ANNEX

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All the below English translations are unofficial.

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¹ The translation of this document was supported jointly by the UNHCR and UNICEF offices in Montenegro.
² The translation of this document was supported jointly by the UNHCR and UNICEF offices in Montenegro.
1. LAW ON DOMESTIC VIOLENCE PROTECTION

LAW ON DOMESTIC VIOLENCE PROTECTION
(Official Gazette of MNE, no 46/10, as of 06.08.2010)

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I GENERAL PROVISIONS

Subject
Article 1
This Act shall govern the provision of protection from domestic violence (‘protection’).

Domestic violence
Article 2
Domestic violence (‘violence’), as used in this Act, shall mean omission or commission by a family member in violating physical, psychological, sexual or economic integrity, mental health and peace of other family member, irrespective of where the incident of violence has occurred.

Family members
Article 3
Family members, as used in this act, shall mean any of the following:
1) spouses or former spouses, children they have in common, and their stepchildren;
2) consensual partners or former consensual partners irrespective of the duration of consensual union, children they have in common, and their stepchildren;
3) persons related by consanguinity and relatives by full adoption, in the direct line of descent with no limitation and in collateral line of descent up to the fourth degree;
4) relatives by incomplete adoption;
5) relatives on the side of wife/consensual partner up to the second degree in a married or consensual union;
6) persons sharing the same household irrespective of the nature of their relationship;
7) persons who have a child in common or who have conceived a child.

Right to assistance and protection
Article 4
A victim of violence (‘victim’) has the right to psycho-social support, legal aid, social and medical care, in accordance with law.

Victim protection is provided by, but is not limited to, issuance of order of protection.
Special assistance and protection is provided to a victim who is a minor child, elderly, person with a disability, and person who cannot take care of himself/herself, in accordance with law.

Institutions providing protection

Article 5

The public administration agency in charge of police affairs (‘Police’), misdemeanour body, public prosecution service, social work centre or other social and child protection agency, health care institution, and other agency or institution acting as care provider, have the duty to provide victim with full and coordinated protection, within their respective powers and depending on the severity of violation.

A non-governmental organization, other legal or natural person, may provide protection in accordance with law.

Bodies and institutions from para. 1 of this article shall act in accordance with law in setting incidences of violence in the order of priority, and shall ensure mutual communication and provide assistance in order to prevent and detect violence, eliminate causes, and provide assistance to victim in regaining security in life.

Expedited procedure

Article 6

Any procedure for protection taken by the bodies and institutions from article 5, para. 1 of this act shall be expedited procedure always bearing in mind, where victim is a minor child, elderly, a person with a disability, or a person who cannot take care of himself/herself, that the interest and wellbeing of victim must be given priority in such procedure.

Use of gender sensitive language

Article 7

Terms used in this act to refer to natural persons of male gender shall also include such persons of female gender.

II VICTIM PROTECTION

1. AVAILABLE ASSISTANCE AND PROTECTION

Forms of violence

Article 8

Specially considered as constituting a violation of physical, psychological, sexual or economic integrity, mental health and peace of other family member shall be any of the following acts whereby a family member:

1) uses physical force, irrespective of whether it inflicts a bodily injury on other family member;
2) threatens to use force or induces danger that may provoke a feeling of personal insecurity or cause physical pain in other family member;
3) assaults verbally, swears, calls names or otherwise insults other family member;
4) denies other family member freedom of communication with third persons;
5) exhausts through labour, deprives of sleep or other rest, threatens to expel from
   residence or take away children;
6) sexually abuses other family member;
7) stalks and otherwise severely abuses other family member;
8) damages or destroys joint property or property of other family member or attempts to
do so;
9) denies means of subsistence to other family member;
10) behaves rudely and so disturbs family peace of a family member that he does not
    share family community with.

Also considered as constituting violation of physical, psychological, sexual or economic
integrity, mental health and peace of other family member shall be insufficient care by a family
member to provide any of the following:
1) food, personal hygiene, clothing, medical care or to ensure regular school attendance or
   his failure to prevent the child from being in harmful company, as well as from
   vagrancy, beggary or theft or otherwise severely neglect his duties concerning child
   development and education;
2) food, personal hygiene, clothing or medical care to other family member who he has a
duty to take care of, where this family member needs special care for reason of his
   illness, disability, old age or other personal characteristics, which prevent him from
taking care of himself.

Considered as constituting major form of domestic violence shall be failure to report
(hiding) family member with special needs.

Duty to report violence

Article 9

A state administration agency, other agency, a health, education or other institution have
the duty to report to police the incidence of violence that they learn of in the discharge of affairs
within their authority or in conduct of their activities.

Under the duty to report violence to the police is the head of the agency or institution from
para. 1 of this article, as well as a health and social care worker, teacher, pre-school teacher and
other person who learns of violence in the discharge of his affairs.

A misdemeanour body and the police are under the duty to notify the social work centre of
such incidence of violence where victim is a minor child.

Emergency intervention

Article 10

Upon receipt of report on the incidence of violence, police will immediately take action
and measures to protect victim, in accordance with this act and other legislation governing police,
misdemeanour procedure, criminal procedure and witness protection.

A social work centre, or other social and child protection institution, and other body and
institution in charge of such protection must immediately provide protection and assistance to
victim in line with their respective powers.

The bodies and institutions from para. 2 of this article shall take care of all victim’s needs
and allow victim access to all forms of assistance and protection.
Victim assistance plan

Article 11

A social work centre may set up an expert team composed of its representatives as well as representatives of local government bodies and service agencies, police, non-governmental organizations and experts for family issues. The team will design victim assistance plan and coordinate victim assistance activities, in accordance with victim’s needs and choice.

Victim assistance plan includes measures to be taken in accordance with the law governing social and child protection. Where victim is a minor child, victim assistance plan must also include child protection measures in accordance with the law governing family relations.

For the conduct of activities from para 1 of this article, an expert team may be organized by other body, institution or organization in charge of protection.

Social care

Article 12

Victim social care includes provision of material and non-material assistance, accommodation and social work services, in accordance with the law governing social and child care.

Social care centers shall obligatory establish precise record of children and persons with special needs existing on their territory of competence.

In order to provide protection from violence over persons referred to in paragraph 2 herein, centers are obliged to form special teams that shall, at least one time per month, pay visits to families where children and persons with special needs resides or live, control conducting with these persons, and, on basis of determined conditions, these teams shall prepare report in written form.

Social care centers shall obligatory, at least one time in six months, deliver report in written form to the ministry competent for social care affairs, which shall contain data on level of realization of social care for children and persons with special needs.

Legal aid

Article 13

Victim of violence has the right to free legal aid, in accordance with the special law.

Victim security

Article 14

A police officer has the duty to accompany victim to victim’s place of residence or other premises to remove necessary personal belongings and possessions, unless where victim strongly objects to being accompanied.

Action from para. 1 can also be taken where victim is provided with temporary residence and care.

Confidentiality of procedure

Article 15
Bodies, institutions, organizations and other legal and natural persons from article 5 of this act shall protect data confidentiality and ensure personal data protection, in accordance with law.

No information may be disclosed on either victim or the family member who committed violence (‘abuser’) where such information would lead to identification of victim of victim’s family member, unless adult victim has explicitly consented to it.

**Confidant**

**Article 16**

Victim may select a person to attend all protection procedures and actions (‘confidant’).

Eligible to be confidant is a family member, a person from a body, institution, non-governmental organization or other legal person or other person that victim confides in.

Abuser is not eligible to act as confidant.

Victim may select confidant before or during protection procedures and actions.

Line bodies have the duty to ensure presence of confidant in all procedures and actions that involve victim and are related to family relations.

**Multidisciplinary team and principle of cooperation**

**Article 17**

For the purpose of organizing, monitoring and promoting a coordinated and efficient protection, the body or institution from article 5, para. 1 of this act may set up a team composed of experts in social and child care, health care, judiciary, police protection, human rights and freedoms, as well as representatives of non-governmental organizations dealing with protection.

