**MONTENEGRO ANSWERS TO THE QUESTIONNAIRE ON DEPRIVATION OF LIBERTY OF WOMEN AND GIRLS**

**Justice system:**

1. **What are the main causes for women coming into conflict with the law and facing the associated deprivation of liberty, including pre-trial detention? Which are the groups of women who are most vulnerable and why? Please list the types of offences for which women, of any particular group of women, are typically charges with, including administrative offenses.**

The most of women who are coming into conflict with the law have their origins in conflict families, and have harmed relationship with one of the parent. Also, the most of them have problems with secondary family, abandonment by spouse (death or devorse) and as single mothers with the lack of financial resourses become subject of anti-social behaviours. Crimes for which they were sentenced are mostly from the group of property crimes (theft), and unauthorized production, possession and distribution of narcotics. Other offenses that occur more frequently in women are: murder, infanticide, robbery, and so often, failure to provide maintenance (alimony), tax evasion, abuse of authority, violence in the family (to the parent, to the spouse). Related to the measure of detention, it is determined mostly because of a reasonable suspicion that the (women) detainee committed crimes against life and body (murder, murder in an attempt, a serious murder), crimes against property (theft, serious theft, fraud), crimes against public order (creation of a criminal organization, bullying, illegal possession of weapons and explosives), while less frequently on suspicion of having committed criminal offenses against human health (unauthorized production, possession and distribution of narcotics), crimes against sexual freedom (rape through aiding) and offenses against marriage and family (violence in the family or family community). The most vulnerable group of women are drugs addicted, who under the influence of drugs, as well as in the absence thereof, exhibit antisocial behaviour. Besides the above groups, women belonging to the Roma population could also be classified as vulnerable due to lack of education and poor financial situation, as a result of the way of life that they live (prostitution, begging).

1. **Please indicate if there are cases of women facing detention in relation to civil law suits and identify the particular groups of women mostly affected**

**According to the article 181, Law on Civil Procedure provides the same treatment for a man or a woman in the role of victim in Civil Procedure**. Therefore:

„If a witness who is duly summoned does not come in and the absence is not justified or if he fails to leave the place where he has to be heard without permission or justified reason, the court shall order that brought forcibly and to pay the costs incurred and shall be punished by a fine of up to 500 euros.“

If a witness comes and after being warned of the consequences, refuse to testify or answer to a particular question, and the court finds that the reasons for denial unjustified, it shall fined up to 500 euros, and if after that refuses to testify, he could be closed. Imprisonment shall last until the witness agrees to testify or until his testimony becomes unnecessary, and no longer than 30 days.

The court shall, upon request, to order the witness to reimburse them caused by his unjustified absence or unjustified refusal to testify. If the witness subsequently justifies his absence, the court shall revoke its decision on the penalty, a witness may be wholly or partially released from charges. The court may revoke its decision on the penalties when the witness subsequently agrees to testify. "

Ministry of Justice is not aware that there were cases of determining the sentence for witnesses in civil proceedings, and if so it is certainly very rare, because the application of other instruments provided by the prescribed attendance of witnesses at a hearing in the civil proceedings. This is not about custody in civil proceedings, nor the same as any, but a possible jail for witnesses, regardless of whether it is a woman or a man.

 In relation to the above, there are a group of women who are most custody in litigation.

1. **What are the main challanges for women's access to justice, including, for example, the availability and quailty of legal representation, and ability to pay for bail and the existence of gender stereotyping and bias in judical proceedings?**

The Constitution of Montenegro stipulates that the state guarantees the equality of women and men and development of policy of equal opportunities, and that everyone is entitled to equal protection of their rights and freedoms. It also stipulates that everyone has the right to legal remedy against the decision ruling on the right or legally based interest. All kinds of discriminations are forbiden too.

Law on Courts (Official Gazette of Montenegro, no. 11/15), in article 3, defines the availability of courts and equality of parties, and provides that "Everyone has the right to apply to court to enforce their rights. All are equal in the court. "

Relation to the criminal legal protection, the Criminal Code in Section 42a, stipulates that if the crime was committed out of hatred towards another person because of national or ethnic origin, membership of a race or religion or because of the absence of such an affiliation, disability, **gender**, sexual orientation or **gender identity** , that circumstance the court will appreciate as aggravating, unless it is defined as a basic feature or severe forms of crime.

Also in paragraph 2, it is provided that if the offense is committed against a person belonging to a special category of vulnerable persons (children, disabled persons, pregnant women, the elderly, refugees), the court will take this as an aggravating circumstance.

According to free legal aid, for the purpose of exercising the right to a fair trial to a natural person, which according to his financial situation, is not able to provide the right to judicial protection without damage to necessary support themselves and their families, provides free legal aid pursuant to the free legal aid.

