as of documents and other written evidences. Article 10, paragraph 2 of this Law set the obligation for the court to deliver the court documents also in the language of national minority in official use in that court to persons who are members of that national minority, and who used that language during the process. Such persons may require the documents to be delivered to them in the language in which the proceeding is conducted.

Article 6 of the Law on Civil Procedure prescribes that the court shall give to each party the opportunity to comment on the claims and allegations of the opposing party, in proceedings conducted in a language which is in official use in court. The parties and other participants in the proceeding who do not understand or speak the language in official use in court are entitled to use their own language or the language they understand. The party who doesn't have qualified attorney (attorney in law or a person who has passed the bar exam) and who, out of ignorance does not use the rights it enjoys under this Law, the court shall warn about which procedural actions he/she may take (Article 12 of the Law).

The parties and other participants in the proceeding have the right to use their own language or the language they understand during the participation in the hearings and during taking other oral procedural actions before the court. If the proceeding is not conducted in the language of the parties or other participants in the proceedings, upon their request shall be provided the interpretation on their language or language they understand of all submissions and written evidence, as well as of what is said during the hearing.

The parties and other participants in the proceeding shall be taught about the right to follow the oral proceedings before the court in their own language through an interpreter. In the minutes shall be noted that they were informed, as well as the statements of the parties and participants. Interpretation shall be performed by interpreters.

Article 100 of the Law prescribes that the summons, decisions and other judicial documents shall be delivered to the parties and other participants in the proceedings in the language which is in official use in the court. If in the court in official use is also the language of some national minority, the court shall deliver the court documents in this language to those parties and participants in the proceeding who are members of that national minority and are using that language during the proceeding.

The parties and other participants in the court proceeding shall submit their complaints, appeals and other submissions to the court in the language which is in the official use in the court. The parties and other participants in court proceeding may submit their submissions also in the language of national minorities which is not in the official use in the court if that is in accordance with the law. The costs for interpretation and translation in a

language of national minorities, incurred by applying the provisions of the Constitution and this Law regulating the right of members of national minorities to use their own language, shall be reimbursed by the court.

Parliament of Montenegro adopted the Law on Free Legal Aid at the meeting held on 6 April 2011. The Free Legal Assistance includes providing the necessary funds for the costs of the proceedings before the courts, as well as exemption from payment of legal costs. The Law is setting up conditions for exercising the right to free legal aid, forms of free legal aid, persons authorized to provide assistance and process of approving free legal aid and other issues of importance for the realization of this right. The application of this Law was postponed and it started on 1 January 2012. During the period of postponement the secondary legislation was adopted, created technical conditions and hired personnel for the operation of the services, as well as provided funds in the Budget for 2012 for the financial sustainability of the system of free legal aid.

The concept of this Law is based on a model of judicial free legal aid. Specifically, the Law prescribes that every basic court in Montenegro shall set up a service for free legal aid, which will assess whether a person applying is entitled to free legal aid. This estimate depends on the financial conditions of the applicant as prescribed by the Law. The Law provides for the following forms of free legal aid: legal advice, drafting documents and representation in court. Legal advice may also be provided by the service for free legal aid, while for the other forms of assistance is necessity to engage an attorney in law. Entrusting all forms of free legal aid to attorneys in law is to attain quality in provided free legal aid.

Exercise and the use of the right to free legal aid in accordance with this Law must be guaranteed without discrimination on grounds of nationality, ethnic origin, race, colour, language, religion or political belief, gender, sexual orientation, health status, disability or any other personal characteristics. The right to free legal aid under the conditions laid down in this Law may be acquired by: Montenegrin citizen, stateless person who are lawfully residing in Montenegro and the person seeking asylum in Montenegro, foreigner with permanent residence or temporary residence permit, as well as another person in accordance with the rules of international law binding Montenegro. The right to free legal aid can be exercised by a person who is: user of financial support of the family or user of the other social protection right, in accordance with the law governing social and child protection; child without parental care; victim of domestic violence or person in poor financial conditions.

(Note: Examples of case law can be provided later, if rules for completing the questionnaire allows it, since in this occasion we didn't have enough time to do so).

2 iii

System of prevention of racism, discrimination, xenophobia and intolerance is already implemented through curriculum in the education system of Montenegro, at all levels of education. Teaching programs are modernized and significantly improved in the past decade in terms of respect for all human rights, fostering multiethnic environment and diversity, respect for cultural and other characteristics of other nations, and training for life in a democratic society, the development of democratic attitudes, tolerance and cooperation, in and out of school.

New subjects are introduced, such as "Civic Education", "Healthy Lifestyles", "Individual in a group", etc, which affirms equality, antidiscrimination, respect of race, nationality, language, religious identity and respect of diversity of others.

Law on Protector of Human Rights and Freedoms of Montenegro adopted on 29 July 2011, the Protector is being established as a national mechanism for protection against all forms of discrimination made by natural or legal persons.

2. vii; 2 viii.

In Montenegro, the victims of criminal acts are entitled to compensation of damages in two ways: 1) from the accused person by submitting a proposal for obtaining property claim in criminal proceeding, or 2) by filing a

complaint in civil proceeding. The Criminal Procedure Code ("Official Gazette of Montenegro", no. 57/2009 and 49/2010) stipulates that the property claims that arose from the criminal act shall be discussed on the proposal of the person who is authorized to pursue that claim in civil proceeding, if this would not significantly delay the proceeding. Property claim may relate to compensation of damages, return of things or invalidation of certain legal affairs. A proposal for the realization of a property claims have to be submitted to the state prosecutor or the court before which the criminal proceeding is pending at least until the end of the main hearing before the first instance court. If an authorized person has not submitted the proposal for obtaining property claim under criminal proceeding until rising of charges, he/she shall be inform that the proposal can be submitted by the end of the main hearing. A property claim shall be decided by the court. In a verdict pronouncing the accused guilty, the court may award to the authorized person property claim in whole or in part, and for the remainder direct him/her to the civil proceeding. If the facts set forth in the criminal proceeding do not provide a reliable basis for either a full or partial compensation, and their determination would lead to a significant delay of the proceeding, the court shall instruct the authorized person to claim property as a whole in the civil proceeding. When the court rules that the defendant is acquitted of the charges or dismisses the charges or if it decides to discontinue criminal proceeding, it shall address authorized person to submit property claim in the civil proceeding. The court may, in the course of criminal proceeding or upon its completion, regardless of the decision made, direct injured party, or a person who filed the property claim and accused to try to resolve their contentious relationship that is the subject of the claim in the mediation process in accordance with the Law on Mediation.

Draft Law on Compensation for Victims of Criminal Acts is adopted. It defines the right to financial compensation for victims of criminal acts committed with intent, conditions and procedures for exercising the right to compensation, authorities which proceed and decide on the right to compensation, authorities and procedures applicable in cross-border cases. With the adoption of the Law on Compensation for Victims of Criminal Acts, Montenegro will join the circle of states which in the framework of their legislation are trying to implement European standards in order to protect the position of victims of criminal acts. The draft stipulates that, in order to protect and assist victims of criminal acts committed with intent, financial compensation shall be provided in the Budget of Montenegro. The compensation is payable if in the proceeding is determined that the victim will not be able to obtain compensation of damages in court or other proceedings, or is necessary to pay compensation before court proceeding or any other proceeding in order to ensure timely removal of harmful consequences for the victim.