**Protection strategy**

**Article 18**

Protection is provided in accordance with the strategy for protection from domestic violence (‘strategy’), which includes:

1) situation analysis and identification of key problems in social care and other forms of care;

2) objectives and measures to be taken to promote social care and other forms of care, particularly in relation to the following: awareness raising among citizens of the phenomenon of violence and developing attitudes to violence as an unacceptable form of behaviour; development of programmes for the prevention of violence; family support in violence prevention; further development of the legislative framework for protection issues; strengthening cooperation among bodies, institutions, organizations and other legal and natural persons in charge of protection; developing new knowledge and skills in any person involved in protection; improvement of the system for data collection and analysis and of the system for reporting incidence of violence.

Activities for implementation of objectives and measures from para. 1, subparagraph 2 of this article are to be set forth in the action plan for strategy implementation.

The strategy and action plan for its implementation are adopted by the Government of Montenegro.

**2. ORDERS OF PROTECTION**
Purpose of orders of protection

Article 19

Orders of protection are issued to prevent and suppress violence, remove its consequences and take efficient measures to reform abuser and eliminate circumstances that may make him susceptible to or encourage reoffending.

Types of orders of protection

Article 20

Abuser may be issued one or more of the following orders of protection:
1) order of removal from place of residence or other premises (‘removal from residence’);
2) restraining order;
3) prohibition of harassment and stalking;
4) mandatory addiction treatment;
5) mandatory psycho-social therapy.

Bodies and institutions from article 5, para. 1 have the duty to inform the abuser of his rights.

Removal from residence

Article 21

Removal from residence may be ordered to abuser who is sharing a place of residence or other premises with victim, irrespective of the title and other rights that abuser and victim may have to the place of residence or other premises, if there is risk of reoffending.

Abuser who is ordered removal from residence shall immediately leave the residence or other premises.

Removal from residence is ordered for minimum thirty days and maximum six months.

Restraining order

Article 22

Restraining order may be issued to abuser if there is risk of reoffending or where victim undergoes suffering the severity of which has prevented victim’s regular psychological activities for a short or longer period of time.

A misdemeanour body shall clearly indicate in the restraining order the location or area within which abuser must not come close to victim.

Restraining order is issued for minimum thirty days and maximum one year.

Order prohibiting harassment and stalking

Article 23

Prohibition of harassment and stalking may be ordered to abuser where there is risk of reoffending.

The protection order from para. 1 of this article is issued for a period of minimum thirty days and maximum one year.

Mandatory addiction treatment

Article 24
Mandatory addiction treatment may be ordered to abuser who commits violence under the influence of alcohol, addictive substances or psychotropic substances, and where due to such addiction there is risk of reoffending.

The protection order from para. 1 of this article may last for as long there is need for treatment, limited to one year.

**Mandatory psycho-social therapy**

**Article 25**

Mandatory psycho-social therapy may be issued to abuser to eliminate the cause of violent behaviour and reform abuser, and to diminish or eliminate risk of reoffending.

The protection order from para. 1 of this article lasts for as long as reasons for which it was ordered are present, limited to six months.

Mandatory psycho-social therapy is enforced in accordance with the law governing treatment and rehabilitation of persons addicted to psychoactive substances (alcoholics and drug addicts) and persons with other behavioural disorders.

### 3. PROCEDURE OF ISSUING ORDERS OF PROTECTION

**Issuance of order of protection**

**Article 26**

An order of protection may be issued either in addition to a sanction or as a sanction in itself.

A misdemeanour body may issue one or several orders of protection to abuser provided pre-requisites for such orders as set by this act are satisfied.

A misdemeanour body may decide to prolong duration of protection measures imposed referred to in Articles 21-25 of this Law, if reasons for measures imposing still exist, but no longer than for period of two years.

**Persons eligible to filing petition**

**Article 27**

Petition for grant of order of protection (‘petition’) may be filed by victim or his representative, social work centre, or other social and child care institution, police or public prosecutor.

An order of protection may be granted by a misdemeanour body *ex officio*.

**Order**

**Article 28**

In order to eliminate risk to victim’s physical integrity, police officer may order abuser to leave residence or other premises or prohibit his return to residence or other premises. The order is issued for maximum three days.

The written order to leave or not return to residence or other premises must be served by police officer on abuser and victim immediately, within maximum two hours, in the presence of an adult, who may be another police officer, but may not be a family member.

The written order from para. 2 of this article must include: date and hour of removal or prohibition of return to residence or other premises; boundaries of the area within which abuser
must not move, reside or come close to victim, and the address of residence where abuser is staying while the order of removal or prohibition of return is in effect.

When leaving residence or other premises, abuser has the right to take with him necessary personal belongings and possessions and must hand over to police officer his key to residence or other premises.

Police officer encloses the written order from para. 2 of this article to the official report on the incidence and immediately, within maximum 12 hours, notifies of the incidence a misdemeanour body and social work centre.

A detailed description of the content and layout of the form for the written order from para. 2 of this article is to be set by the ministry in charge of internal affairs.

**Grant of order of protection before and during the proceeding**

**Article 29**

If a misdemeanour body finds it necessary to immediately protect victim, it may grant an order of protection before and during the proceeding, within maximum 48 hours of the receipt of petition.

A misdemeanour body may request assistance from social work centres or other social and child care institution in collecting evidence and presenting the opinion on the purpose of the order sought.

If the petition is filed before the proceeding starts and the petitioner does not file application to initiate the proceeding within five days, the misdemeanour body shall suspend the order of protection granted.

The misdemeanour body shall warn the petitioner of the consequences of his failing to file the application from para. 3 of this article.

**Appeal**

**Article 30**

The decision to grant an order of protection is subject to appeal within three days of its service.

The appeal is subject to the decision of the second instance body within three days of receipt of appeal.

The appeal shall not stay the enforcement of decision granting an order of protection.

**Extension, expiry and replacement of an order of protection granted before and during the proceeding**

**Article 31**

An order of protection granted before and during the proceeding may last for as long as the reasons for which it was granted are present, limited by the end of proceeding.

Before the proceeding ends, a misdemeanour body may replace the order of protection granted before and during the proceeding with another order of protection.

**Duty to comply with order of protection**

**Article 32**

Abuser must comply with the order of protection issued.
A person who is informed during discharge of his affairs that abuser does not comply with the order of protection must notify of that a misdemeanour body, social welfare centre, or other social and child care institution, police or public prosecutor.

**Enforcement of order**

**Article 33**

The decision granting an order of protection must be immediately served by a misdemeanour body to the body or institution in charge of enforcement, within maximum three days of the delivery of decision.

The decision granting the order of protection from articles 21, 22 and 23 of this act shall be furnished to the police for enforcement.

The decision granting the order of protection from article 24 and 25 of this act shall be furnished to the body or institution in charge of enforcing orders in accordance with the law governing treatment and rehabilitation of addicts to psycho-active substances (alcoholics and drug addicts) and persons with other behavioural disorders.

More detailed description of enforcement of the decision granting the order of protection from articles 21, 22 and 23 of this act shall be set by the ministry in charge of internal affairs, while more detailed description of enforcement of the decision granting the order of protection from articles 24 and 25 of this act shall be set by the ministry in charge of health care.

**Service of decision and the register**

**Article 34**

The decision granting an order of protection must be furnished to the social work centre on whose territory victim and abuser reside, either permanently or temporarily.

The register of reported incidences of violence, victims, abusers, orders of protection granted as well as of other protection and assistance measures is maintained by the bodies and institutions from article 5, para. 1 of this act, in line with their respective powers, and deliver it to the ministry competent for human and minority rights protection

**Application of other laws**

**Article 35**

The procedure by which orders of protection are granted and enforced is subject to provisions of the law governing police, misdemeanour procedure, criminal procedure, criminal sanctions and their implementation and enforcement, unless otherwise provided for by this act.

**III PENALTY PROVISIONS**

**Misdemeanour liability of a family member**

**Article 36**

A fine amounting to minimum three-fold minimum salary in Montenegro or a prison term of minimum ten days shall be imposed on abuser if he does any of the following:

1) uses physical force, irrespective of whether it inflicts a bodily injury on other family member;
2) threatens to use force or induces danger that may provoke a feeling of personal insecurity or cause physical pain in other family member;
3) assaults verbally, swears, calls names or otherwise insults other family member;
4) denies other family member freedom of communication with third persons;
5) exhausts through labour, deprives of sleep or other rest, threatens to expel from residence or take away children;
6) sexually abuses other family member;
7) stalks and otherwise severely abuses other family member;
8) damages or destroys joint property or property of other family member or makes an attempt to do so;
9) denies means of subsistence to other family member;
10) behaves rudely and so disturbs family peace of a family member that he does not share family community with (article 8, para.1).

