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Ministry for Human and Minority Rights

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**MONTENEGRO REPORT ON THE IMPLEMENTATION OF URGENT  
RECOMMENDATIONS OF  
THE COMMITTEE ON THE IMPLEMENTATION OF THE CONVENTION ON  
THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST  
WOMEN**

## INTRODUCTION

Within the 67<sup>th</sup> regular session of the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee), held in Geneva on July 11, 2017, a delegation of the Government of Montenegro, headed by the Minister for Human and Minority Rights, presented Montenegro Second Periodical Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The Report was considered in a form of a constructive dialogue between the members of the Committee and the delegation. The aim of this dialogue is to achieve better understanding of the real situation in the country, and to jointly establish modalities for improving the implementation of the Convention.

All members of the delegation of Montenegro took part in the work and their work was positively evaluated. Efforts to achieve progress were supported and it was estimated that the Committee's Final Conclusions and Assessments will be a clear indication of the future engagement of the Government and all other actors in the country.

"Shadow Reports" were submitted at the same time by the following organizations: Center for Women's Rights, Safe Women's House, SOS Telephone for Women and Children Victims of Violence Nikšić; Center for Roma Initiatives; Spektra, Juventas and Queer Montenegro.

Through an interactive discussion the Committee was introduced with the amendments to all laws that have been innovated in the area of achieving gender equality in order to comply with international standards. Areas of interest also related to education, social protection, position of women in the labor market, exercising rights in the field of labor relations, health, protection against discrimination of marginalized groups and access to justice.

After the presentation of each individual report, in a closed session, the Committee considered the meeting held, on the basis of which the country's rapporteurs drafted conclusions and recommendations. The draft was then discussed at a plenum, which was also closed to the public.

The final remarks and recommendations of the CEDAW Committee (CEDAW/C/MNE/Q/2) of 21 July 2019 with regard to the Second Periodic Report on the Implementation of the CEDAW Convention were submitted to the Ministry for Human and Minority Rights. The final remarks and recommendations of the CEDAW Committee can be found on the following link:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMNE%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMNE%2fCO%2f2&Lang=en).

Ministry for Human Rights and Minority Rights had it translated and distributed to all contact persons for gender equality, members of the Gender Equality Council, judicial institutions - courts

and prosecutor's offices, NGOs, representatives of local self-governments, media etc. – to about 200 e-mail addresses.

As for the Third Periodic Report, Montenegro is obliged to submit a Report on the Implementation of 63 recommendations in July 2021. The Committee requested information on the implementation of urgent recommendations 21c, 37, 43c and 53b within two years.

With regard to the obligation to submit the Report on the Implementation of Emergency Recommendations to the CEDAW Committee by 17 July 2019, the Ministry in coordination with Ministries of Labor and Social Welfare, Justice, Internal Affairs, National Office for Fight Against Trafficking in Human Beings, Police Administration, Gender Equality Committee in the Parliament of Montenegro and Supreme Court of Montenegro, drafted the Report, which is presented below.

### **RECOMMENDATION No. 21:**

21. (c) Strictly enforce the prohibition of a forced extramarital community or child and/or compulsory marriage, in particular in cases of further sexual exploitation of the victim, and to adequately prosecute and sanction perpetrators of such offenses.

Amendments to the Criminal Code of Montenegro of 2017<sup>1</sup> amended Articles of the Law regarding the common-law marriage with a minor child (penal provisions), trafficking in human beings/minors. Common-law marriage with a minor represents a severe form of this criminal offense complemented by a qualifying circumstance when the offense is committed by the use of force or threat. Namely, if the offense is committed by force, threat or for gain, the perpetrator shall be punished by imprisonment of six months to five years. Pursuant to Article 216 of this Law, which refers to the common-law marriage with a minor, it is envisaged that an adult who cohabitates in a common-law marriage with a minor shall be punished by imprisonment of three months to three years. The same penalty applies to a parent, adoptive parent or guardian who allows a minor to cohabit in a common-law marriage with another person or instigates him/her into such marriage.