The right to free legal aid have especially persons who are the victims of criminal acts of violence in the family or a family community and trafficking in human beings, as well as victims of domestic violence in accordance to the law which proclames protection of domestic violence. Persons authorized to provide free legal aid are lawyers from the list of the Bar Association of Montenegro. The list is made by lawyer who are under territorial jurisdiction of basic courts.

1. **What have been the main drivers for the increasing or decreasing of the female prison population in your country in the past decade? To what extent are non-custodial measures used, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non – custodial Measures fo Women Offenders (Bankok Rules)?**

As one of the most common drivers to commit crimes are achievement of economic benefits, it is clear that the mechanisms of reaction to the crime will not achieve valid results if not adequately fight against criminal activity, especially if the value of these benefits is high. Post-penal acceptance and reintegration into the community, and addressing socio-economic issues of the prisoners are the main drivers of the decrease in commission of criminal offenses and the return of socially acceptable behaviors.

**IV Migration and crisis situations**

1. **What are the specific risks of detention and confinement encountered by women on the move in the context of asylum seeking, internal displacement and migratory processes?**
2. **What is the policy relating to the administrative detention of women migrants including pregnant women and women with children?**

 Montenegro fully implements the standards of the Geneva Convention and other international documents dealing with the protection of human rights, as well as the rights of women migrants and women seeking international protection. The national regulation that is governing the field of international protection is the Law on International and Temporary Protection of Foreigners ("Official Gazette of Montenegro" No.2 of 10 January 2017), that is fully implemented the CEAS standards of the "Common European Asylum System".

The possibility of limiting the freedom of movement regulated by Article 62 of the Law in the following way:

"A foreigner seeking international protection and a foreigner in a transfer has freedom of movement in Montenegro, including the choice of place of residence, with the obligation of the Ministry to inform about the place and address of stay, within three days of the election or change of place and address of stay.

      Freedom of movement may be restricted to foreigner who seeks international protection if on the basis of facts and circumstances of the particular case is estimated that this is necessary because of:

     1) establishing the facts and circumstances on which the application for international protection is based, which cannot be established without restriction of movement, especially if it is estimated that there is a risk of escape in view of earlier attempts to arbitrarily leave Montenegro, the earlier refusal to check and establish identity, hiding or providing false identity information or citizenship, gross violation of the rules of residence and home order in the Reception Center, as well as the results of the Eurodac system for the comparison of fingerprints by Regulation (EU) No. 603/2013;
     2) identification and verification of identity or nationality;
     3) protection of national security and public order of Montenegro;
     4) preventing the misuse of the proceedings where there is a reasonable suspicion that the intention to file a request for international protection has been expressed during the proceedings in order to prevent the refoulement.

The foreigner in the transfer shall restrict the freedom of movement for the purpose of effecting transfers to another State responsible for deciding on a request for international protection, if it is estimated that there is a risk of escape, particularly taking into account his opposition to the transfer, as well as the circumstances referred to paragraph 2, point 1 of this member.

In order to limit the freedom of movement, in the cases referred to Article 62 of this Law, the following measures may be imposed on a foreigner seeking international protection or a foreigner in a transfer:

      1) prohibition of movement outside the Reception Center;
      2) prohibition of movement outside a particular area;
      3) prohibition on leaving the accommodation at the address he applied;
      4) obligatory accommodation in the reception center;
      5) seizure of travel documents and other documents;
      6) lodging in the Shelter for foreigners

In the practice so far, there have been no cases of restrictions on the freedom of movement for women who requested international protection in Montenegro

We especially emphasize that the Law stipulates in Article 20:
"A foreigner seeking international protection who is having regard to his or her personal characteristics and circumstances (age, gender, gender orientation, gender identity, serious illness, mental health or the consequences of torture, rape or other serious forms of psychological, physical or gender-based violence and gender), is not fully capable of exercising rights and performing obligations in accordance with this Law, without appropriate assistance, special procedural guarantees are provided.

Special procedural guarantees are considered adequate support to foreigners in accordance with paragraph 1 of this Article, in order to manage the rights and fulfill obligations in accordance with this Law.

The properties and circumstances in accordance with paragraph 1 of this Article, in the procedure of express intent to submit a request for international protection until the adoption of a decision on a request for international protection, it shall be determined by the qualified police officers and authorized officials of the Ministry and other competent authorities in accordance with this Law.

In proceedings at the request of a foreigner seeking international protection requiring special procedural guarantees, and in particular at the request of a victim of torture, rape or other serious forms of psychic, physical or gender-based violence, if they cannot be adequately supported, apply the provisions of Article 36 and 51 of this Law. "

The rights to privacy, dignity and safety of these persons are respected during reception and accommodation of women migrant including pregnant women and women with children. Considering that migrants are our country of transit territory and foreigners seeking international protection are short-lived, the Reception Center provides accommodation and food, health care, psychosocial assistance, which is also their primary need and priority