A fine of minimum five-fold minimum salary in Montenegro or a prison term of minimum twenty days shall be imposed for the offence on an adult family member who commits violence from para. 1 of this act in the presence of a minor child.

A fine of minimum ten-fold minimum salary in Montenegro or a prison term of minimum thirty days shall be imposed for the offence on a family member who commits violence from para. 1 of this act and victim is a minor child.

A fine of minimum twenty-fold minimum salary in Montenegro or a prison term of minimum sixty days shall be imposed for the offence on a family member who fails to report (hides) family member with special needs (article 8, para.1).

_Misdemeanour liability for neglect_

**Article 37**

A fine of minimum five-fold minimum salary in Montenegro or a prison term of minimum ten days shall be imposed on abuser who does not take sufficient action to provide the following:

1) food, personal hygiene, clothing, medical care or ensure regular school attendance or his failure to prevent the child from being in harmful company, as well as from vagrancy, begging or theft or otherwise severely neglects his duties concerning child development and education (Article 8, paragraph 2, subparagraph 1);
2) food, personal hygiene, clothing or medical care to other family member who he has a duty to take care of, where this family member needs special care for reason of his illness, disability, old age or other personal characteristics, which prevent him from taking care of himself (Article 8, paragraph 2, subparagraph 2).

_Liability for violation of order_

**Article 38**

A fine of minimum fifteen-fold minimum salary in Montenegro or a prison term for minimum forty days shall be imposed on abuser for violation of the police order to leave place or the order prohibiting return to place of residence or other premises (article 28, paras. 1 and 2).

_Misdemeanour liability of a third person_

**Article 39**

A fine ranging from two-fold to ten-fold minimum salary in Montenegro shall be imposed on:
1) the head of a state administration body, other body, a health care and social care institution, teacher, pre-school teacher and other person for not reporting to the police an incidence of violence he learns of in the discharge of his affairs (article 9, para. 2);
2) a person who is informed in the discharge of his affairs that the abuser does not comply with the order of protection issued but does not report this to a misdemeanour body, social welfare centre, or other social and child care institution, police or public prosecutor (article 32, para. 2).

IV TRANSITIONAL AND FINAL PROVISIONS

Adoption of secondary legislation

Article 40
Secondary legislation governing implementation of this act shall be adopted within six months of the effective date of this act.

Effective date

Article 41
This act shall take effect on the eighth date after its publication in the “Official Gazette of Montenegro”. 19 Law on Domestic Violence Protection

2. LAW ON SOCIAL AND CHILD PROTECTION (2013)

LAW ON SOCIAL AND CHILD PROTECTION

I. GENERAL PROVISIONS

Subject matter

Article 1
This law shall prescribe the conditions and the manner of exercising the rights in the area of social and child protection and the performance of affairs of social and child protection.

Activity

Article 2
Social and child protection is an activity that ensures provision and implementation of measures and programmes intended for an individual and a family in unfavourable personal or family circumstances, which shall include prevention, assistance for meeting the basic needs and support.

Exercising the public interest

Article 3
Social and child protection is an activity of public interest.
Exercising of the public interest in social and child protection shall be ensured by Montenegro (hereinafter referred to as: the state) and local self-government (hereinafter referred to as: municipality), under the conditions and in the manner prescribed by this law.

Aims of social and child protection

Article 4
The aim of social and child protection is the improvement of life quality and strengthening of an individual and the family for independent and productive life.
In achieving social and child protection objectives, the below persons shall be protected in particular:
1) A child:
   - without parental care;
   - whose parent is not able to take care of the child;
   - with disabilities;
   - in conflict with the law;
   - that uses alcohol, drugs or other narcotic substances;
   - that is a victim of abuse, neglect, domestic violence or exploitation, or is at risk of becoming a victim;
   - that is a victim of trafficking in human beings;
   - whose parents do not agree on the manner of exercising the parental right;
   - who finds itself out of the place of residence without the supervision of a parent, adoptive parent or guardian;
   - who is pregnant and without family support and adequate living conditions;
   - who is single parent with a child and without family support and adequate living conditions;
   - who needs an adequate form of social protection due to special circumstances and social risk.
2) An adult and old person:
   - with disability;
   - who uses alcohol, drugs or other narcotic substances;
   - who is a victim of neglect, abuse, exploitation and violence in the family or who is at risk of becoming a victim;
   - victim of trafficking in human beings;
   - who is homeless;
   - who is pregnant and without family support and adequate living conditions;
   - who is a single parent with a child and without parental support and adequate living conditions;
   - who needs an adequate form of social protection due to special circumstances and social risk.

Persons exercising the rights

Article 5
The rights in accordance with this Law can be exercised by a Montenegrin citizen with the permanent place of residence at the territory of the State.
The rights in the area of social and child protection established by this law and international contract can be exercised also by a person who has the status of a foreigner with granted temporary stay or permanent stay in the state, in accordance with a special law.

Responsibility for meeting the living needs
Article 6
Everyone is obliged to create conditions for meeting the living needs through his work, revenues and property, and to prevent social exclusion of his family members, especially children and other members who are not able to take care of themselves.

Principles of social and child protection

Article 7
Social and child protection is based on the following principles:
1) Respect for the integrity and dignity of beneficiaries of social and child protection which is based on social justice, accountability and solidarity, and is provided with respect for physical and psychological integrity, safety, and with respect for the moral, cultural and religious beliefs, in accordance with the guaranteed human rights and freedoms;
2) Ban of discrimination of beneficiaries on the basis of race, gender, age, national belonging, social origin, sexual orientation, religion, political, trade union or other belonging, property owned, culture, language, disability, nature of social exclusion, belonging to particular social group or other personal characteristics;
3) Informing the beneficiaries on all the data important for determining their social needs and exercising their rights, and on how the needs can be met;
4) Individual approach to the beneficiary in providing rights in the area of social and child protection;
5) Active participation of beneficiaries in the creation, selection and use of the rights in the area of social and child protection, which is based on participation in the situation and needs assessment and the decision making on the use of the needed services;
6) Respect for the best interest of the beneficiaries in exercising the rights in the area of social and child protection;
7) Prevention of institutionalisation and availability of services in the least restrictive environment whenever conditions for it arise in their home or the local community through extra-institutional forms of protection, provided by various service providers, with the aim of improving the quality of life of the beneficiaries and their social inclusion;
8) Pluralism of services and providers of social and child protection, which is performed also by civil society organisations and other legal and physical persons, under the conditions and in the manner prescribed by law;
9) Partnerships and joining of different entities responsible for activities and programmes, especially at the local level with the objective of making services available in the least restrictive environment and preventing institutionalisation;
10) Transparency with regard to informing the public on social and child protection through the media, and in other manners, in accordance with the law.

Prohibited activities of employees

Article 8
In an institution, or another service provider, an employee shall be prohibited from every form of violence towards a child, an adult or old person, physical, emotional and sexual abuse, taking advantage of the beneficiaries, abuse of trust or authorisations enjoyed in relation to the beneficiary, neglect of the beneficiary and other actions that disturb the health, dignity and development of the beneficiary.
The right to protection of personal data

Article 9
The beneficiary shall be entitled to protection of personal data from documents processed for the needs of reports, that is, for records keeping, including also those data pertaining to his personality, behaviour and family circumstances and the manner of use of the rights in the area of social and child protection.

With regard to protection of personal data of the beneficiaries, regulations on the protection of personal data shall apply.

The right to filing a complaint

Article 10
The beneficiary who is not satisfied with the provided service, procedure or behaviour of service provider can file a complaint to the public administration body competent for social protection affairs (hereinafter referred to as: the competent public administration body).

Rights in the area of social and child protection

Article 11
The rights in the area of social and child protection are the following:
1) Basic financial support;
2) Social and child protection services.

Procedure

Article 12
In the procedure of exercising the rights in accordance with this law, provisions of the Law on General Administrative Procedure shall apply, unless otherwise stipulated by this law.