The Montenegrin Criminal Code of 2017 is in line with the Istanbul Convention by introducing a new form of criminal offense - conclusion of unlawful marriage (by using force or threat). Namely, if a person instigates or takes another person abroad with the intention to make him/her conclude a marriage by using force or threat, shall be punished by imprisonment of three months to three years.

Also, the amendments to the Criminal Code of Montenegro of July 2017 added new criminal offenses: female genital mutilation and forced mutilation. There were no such cases before the Montenegrin courts in connection with these newly introduced incriminations.

The Family Law stipulates that a person who has not reached 18 years of age cannot conclude marriage. The Law envisages exemption enabling the court to permit the

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<sup>1</sup> Law on amendments to the Criminal Code of Montenegro (Official Gazette of Montenegro 44/2017).

marriage of a child over 16 years of age, in accordance with the Law on Extra-Judicial Proceedings.

No amendments to the Family Law are planned in 2019.

In the period from July 2017 to May 2019, a total of three cases of the criminal offense of common-law marriage with a minor were before the Montenegrin courts. Out of three, two cases are concluded, while one case is still in proceedings. In two aforementioned cases the court reached a convicting decision, in one case with a suspended sentence, and in another with a punishment of work in the public interest. The decision in one of the cases became final.

The Ministry of Interior adopted the “Guidelines for dealing with competent institutions in cases of identifying and prosecuting child marriages and common-law marriages”<sup>2</sup> with the aim of preventing common-law marriages and forced marriages. Also, the Ministry of Interior formed the National Anti-Domestic Violence Team, which is by its Rules of Procedure obliged to take actions in cases of contracted child and forced marriages.

The National Anti-Trafficking Office conducted a number of coordinated activities aimed at the prevention and suppression of child contracted marriages among the Roma and Egyptian populations. In 2017, four potential victims of human trafficking stayed at the shelter for victims of trafficking in human beings, of which two were female minors, potential victims of unlawful marriage.

In 2018, five female stayed at the national shelter for victims of trafficking in human beings, three of which were minors - potential victims of unlawful marriage.

Each minor female ward who was staying at the National Shelter for Victims of Trafficking in Human Beings was appointed a special guardian for each special case, and individual recovery plans were developed to address their needs. In cases when wards were returned to their families based on the assessment of competent authorities (SWC and Police Administration), the competent center for social work exercised more intensive supervision of those families. In some cases, an extremely rigorous measure of depriving parents of parental rights was implemented. Although in the cases of the aforementioned wards there were no elements of the KD Trafficking in Human Beings, they were provided all the necessary assistance and protection provided to the victims of trafficking in human beings.

In December 2018, for the purpose of more efficient fight against trafficking in human beings, primarily better and higher quality identification of potential victims and criminal prosecution, the Operational Team for the fight against trafficking in human beings was formed to act on the operational level, consisting of highest representatives of the Higher State Prosecutor’s Office from Podgorica and Bijelo Polje (Heads), representatives of the Police Administration (Head and Officer of the Department for the Suppression of Trafficking in Human Beings, Smuggling and Illegal Migrations), the National Coordinator

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<sup>2</sup> The Ministry of interior of Montenegro is one of the first in the Region to have adopted the Guidelines in 2017

for Combating Trafficking in Human Beings, and other representatives of the Ministry of Interior and representative of the Ministry of Justice.

Montenegro has signed three bilateral protocols on cooperation in combating trafficking in human beings with the following countries of the Region: Albania, Kosovo and Macedonia.

At the session held on June 20, 2017, the Committee on Gender Equality of the Parliament of Montenegro, in line with its authorities, as an interested working body, considered and supported the Bill on Amendments to the Criminal Code of Montenegro. During the global campaign “16 days of activism against violence against women”, the Committee organizes session of the Women’s Parliament dedicated to the implementation of activities in the field of prevention and suppression of violence against women and domestic violence.