Performance of social and child protection

Article 13
The activities of social and child protection shall be performed by social and child protection institutions (hereinafter referred to as: the institution), in accordance with this law. The institution referred to in paragraph 1 of this Article can be established as a public or a private institution. Certain affairs of social and child protection can be performed also by other form of organisation, in accordance with this Law.

Resources for performing the affairs in the area of social and child protection

Article 14
Resources for performing activities and exercising the rights in the area of social and child protection shall be provided in accordance with this Law.

Record keeping

Article 15
Records shall be kept on the beneficiaries, rights and service providers, in accordance with this Law.
Use of rights

Article 16
The rights in the area of social and child protection are personal and non-transferrable. Financial support received in accordance with this Law shall not be subject of securing or forced execution.

Strategic documents

Article 17
Social and child protection shall be exercised in accordance with the strategic documents, which determine long-term objectives and priorities for social and child protection development. Strategic documents referred to in paragraph 1 of this Article shall be programmes that need to be implemented with the aim of improving social and child protection. Strategic documents referred to in paragraph 1 of this Article shall be determined by the Government of Montenegro (hereinafter referred to as: the Government) and the municipality. Programmes referred to in paragraph 2 of this Article can be implemented by the State, the municipality and service providers. Resources for funding programmes referred to in paragraph 2 of this Article shall be provided from the budget of the State, the municipality and service providers.

Use of gender sensitive language

Article 18
Expressions used in this Law to denote male persons shall imply the same expressions for female persons.

Meaning of expressions

Article 19
Particular expressions used in this Law shall have the following meaning:

1) **Measures and programmes** of social and child protection shall be activities which encompass the rights in the area of social and child protection, with the objective of improving the quality of life and empowering beneficiaries to individually meet the basic living needs, and achieving their active participation in the society;

2) **Service provider** is an institution, another form of organisation and physical person for which the competent state administration body determines it meets the conditions for performing the activity of social and child protection and issues thereto a licence for performing the activity;

3) **Licence** is a public document, which confirms that the service provider or professional worker meets the established conditions and standards for providing particular services, that is for performing expert affairs in the area of social and child protection;

4) **Beneficiary** is an individual or a family, who have exercised their right in the area of social and child protection, or for whom the procedure for exercising the right is under way;

5) **Employer** is a domestic or a foreign legal person or a part thereof or a physical person, which concludes a work contract with the employee;

6) **A child** is a person of up to 18 years of age;

7) **Young people** are persons of up to 26 years of age;

8) **Family** is made up of spouses or common law marriage partners and children (born in marriage or out of it, adopted and step children) and relatives in the first line notwithstanding the degree of relationship, as well as relatives in the lateral line including also other relatives living
together; a child not living in the family if it attends the regular secondary school education, until the time limit prescribed for that education, and the spouse notwithstanding where he is living;

9) **Incapable of work** is:
- a child;
- a child not included in regular education system, if he is included in the records of the Employment Agency of Montenegro (hereinafter referred to as: Employment Agency);
- a person deemed incapable of work, in accordance with this Law;
- a person who has turned 67.

10) **A single person shall be:**
- a divorced parent or a parent who finds himself in a situation that the other parent has died or is unknown, and maintains the child, or exercises prolonged parental right, in accordance with the law, until a marriage or common law marriage is established;
- adult person incapable of work, who has no relatives obliged to support him in accordance with the law regulating family relations, or has relatives who are not able to support him.

11) **Person with disability** is a person who has had longstanding physical, mental, intellectual or sensory disorders which, in conjunction with diverse barriers, can make difficult full and effective participation of these persons in the society based on equality with others;

12) **A homeless person** is a person without property, with no place or means for living who is temporarily placed in a reception centre or stays in public or other places not intended for living;

13) **Individual plan of services** is a plan for change of life situation or behaviour of beneficiaries determined based on a comprehensive assessment of needs, difficulties and resources and in agreement with the beneficiary, directed towards selected objectives, all with the aim of overcoming unfavourable living circumstances, being implemented, monitored and reviewed together with the beneficiary, his family members, service providers and other persons important for the beneficiary;

14) **Individual plan of activation** is an agreement between the Social Welfare Centre and beneficiary of financial support on active overcoming of his unfavourable social situation;

15) **Revenue** is the income earned by an individual or a family on any grounds whatsoever;

16) **Immovable property** is a flat, residential building, business premises, agricultural land (arable land, garden, orchard, vineyard, meadow and pasture), commercial forests in accordance with law and other;

17) **Movable property** is a motor vehicle, cattle stock, agricultural and construction mechanisation and other means for work and doing business.

**II. BASIC MATERIAL SUPPORTS IN SOCIAL PROTECTION**

**Basic material support**

**Article 20**

The basic material supports in social protection are the following:

1) Financial support;
2) Personal disability allowance;
3) Care and support allowance;
4) Health protection;
5) Funeral costs;
6) One-off financial assistance.
The State can provide other kinds of material supports in social protection as well, in accordance with material possibilities. Closer conditions for exercising the rights referred to in paragraphs 1 and 2 of this Article shall be prescribed by the competent state administration body.

**Financial support**

**Article 21**

An individual, or a family can obtain the right to financial support, if an individual or a family member:

1) Is incapable of work;
2) Is capable of work, under the condition:
   - she is expecting a child;
   - he/she is a single parent;
   - A parent maintaining a child, or a parent exercising prolonged parental right, in accordance with the law regulating family relations;
   - A person who has completed education according to the educational programme with adapted delivery and additional expert assistance or special educational programme;
   - A person who has turned 18, if he/she is attending regular secondary school education, until the end of the time limit prescribed for that education;
   - A child without parental care or a person who was a child without parental care, until he/she finds employment for a time period longer than six months.

The adoptive parent, custodian, foster parent or a person to whom care, education and upbringing of the child has been entrusted shall be entitled to right referred to in paragraph 1 item 2 indents 2 and 3 of this Article.

The longest period during which the person referred to in paragraph 1 item 2 indent 4 of this Article can exercise the right to financial support is five years from the day of completion of education.

The person referred to in paragraph 1 item 2 indent 6 of this Article can exercise the right to financial support for a maximum period of five years from the day of termination of placement into an institution, family placement - fostering, or from termination of guardianship.

**The base for exercising financial support**

**Article 22**

The right to financial support can be exercised by an individual, or a family referred to in Article 21 of this Law, on the condition that:

1) The amount of average monthly revenues from the previous three months does not exceed the base for exercising the right by:
   - 63.50 euro for an individual;
   - 76.20 euro for a family with two members;
   - 91.50 euro for a family with three members;
   - 108.00 euro for a family with four members;
   - 120.70 euro for a family with five and more members;
2) He or it does not possess or does not use business premises;
3) He or it does not possess or does not use a flat or a residential building bigger than:
   - one bedroom flat for an individual;

- two bedroom flat for a family with two or three members;
- three bedroom flat for a family with four or more members.
4) He or it does not possess land in town or suburban region;
5) He or it does not possess, or does not use agricultural land, or commercial forests of surface larger than:
   - 20 ares for an individual;
   - 30 ares for a family of two members;
   - 40 ares for a family of three members;
   - 50 ares for a family of four members;
   - 60 ares for a family of five and more members;
   - or does not possess, or does not use other land of surface larger than 2 ha;
6) An individual or a member of the family is capable of work, and is included in the records of the Employment Agency, in accordance with a special law;
7) The Social Welfare Centre determines that the person obliged to provide maintenance is not capable of maintaining the person that is incapable of work, in accordance with this Law;
8) An individual or a family member did not refuse employment offered to him or vocational training, re-training or additional training, in accordance with a special law, unless a minimum of one year has elapsed since the refusal;
9) The employment relationship of an individual or a family member was not terminated by the statement of his will, his consent or his quittance, due to disciplinary or criminal liability, unless as a minimum one year has elapsed since termination of employment relationship or if incapacity for work arose after termination of employment relationship;
10) An individual or a family member did not terminate his employment relationship by mutual agreement with payment of severance pay in the amount exceeding ten average monthly wages including taxes and contributions in the state, in accordance with a special law, unless a minimum of three years have elapsed since the mutual agreement on termination of employment relationship and payment of the severance pay;
11) An individual or a family member did not exercise the right to severance pay based on termination of employment relationship, in accordance with a special law, unless a minimum of six months have elapsed since the exercising of the right;
12) An individual or a family member did not alienate immovable property or renounce the right to inherit property referred to in items 2, 3, 4 and 5 of this Article, unless a minimum of three years have elapsed since alienation or renouncing;
13) An individual or a family member does not own cattle stock, agricultural and construction mechanisation and other means for work and doing business;
14) An individual or a family member does not own a motor vehicle, except the motor vehicle which serves for transport of an individual or a family member, beneficiary of allowance for care and support of other person;
15) An individual or a family member did not conclude a contract on life-long maintenance, except with the Social Welfare Centre.
For families which have a member who is beneficiary of the care and support allowance, the scope of residential space referred to in paragraph 1 item 3 indent 1 and 2 of this Article shall be increased by one room.
Revenues that are not considered revenues in the procedure of exercising the right to financial support

Article 23
In the procedure of exercising the right to financial support, the following shall not be considered revenue of an individual or a family member: personal disability allowance; care and support allowance; child allowance; compensation for the newly born child or compensation for the birth of a child for a person in the records of the Employment Agency and a full-time student exercised in accordance with this Law; revenues from awards; retirement severance pay; one-off financial assistance; compensation for removing the consequences of natural disasters; revenues from pupils’ or students’ standard; compensation for death of a family member; allowances referring to the obligation to maintain a person that is not living in a family: compensation for a person with disability which is in the records of the Employment Agency; financial compensation to the person in the records of the Employment Agency, who is a parent of the person that exercises the right to personal disability allowance in accordance with this Law, revenues of the family members obtained in the previous quarter from salary, salary compensation and retirement payment, if they submit a request to the Social Welfare Centre after they cease to obtain such revenues.

Capability of maintenance

Article 24
If a person incapable of work has a relative with whom he is not living in a family, and who, in accordance with the law regulating family relations, is obliged to provide maintenance, in determining the right to financial support the possibility of the relative to provide maintenance shall previously be established, in accordance with this Law, unless this obligation is established by a court decision.
A relative is able to provide maintenance, in the sense of paragraph 1 of this Article if:
1) The average monthly revenues of the family in the previous quarter exceed fivefold the base established by Article 22 paragraph 1 item 1 of this Law;
2) He owns or uses business premises established by Article 22 paragraph 1 item 2 of this Law;
3) He owns or uses a flat or a family building larger than twice the size established in Article 22 paragraph 1 item 3 of this Law;
4) He owns land in town or suburban construction region established by Article 22 paragraph 1 item 4 of this Law;
5) He owns or uses agricultural land or commercial forests or other land covering surface larger than fivefold the size established in Article 22 paragraph 1 item 5 of this Law.

Determining the right to financial support by direct insight

Article 25
Notwithstanding Article 22 of this Law, for the purpose of exercising the right to financial support, the authorised person of the Social Welfare Centre can propose direct insight by the commission of the Social Welfare Centre if all the family members are incapable of work or if a single parent is concerned.
The commission referred to in paragraph 1 of this Article shall be appointed by the Director of the Social Welfare Centre from among its employees.
The commission referred to in paragraph 2 of this Article shall provide a finding and opinion on whether a family or an individual are in need of financial support. The right to financial support for a family referred to in paragraph 1 of this Article can be recognized for a period of three months, with the obligation of review by official duty. The content and the form of the finding and the opinion from paragraph 3 of this Article shall be prescribed by the competent state administration body.

Exception for determining termination of the right to financial support

Article 26

The Social Welfare Centre shall make the decision on termination of the right to financial support for an individual or a family, if by monitoring the material and other social conditions the commission of the Social Welfare Centre determines that the said conditions are considerably more favourable than those which can be provided based on the right to financial support. The Commission referred to in paragraph 1 of this Article shall be appointed by the Director of the Social Welfare Centre from among its employees. The Commission referred to in paragraph 2 of this Article shall produce a finding and an opinion on the termination of the right to financial support. The content and the form of the finding and the opinion referred to in paragraph 3 of this Article shall be prescribed by the competent state administration body.

Responsibility for meeting one’s own life needs

Article 27

In accordance with the regulations regulating in more detail labour relations and pension and disability insurance, or professional rehabilitation and employment of persons with disability, an individual who is capable of work shall have the right and duty to participate in activities that enable overcoming of his unfavourable social situation, that is in implementation of measures that ensure his social inclusion. Based on an individual plan of activation, the Social Welfare Centre can conclude an agreement with the beneficiary of financial support on active overcoming of his unfavourable social situation, which shall include activities and obligations of the beneficiary, as well as termination of the right to financial support in the event of unjustified failure to fulfil the obligations from the contract. The content and form of the individual plan of activation shall be prescribed by the competent state administration body.

The rights and duties related to employment of beneficiaries of financial support capable of work

Article 28

The Social Welfare Centre and the Employment Agency are obliged to cooperate mutually in the implementation of measures for social inclusion of beneficiaries of financial support capable of work. The Social Welfare Centre is obliged to forward to the Employment Agency a notice on recognized right to financial support for an unemployed beneficiary capable of work, within eight days as of the day when decision on recognition of the right is rendered.
The Employment Agency is obliged to inform the Social Welfare Centre within eight days from the day when it finds that the beneficiary of financial support able for work has found employment, refused employment or vocational training, re-training or additional training offered to him. The manner of implementation of social inclusion measures for beneficiaries of financial support capable of work shall be established by a special act by the competent state administration body.

**Restricted duration of financial support**

**Article 29**

Parents capable of work, who maintain a child shall be entitled to financial support for the period of nine months during one year, unless the child is a beneficiary of the care and support allowance, if it meets the conditions prescribed by this Law. Notwithstanding paragraph 1 of this Article, if one of the parents is involved in education, training or some other form of social engagement in accordance with the individual plan of activation, he shall be considered a person incapable of work with regard to the duration of the right to financial support. Parents referred to in paragraph 1 of this Article can exercise the right to financial support after expiry of the three month period from the day of termination of the right to financial support, if they meet the conditions prescribed by this Law.

**Contract on life-long maintenance**

**Article 30**

The right to financial support can be exercised by a person who is deemed incapable of work in accordance with this Law, or a person who has turned 67, and who has property, if a contract on lifelong maintenance is concluded with the Social Welfare Centre in accordance with the law regulating obligation relations.

**The amount of financial support**

**Article 31**

The monthly amount of financial support for an individual or a family with no revenue shall amount to:

1) 63.50 euro for an individual;
2) 76.20 euro for a family with two members;
3) 91.50 euro for a family with three members;
4) 108.00 euro for a family with four members;
5) 120.70 euro for a family with five and more members.

The amount of financial support for a person who was a child without parental care shall amount to 120.70 euro per month.

The amount of financial support for a family that earned revenue shall be established in the amount of difference between the amount established by paragraph 1 of this Article and the average monthly revenue of the family from the previous three months. The number of family members referred to in Article 21 of this Law shall be taken into account in determining the amount of financial support. The monthly amount of financial support for a family referred to in Article 25 of this Law shall be established in the amount of 50% of the amount established in paragraph 1 of this Article.
Personal disability allowance
Article 32
A person with severe disability shall have the right to personal disability allowance. The amount of personal disability allowance referred to in paragraph 1 of this Article shall amount to 108.80 euro per month.

Care and support allowance
Article 33
The following persons shall have the right to care and support allowance:
1) A person who needs care and support due to bodily, mental, intellectual or sensory disorders or changes in health condition, in order to have access to fulfilment of its needs;
2) Beneficiary of personal disability allowance.
A person referred to in paragraph 1 of this Article can exercise the right to care and support allowance for care on the condition he/she did not exercise this right on some other grounds. The amount of the care and support allowance is 63 euro per month.

Health protection
Article 34
The right to health protection is provided to the beneficiary of: financial support, care and support allowance and accommodation services, unless he exercised this right on some other grounds. The right referred to in paragraph 1 of this Article shall be provided in accordance with the law regulating health protection.

Funeral expenses
Article 35
The right to funeral expenses in the event of death of the beneficiary of: financial support, care and support allowance and accommodation, shall be provided in accordance with this Law. The person who has taken over the payment of funeral expenses shall be entitled to funeral expenses for beneficiaries referred to in paragraph 1 of this Article, unless he exercised this right on some other grounds. Service provider who paid the funeral expenses for person referred to in paragraph 1 of this Article shall have the right to compensation of expenses from the person who is obliged to pay the expenses. The right to funeral expenses referred to in paragraph 1 of this Article shall be exercised with the Social Welfare Centre.