Tenth session of the Women’s Parliament was devoted to the consideration of the position of women in the Western Balkans in the context of the adoption of the Resolution on Women’s Rights in the Western Balkans (Bosnia and Herzegovina, Serbia, Montenegro, Macedonia, Albania and Kosovo) at the session of the Committee on Women’s Rights and Equality of Women FEMM) of the European Parliament.

On the occasion of celebrating the International Roma Day, on 8 April 2018, a consultative hearing of representatives of the Government of Montenegro entitled “Exercising children’s rights in the Roma community in Montenegro with a special focus on girls’ education” was held. Representatives of the Roma NGOs recognized socio-economic status as a priority, as well as insufficient information, early and contractual marriages and domestic and violence in society, but also drew attention to the encouraging information about a high level of readiness of the members of Roma community to work on the resolution of their status and emphasized a high level of trust in the institutions of the system.

At the joint sessions of the Committee on Gender Equality, the Committee on Political System, Justice and Administration and the Committee on Health, Labor and Social Welfare, held in 2018, a consultative hearing of the Minister of Labor and Social Welfare, the Minister of the Interior and the Minister of Health was held on the topic: “Protection and support for women victims of violence”. The Committees adopted conclusions which were forwarded to the line ministries for further reporting on their implementation. One of the conclusions relates to the development of instructions for taking actions and initiating procedures in cases of forced marriages in Roma and Egyptian communities for the needs of the police, centers for social work, schools, courts and health centers.

In accordance with the Action Plan for the implementation of the “Strategy for Social Inclusion of Roma and Egyptians in Montenegro 2016-2020”, for 2018, the Ministry for Human and Minority Rights held numerous workshops in order to educate participants about the consequences of child arranged/forced marriages, the importance of education of the Roma and Egyptian populations, etc.

NGO “Montenegrin Women’s Lobby” (MWL) completed the licensing procedure with the Ministry of Labor and Social Welfare in line with the stipulated rules which allowed this organization to receive a license for performing social and child care activities and provide

SOS telephone service for victims of sexual violence. After receiving the International Certificate 2016 under ISO 9001: 2015 standards, and obtaining the National License, the NGO “Montenegrin Women’s Lobby” completed the cycle of their activities referring to respecting and applying best standards in their work.

In June 2019, SOS line for victims of sexual violence was officially released in the premises of WZL. Social service “SOS line for victims of sexual violence” is licensed by the Institute for Social and Child Protection for performing activities and providing services to victims of sexual violence, especially for women and children as the most vulnerable category. The adaptation of the premises in which the SOS Center will function was financially supported by the Turkish Agency for International Cooperation and Coordination (TIKA). Fulfilling spatial standards and employing professional workers as preconditions for obtaining a license under the Law on Social and Child Protection was financially supported by the UNDP Office in Montenegro.

## **RECOMMENDATION No. 37**

37. The Committee recommends that a Member State establish a fund to support all women who have left their formal employment in order to opt for compensation in line with the annulled amendments to the Law on Social and Child Protection of 2015 who have difficulty to re-enter the labor market.

The Law on Social and Child Protection, which contains provisions relating to compensation for the birth of three or more children, was adopted on 16 July 2015 and entered into force on 6 August 2015, while its application began on 1 January 2016.

After the Constitutional Court of Montenegro adopted the Decision terminating provisions of Article 54a, paragraphs 2, 3 and 4 and Article 54b, paragraph 2, and established that provisions of Article 54a, paragraph 1 and Article 54b, paragraph 1, were not in accordance with the Constitution of Montenegro, the Law on Execution of the Decision of the Constitutional Court of Montenegro was adopted by the Constitutional Court of Montenegro U-I No. 6/16 of 19 April 2017, which regulates the status of beneficiaries of compensation based on the birth of three or more children.