The amount of funeral expenses
Article 36
The amount of funeral expenses for person referred to in Article 35 paragraph 1 of this Law shall be established in the amount of 315 euro. The amount of transport expenses for the person referred to in Article 35 paragraph 1 of this Law, who died outside his place of residence, shall be established in the amount of real transport expenses.
The amount of funeral expenses for a person whose place of residence is unknown, who died at the territory of the State, shall be provided with the Social Welfare Centre and established in the amount of real funeral expenses.

One-off financial assistance
Article 37
An individual or a family who, due to special circumstances that affect their residential, material and health condition, find themselves in the state of social need can exercise the right to one-off financial assistance.

The person referred to in paragraph 1 of this Article shall exercise this right in accordance with the criteria and according to the procedure prescribed by the competent state administration body. The amount of assistance referred to in paragraph 1 of this Article shall be established by the Social Welfare Centre, depending on the need of an individual or a family and the financial capacity of the state.

Harmonisation of the base and the amount of financial support
Article 38
The amount of the base referred to in Article 22 paragraph 1 item 1 of this law and the amount of financial benefits referred to in Art. 31, 32, 33 and 36 of this law shall be harmonised on semi–annual basis (on 01 January and on 01 July of the current year) with the living costs trends and the average salary of employees at the territory of Montenegro on the grounds of the statistical data for the previous semi–annual period, in the percentage which represents the amount of half the percentage of growth, i.e. decrease of the living costs and half the percentage of growth, i.e. decrease of salaries.

Act on harmonisation of monthly financial incomes shall be made by the competent state administration body.

Financial benefits in the area of social protection under the competence of the municipality
Article 39
In accordance with its financial capacity, the municipality can provide financial benefits from the area of social protection, such as: one-off assistance subsidies for the payment of utilities provided by public companies established by the municipality and other financial benefits in the area of social protection.

The type of material supports, more detailed conditions, manner and procedure for exercising the right referred to in paragraph 1 of this Article shall be prescribed by the competent municipal body.

III. FUNDAMENTAL FINANCIAL BENEFITS IN THE AREA OF CHILD PROTECTION
Fundamental financial benefits
Article 40
Fundamental financial benefits in the area of child protection are:
1) Benefit for a new-born child;
2) Child allowance;
3) Costs of nutrition in pre-school institutions;
4) Assistance for up-bringing and education of children and young people with special educational needs;
5) Reimbursement of salary compensation and salary compensation for maternity or parental leave;
6) The maternity leave pay;
7) Reimbursement of salary compensation and salary compensation for half-time work.
The state can also provide other financial benefits within child protection, pursuant to its financial capacities.
More detailed conditions for exercising the rights referred to in paragraphs 1 and 2 of this Article shall be prescribed by the competent state administration body.

**Benefit for a new born child**

**Article 41**
One of the parents, an adoptive parent, a guardian, a foster parent or a person to whom care, upbringing and education of a child has been entrusted can exercise the right to one-off benefit for a new-born child.
The benefit referred to in paragraph 1 of this Article can be exercised until the child is one year old.
The amount of the benefit referred to in paragraph 1 of this Article shall be EUR 105.

**Child allowance**

**Article 42**
The right to child allowance can be exercised by a child who:
1) Is beneficiary of financial support;
2) Is beneficiary of care and support allowance;
3) Is beneficiary of personal disability allowance;
4) Is without parental care;
5) Whose parent, adoptive parent, guardian, foster parent i.e. person to whom care, upbringing and education of the child have been entrusted as beneficiary of financial benefit established employment relationship based on an agreement on active overcoming of an unfavourable social situation.
Three children in a family shall have the right to child allowance.
Notwithstanding paragraph 2 of this Article, child allowance shall be provided also for children who were born as twins, triplets and the like, notwithstanding the number established in paragraph 2 of this Article.
The child referred to in paragraph 1 indent 2, 3 and 4 of this Article shall exercise the right to child allowance notwithstanding the number of children established in paragraph 2 of this Article.

**Duration of child allowance**

**Article 43**
The right to child allowance shall be exercised until the age of 18, if the child attends regular education system.
Notwithstanding paragraph 1 of this Article, the right to child allowance is exercised by a child after the age of 18 if he attends regular secondary school education system, until the end of the time limit prescribed for that kind of education.
A child beneficiary of financial support and the child without parental care, from the age of 15 until the age of 18, who is not included in regular education system, shall exercise the right referred to in paragraph 1 of this Article if he is registered by the Employment Agency. The child referred to in Article 42 paragraph 1 indent 5 of this law shall exercise the right to child allowance as of the day when the parent, adoptive parent, guardian, foster parent, or person to whom care, upbringing and education of the child has been entrusted enters into employment, for a maximum period of nine months, if he/she meets the conditions prescribed by this law.

The amount of child allowance

Article 44
The monthly amount of child allowance shall amount to:
1) EUR 19 for a beneficiary of financial support;
2) EUR 25, 50 for a beneficiary of care and support allowance;
3) EUR 31, 80 for a beneficiary of personal disability allowance;
4) EUR 31, 80 for a child without parental care;
5) EUR 19 for a child whose parent, adoptive parent, guardian, foster parent or a person to whom care, upbringing and education of the child has been entrusted as a beneficiary of financial support entered into employment on the grounds of the agreement on active overcoming of unfavourable social situation.
A child who meets the conditions for child allowance on a number of grounds shall exercise the right according to the most favourable grounds.

Holder of child allowance

Article 45
Holder of the right to child allowance shall be the parent, adoptive parent, guardian, foster parent or a person to whom care, upbringing and education of the child has been entrusted.
The child allowance shall be paid monthly to the holder of the right referred to in paragraph 1 of this Article.
Child allowance for a child without parental care, who has been placed into an institution, shall be paid on the child’s name to the authorized person in that institution and shall be used for the needs of the child.
The authorized person, in the sense of paragraph 3 of this Article, shall be the person to whom the custody body entrusted performance of particular affairs, in accordance with the law regulating family relations.

Expenses of nutrition in pre-school institutions

Article 46
The right to nutrition expenses in a public pre-school institution shall be exercised by children in accordance with the law regulating pre-school upbringing and education.

Assistance in upbringing and education

Article 47
Children and young people who have exercised the right to upbringing and education in accordance with a special law shall be entitled to the right to support for upbringing and education of children and young persons with special educational needs.
The right to assistance referred to in paragraph 1 of this Article shall comprise:
1) Costs of accommodation into an institution;
2) Transport costs.

Costs of accommodation

Article 48
Children and young people referred to in Article 47 of this law, who are oriented to upbringing
and education outside their place of permanent or temporary residence, shall have the right to
expenses of accommodation into an institution for the duration of upbringing and education, in
accordance with this law.
The person accompanying the person referred to in paragraph 1 of this Article shall also have the
right to provision of accommodation expenses.
The accommodation expenses for the accompanying person shall be provided in the amount of
accommodation expenses for persons referred to in paragraph 1 of this Article.

Transport expenses

Article 49
Children and young people referred to in Article 47 of this law shall be provided transport
expenses for the duration of upbringing and education, and if they are placed into an institution,
transport expenses shall be provided also during winter and summer holidays, state, religious and
other holidays if they are travelling to their place of residence, and for returning to their place of
education, if this right has not been exercised on some other grounds.
The person accompanying the person referred to in paragraph 1 of this Article shall also have the
right to provision of transport expenses, unless he exercised this right on some other grounds.
The amount of transport expenses for persons referred to in paragraphs 1 and 2 of this Article
shall be established in the amount of expenses of public transport in road and railroad transport.

Beneficiary of reimbursement of salary compensation for maternity or parental leave

Article 50
An employer shall be entitled to reimbursement of funds for payment of salary compensation to
an employee for maternal or parental leave.

Amount of means

Article 51
The amount of funds being reimbursed to an employer for an employee who was in employment
relationship before exercising this right:
1) As a minimum 12 months without interruption, shall be the average income of the employee
for 12 months preceding the month when the right to material or parental leave was acquired;
2) From six to 12 months without interruption, shall be 70% of the average income of the
employee during work which preceded the month when the right to maternity or parental leave
was acquired;
3) From three to six months without interruption, shall be 50% of the average income of the
employee during work which preceded the acquiring of the right to maternal or parental leave;
4) Up to three months shall be 30% of the average income of the employee during work which
preceded the acquiring of the right to maternal or parental leave.
The maximum amount of funds referred to in paragraph 1 item 1 of this Article can be established as the amount of two average salaries of the state employee in the previous year, according to the data of the body competent for the affairs of statistics. The amount of means referred to in paragraph 1 items 2), 3) and 4) of this Article can be established at the maximum amount of one average income of a state employee in the previous year, according to the data of the state body competent for the affairs of statistics.

**Compensation of the salary of an employee undertaking entrepreneurial activity for maternity or parental leave**

**Article 52**
The person engaged in entrepreneurial activity as the only employee, shall exercise the right to compensation of salary with the Social Welfare Centre. The amount of compensation referred to in paragraph 1 of this Article shall be established in accordance with Article 51 of this law.

**Use of the right**

**Article 53**
If the request for reimbursement of the salary compensation or the request for salary compensation for maternity or parental leave was submitted within 30 days from the day when the right started to be used, the payment shall be effected as of that day, and if the request was submitted after that time limit, the payment shall be effected as of the day when the request was submitted.

Reimbursement of the salary compensation or salary compensation for maternity or parental leave can be achieved if the request was submitted after expiry of the time limit which the employee used for maternity or parental leave.

**Benefit for a new-born child**

**Article 54**
One of the parents who are in the records of the Employment Office and a student can exercise the right to monthly compensation on the grounds of the birth of a child, until the child is one year old. If the request for compensation referred to in paragraph 1 of this Article was submitted within 30 days as of the day of birth, the payment shall be effected as of the day of birth, and if the request was submitted after that time limit the compensation shall be paid from the day of submission of the request.

The person referred to in paragraph 1 of this Article may not exercise the right to benefits for a new-born child if he/she submits the request after termination of the time period that would grant him/her the right to receive the compensation.

The amount of compensation referred to in paragraph 1 of this Article shall be EUR 63, 50 per month.

**Reimbursement to the employer of salary compensation for half – time work**

**Article 55**
An employer shall be entitled to reimbursement of funds on the grounds of the payment of compensation for salary to an employee for half – time work, in the amount of 50% of the salary of the employee.
The amount of funds reimbursed to the employer for an employee for half – time work for a person referred to in paragraph 1 of this Article, who was employed prior to exercising of this right:
At least 12 months without interruption, shall be 50% of the average salary for 12 months preceding the month when the right to half – time work was obtained;
2) Up to 12 months without interruption, shall be 50% of the average salary during time of work which preceded the month when the right to half – time work was obtained.

Compensation of salary for half – time work to an employee undertaking entrepreneurial activity

Article 56
A person undertaking entrepreneurial activity as the only employee shall exercise the right to compensation of the salary for half – time work with the Social Welfare Centre.
The amount of salary compensation referred to in paragraph 1 of this Article shall be established in accordance with Article 55 of this law.

Exemptions from reimbursement

Article 57
An employer whose payment of salary compensation is provided from the public spending sector (state budget, municipality budget and extra-budgetary funds) shall not be reimbursed funds on the grounds of compensation for maternal or parental leave and compensation of salary for half – time work.

Harmonisation of the amount of financial benefit in child protection

Article 58
The amount of bases from Articles 41, 42 and 54 of this law shall be harmonised on semi – annual basis (on 01 January and on 01 July of the current year) with the living costs trends and the average salary of employees at the territory of Montenegro based on the statistical data for the preceding half year in the percentage which represents the sum of half percentage of growth, i.e. reduction in the living costs and half the percentage of growth, i.e. reduction of salaries.
The act on harmonisation of monthly financial incomes shall be adopted by the competent state administration body.

Financial benefits in the area of child protection under the competence of municipality

Article 59
The municipality can, in accordance with its financial capacities, provide financial supports in the area of child protection such as: support for a new-born child; support for purchase of school supplies and other material allowances.
Types of material allowances, more detailed conditions, manner and procedure for exercising the right referred to in paragraph 1 of this Article shall be prescribed by the competent municipal body.

IV. SOCIAL AND CHILD PROTECTION SERVICES
Types of services
Article 60
Services in the area of social and child protection are:
1) Assessment and planning;
2) Support for the life in the family;
3) Counselling-therapy and social-educational service;
4) Accommodation;
5) Urgent interventions and
6) Other services.
More detailed conditions for provision and use of services, norms and minimal standards of services referred to in paragraph 1 of this Article shall be prescribed by the competent state administration body.

Assessment and planning
Article 61
Assessment and planning shall be done for the purpose of the following:
1) Assessment of the situation, i.e. needs, strengths, weaknesses and risks of beneficiaries and other persons important for the beneficiary;
2) Assessment of guardians, foster parents, adoptive parents and persons to whom care, upbringing and education of the child have been entrusted;
3) Development of an individual plan for service provision and other assessments and plans.
Assessment and planning referred to in paragraph 1 of this Article shall be carried out by the Social Welfare Centre.

Support for life in the family
Article 62
Support services for life in the community shall comprise activities supporting stay of beneficiaries in the family or the immediate surroundings.
Support services for life in the family are the following: daily stay, help in the house, living with support, daily centre, personal assistance, interpretation and translation into sign language and other support services in the community.

Counselling-therapy and social-educational services
Article 63
Counselling-therapy and social-educational services include: counselling, therapy, mediation, SOS telephone and other services with the objective of overcoming situations of crisis and improving family relations.

Accommodation
Article 64
Accommodation is a service which comprises the stay of beneficiaries: in family placement as fostering, family placement, in an institution, in a daily centre – refuge and other types of accommodation.
Accommodation can be temporary, occasional and longstanding.
Services referred to in Articles 62 and 63 of this law and paragraph 1 of this Article shall be performed by service provider.
Family placement - fostering

Article 65
Service of family placement – fostering is provided for children and young people in accordance with the law regulating family relations.

Family placement

Article 66
Service of family placement is provided to a pregnant woman, a single parent with a child up to the age of three, and an adult and old person, who needs to be taken care of due to their social circumstances.

Type of family placement – fostering and family placement

Article 67
Family placement – fostering and family placements are provided in the form of the following:
1) Standard accommodation;
2) Placement with intensive or additional support;
3) Urgent placement;
4) Occasional placement;
5) Other types of placement.

Providers of family placement- fostering and family placement

Article 68
The service of family placement – fostering and family placement is provided by a natural person in accordance with this law and the law regulating family relations.
The service referred to in paragraph 1 of this Article shall be provided by a natural person assessed as suitable, who has successfully completed the training and obtained a licence for provision of that service.
Assessment of eligibility of a natural person for providing the service of family placement – fostering and family placement, professional support and training shall be performed by the Social Welfare Centre.
Provider of the service of family placement – fostering and family placement shall be entitled to professional support, compensation of costs for accommodation of beneficiaries and compensation for work.
Mutual rights and obligations between service providers of family placement - fostering or family placement and the Social Welfare Centre shall be regulated by a contract.
In addition to the Social Welfare Centre, other service providers can provide expert support and perform adequate training for providers of family placement service of fostering and the family placement.
More detailed conditions for assessment of eligibility of a person for providing the service of family placement - fostering and family placement, the programme and manner of training implementation and provision of expert support, for obtaining the licence, as well as remuneration of expenses of family placement - fostering and family placement and remuneration for work for service provider shall be prescribed by the competent state administration body.
Placement in an institution

Article 69
Placement in an institution shall be carried out through care taken in an institution and by providing remuneration for accommodation costs.