According to the aforementioned Law, beneficiaries who terminated their employment for an indefinite period of time, continued to receive a monthly compensation of EUR 193, EUR 264 or EUR 336, depending on the amount of net salary they had earned three months before the termination of employment for a period of three years until acquiring the right to retirement depending on the age of the beneficiary. As it was necessary to include other categories of beneficiaries in the aforementioned Law, the Law on the Execution of the Decision of the Constitutional Court of Montenegro U-I No. 6/16 of 19 April 2017 was amended. The main reason for the amendment is that the beneficiaries of the right to

compensation based on the birth of three or more children referred to in Article 54a and 54b of the Law on Amendments to the Law on Social and Child Protection, respectively Art. 1 and 2 (Article 54a, paragraph 1 and 54b, paragraph 1) of the Law on Amendments to the Law on Social and Child Protection, who, for the purpose of exercising this right, ceased to perform entrepreneurial activity or professional or other activity as a basic occupation or agricultural activity, are not recognized by the existing Law. Following this amendment to the Law, the Constitutional Court passed a new Decision. In accordance with this Decision, the Law on Amendments to the Law on Execution of the Decision of the Constitutional Court of Montenegro U-I No. 6/16 of 19 April 2017 was adopted and published in the Official Gazette of Montenegro on August 1, 2018. This Law recognizes beneficiaries who have terminated a fixed-term employment.

In accordance with all of the aforementioned, we conclude that all beneficiaries who have terminated employment either for a definite or indefinite period of time on their own will, and those who ceased to perform entrepreneurial or agricultural activity on their own will, continued to receive a monthly compensation in accordance with the Law on the Execution of the Decision of the Constitutional Court, and have not been put into the above legal and factual status in which they were before fulfilling the right to compensation based on the birth of three or more children.

## **RECOMMENDATION No. 43**

43. (c) Continue to strengthen its efforts to improve the situation in refugee camps in Konik and take measures to integrate persons living in campsites in communities.
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According to the existing and available data from the Census of the Population, Households and Dwellings in Montenegro in 2011, 6,251 persons declared themselves to be Roma or 1.01% of the total population. The population of Egyptians comprises 2,054 persons, or 0.33% of the total population, while 5,169 persons speak Roma as their mother tongue. The largest number of Roma live in the territory of Podgorica (3,988), Berane (531) and Nikšić (483).

Through the Regional Housing Program for Montenegro, funds for resolving housing issues have been provided for 6,063 persons (1,177 households) belonging to the most vulnerable categories (persons located in informal collective centers and vulnerable persons in private accommodation, with particular reference to the campsite Konik). On the MNE 2 sub-project, for the reasons of good design practice, savings of € 1,950,977.11 were made – which is why the Donors Assembly approved the extension of the housing construction

project at Konik in Podgorica for an additional 51 housing units - Continuation of the IPA Project (second phase).

Works on the second phase officially began on May 18, 2017. All construction works and attachments were completed within the planned period of time, and the ceremony of entering into new housing units was held on 12 December 2018. Completion of this phase created conditions for the final closure of the Konik campsite. MNE 4: "Construction of 94 housing units in Berane municipality". The grant agreement was signed with the Development Bank of the Council of Europe. Construction works on the facility started on February 15, 2017. Beneficiaries' entering into the housing units was completed in mid-March 2019.

The Government of Montenegro adopted the "Strategy for Social Inclusion of Roma and Egyptians in Montenegro 2016-2020" and adopted the Action Plan for the implementation of the Strategy for 2016 and the Action Plan for 2018 in March 2017. The Strategy foresees that it will be implemented through one-year Action Plans specifying priority measures and activities to be carried out in that year.

In order to monitor the implementation of the activities, the Government formed the Commission and appointed the National Coordinator for monitoring the implementation of the Strategy. The work of the Commission is coordinated by the Ministry for Human and Minority Rights. The Commission consists of representatives of institutions recognized by the Strategy and the Action Plan as the bearers of certain activities, as well as representatives of the Roma Council in Montenegro and Roma and Egyptian NGOs.

## **RECOMMENDATION No. 53**

53. (b) Ensure legally precise execution of the joint property regime after the termination of marriage, the abolition of any condition for women to prove their share and contribution to the joint property, eliminate the possibility of unequal distribution of joint property and adopt legal measures necessary to guarantee that women living in de facto relationships have economic protection while recognizing their rights to property acquired during that relationship.

The Family Law (Official Gazette of Montenegro, 1/07 and 53/16) in Article 288 stipulates the following: "Joint property consists of the property that spouses gained by their work during the marriage, as well as the incomes from that property.

The incomes from the separate property gained by work of the spouses are incorporated into the joint property, as well as the property gained by using intellectual property rights,

property gained on the basis of insurance and games of chance during the marital community”. Furthermore, Articles 293-298 of the Family Law relate to the “settlement of joint property of spouses”, and Article 294 of the Family Law prescribes the following:

“If an agreement is not reached, the property of spouses shall be divided to equal parts.

At the request of the spouse who proves that his/her contribution in gaining the joint property is obviously and significantly higher than the contribution of the other spouse, the court shall divide the joint property according to the contributions of each spouse.

When determining the share of each spouse the court shall take into account not only the incomes and earnings of each spouse, but also the support that one spouse provides for another, the work, household and family, care for upbringing of children and every other form of work and cooperation in management, maintenance and increase of joint property”.

Furthermore, Article 296 of the Family Law prescribes the following:

“In the process of settling joint property, at the request of a spouse, his/her part of the property shall primarily contain the items from joint property that are used by him/her for performing the activities of his/her profession.

Apart from the part of the property of a spouse, the things gained by work during the marital community, which are exclusively for personal use of the spouse, shall be taken from the joint property and given to the spouse.

If the value of the items from the paragraphs 1 and 2 of this Article is disproportionately large in comparison to the value of the whole joint property, those items shall be divided as well, unless the spouse who is to obtain these items compensate to the other spouse by the appropriate value or cedes to the other spouse some other items, with the consent of the other spouse.”

Therefore, the court is obliged to take into account all circumstances that affect the distribution of joint property, which are prescribed by law, when deciding on the division of the joint property of spouses in each particular case.

The Ministry for Human and Minority Rights, within the framework of the Public Invitation for Funding NGO Programs/Projects in the field of Gender Equality in 2018 entitled: “For the gender balance in Montenegro”, supported the project of NGO Safe Women’s House “For you in your parent’s home and your in-laws home - the power of the law against property customary law”. Within this project, a Survey on attitudes towards the property rights of women in Montenegro was carried out.

The survey was conducted by IPSOS Strategic Marketing in February 2019 on a representative stratified sample of 1,036 respondents in 17 cities in Montenegro, 130 polling stations areas, urban, suburban and rural areas.

According to the survey, majority of citizens, 82% of them, think that family assets should belong to men and women equally, but only 25% think that this is happening in real life, because there is still the view that the waiver of the right to property is a family tradition that needs to be respected.

As for the joint property acquired in marriage or common-law marriage, majority of citizens, 88% of them, have the view that property acquired in these communities should be equally divided, and only about half of them think that this happens in real life.

In April 2019, NGO Women's Safe House and the Ministry for Human and Minority Rights organized a press conference to present the Survey results. In several municipalities, public forums were organized as part of the awareness-raising campaigns on the importance of exercising property rights.

According to statistical data of the Real Estate Administration, the number of women who are right holders increased in almost all municipalities, headed by Herceg Novi, Podgorica, Kotor and Tivat. High percentages are also recorded in municipalities of Pljevlja and Žabljak in the north of the country, and awareness of property rights should be raised in smaller Municipalities such as Gusinje, Plav and Petnjica.