Beneficiaries of placement in an institution

Article 70
Placement into an institution shall be provided to children and young people, a pregnant woman, a single parent with a child until the age of three, a person with disability and an old person for whom it cannot be provided to remain in the family, or that is not in their best interest, or support services for life in the community or family placement – fostering or family placement cannot be provided.
Placement of a child into an institution is provided in the event when the Social Welfare Centre establishes that it cannot be provided that the child stays in the family, i.e. family placement – fostering cannot be provided or it is not in the best interest of the child.
The Social Welfare Centre shall review the placement of the child into an institution as a minimum once in six months.
A child younger than three shall not be provided placement into an institution.
Notwithstanding paragraph 4 of this Article a child younger than three can be provided placement into an institution, with the previously obtained consent of the competent state administration body, if protection referred to in paragraph 2 of this Article cannot be provided and if there are particular justified reasons for this.
Placement into an institution shall be provided to a beneficiary so that it ensures his/her preparation or return to biological family, his leaving to another family, or prepares the beneficiary for independent life.
Accommodation of the beneficiary of the placement into an institution cannot be terminated before the Social Welfare Centre provides conditions for placement into another institution, family placement or some other form of social and child protection.

Services of urgent intervention

Article 71
Services of urgent intervention are provided for the purpose of ensuring safety in situations that endanger life, health and development of beneficiaries and they shall be provided 24 hours a day.
Services of urgent intervention are provided by the Social Welfare Centre with the obligation of cooperation with other competent bodies and services.
In the event when a body, i.e. the service referred to in paragraph 2 of this Article first establishes a contact with a beneficiary, it shall immediately inform thereon the competent Social Welfare Centre.

Provision of services

Article 72
Services of social and child protection referred to in Articles 62 and 63 of this law, as well as services of placement in an institution and a daily centre – refuge referred to in Article 64 paragraph 1 of this law, for which there is need, and which can be provided in a more efficient
manner by other service providers, through the public procurement procedure, a public call or public-private partnership, shall be provided in accordance with law.

V. JURISDICTION AND PROCEDURE FOR THE EXERCISE OF SOCIAL AND CHILD PROTECTION RIGHTS

Subject-matter jurisdiction

Article 73
A request for the exercise of social and child protection rights shall be decided upon in the first instance by the Social Welfare Centre.
An appeal against the decision of the Social Welfare Centre shall be decided upon by the competent state administration body.

Territorial jurisdiction

Article 74
In the exercise of social and child protection rights territorial jurisdiction shall be established for the following categories:
1) A person who has permanent residence, based on the place of permanent residence;
2) A person who finds himself/herself in the territory outside his/her place of permanent residence, based on the place of temporary residence;
3) A person of unknown permanent residence, based on the place where the cause for the initiation of proceedings has arisen;
4) A child, based on permanent or temporary residence of the child’s parents;
5) A child whose parents do not live together, based on the permanent or temporary residence of the parent to whom care and upbringing of the child has been entrusted;
6) A child whose parents are not known or have abandoned the child or if the permanent or temporary residence of the child is not known, based on the place where the cause for the initiation of proceedings has arisen;
7) A legal person based on the seat, or, when performing activities outside the seat, based on the place where the legal person’s activities are carried out.

Change of jurisdiction

Article 75
The Social Welfare Centre which initiated proceedings shall submit case files, if in the course of the proceedings circumstances based on which territorial jurisdiction was established change, without delay, to the competent Social Welfare Centre.
If the beneficiary changes permanent or temporary residence, the Social Welfare Centre shall, without delay, submit case files to the competent Social Welfare Centre whose jurisdiction is determined based on the place of permanent or temporary residence of beneficiary.
The Social Welfare Centre which was submitted the case files shall decide upon the beneficiary’s right within 15 days as of the day of the submission of files.
The Social Welfare Centre, which has recognized the right, shall provide the execution of that right until the completion of the proceedings referred to in paragraph 3 of this Article.

Conflict of territorial jurisdiction

Article 76
Conflict of territorial jurisdiction between the Social Welfare Centres shall be resolved by the competent state administration body.
The Social Welfare Centre shall provide to the applicant referred to in paragraph 1 of this Article adequate form of protection until the completion of the proceedings referred to in paragraph 1 of this Article.

**Initiation of procedure**

**Article 77**
The procedure for the exercise of rights under this Law shall be initiated at the request of the person, i.e. his/her legal representative, adoptive parent, guardian, foster parent, or a person to whom care, education and upbringing of the child have been entrusted ex officio.
The Social Welfare Centre shall initiate the procedure ex officio upon the initiative of legal or natural person, when it is in the interests of beneficiary, or in the public interest, or when there is the interest of third parties.
The application for the exercise of rights referred to in paragraph 1 of this Article shall be submitted on a form prescribed by the competent state administration body.
The applicant referred to in paragraph 1 of this Article shall be responsible for the correctness and accuracy of data entered in the form referred to in paragraph 3 of this Article.

**Findings and opinion of the Social Welfare Centre**

**Article 78**
Rights to fundamental financial support referred to in Articles 21, 32, 33 and 37 of this Law shall be exercised on the basis of evidence and direct insight.
In the procedure of exercising the rights referred to in paragraph 1 of this Article, the authorised person from the Social Welfare Centre shall provide findings and opinion establishing the facts for which no official records are kept which shall be used as evidence.
The content and form of findings and opinion in sense of paragraph 2 of this Article shall be prescribed by the competent state administration body.

**Individual plan of services**

**Article 79**
Rights to services of social and child protection referred to in Articles 62, 64 and 71 of this Law shall be recognised on the basis of evidence and an individual plan of services.
The authorised person of the Social Welfare Centre shall make an individual plan referred to in paragraph 1 of this Article, in cooperation with beneficiary, his/her family members and other persons important for beneficiary.

**Social and Medical Commission**

**Article 80**
When it is in the procedure for exercising the rights to financial support, care and support allowance, personal disability allowance, short time wage compensation for disability that needs to be determined, incapacity for work or disability, the Social Welfare Centre shall establish those facts on the basis of findings, evaluation and opinion of the Social and Medical Commission.
The Social and Medical Commission shall be established as the first and second instance body.
The Commission referred to in paragraph 2 of this Article shall be formed by the competent state administration body. Further requirements in terms of education, composition and manner of work of the Commission referred to in paragraph 2 of this Article shall be prescribed by the competent state administration body.

**Medical Indications**

**Article 81**

Medical indications for the exercise of the rights to financial support care and support allowance, personal disability allowance, and short time wage compensation shall be prescribed by the competent state administration body, with the previously obtained opinion from the state administration body in charge of health matters.

**Deadlines**

**Article 82**

The procedure for the exercise of social and child protection rights is urgent. The Social Welfare Centre shall be obliged to adopt and deliver a decision on the application for the exercise of the right to fundamental financial support not later than 15 days, and if it is necessary to carry out a special investigation procedure, within 30 days as of the day of the receipt of the properly filed application, or the initiation of the procedure ex officio.

**Oral decision**

**Article 83**

When it comes to taking extremely urgent measures for the purpose of providing social and child protection, the Social Welfare Centre can make decisions orally. In the case referred to in paragraph 1 of this Article, the Social Welfare Centre shall give a decision in writing within three days as of the day of making the oral decision.

**Exercise of rights**

**Article 84**

The rights to basic financial support from Articles 21, 32, 33 and 42 of this Law shall be valid as of the first day of the following month upon filing the application. A beneficiary, or his/her legal representative, adopter, guardian, foster parent, or the person to whom care, education and upbringing of the child have been entrusted, shall report to the Social Welfare Centre any change that can affect the exercise and the amount of rights referred to in paragraph 1 of this Article, within 15 days as of the day when the change occurred. Any changes that can affect the enjoyment of rights under this Law shall be taken into account as of the first day of the following month upon their occurrence. The beneficiary’s right to financial support shall cease to exist should he/she be placed in an institution, that is, in the religious, military or the Internal Affairs School for more than 30 days as of the day of his/her placement in that institution, provided that accommodation and food expenses are provided at the expense of those bodies or should he/she be serving a prison sentence for longer than six months. Payment of care and support allowance and personal disability allowance to the beneficiary shall be suspended should he/she be using the accommodation services of the institution referred to in
Article 64 paragraph 1 of this Law for more than 60 days, provided that the service is allocated from the state budget.

**Direct contracting of the use of service**

**Article 85**

A beneficiary or his legal representative, adopter, guardian, foster parent, or the person to whom care, upbringing and education of the child have been entrusted, can directly choose a service provider and enter into agreement with the service provider therein on the use of services should the beneficiary fully participate in the coverage of the costs of service.

Notwithstanding paragraph 1 of this Article, service providers cannot be chosen directly for accommodation:

1) of the child in an institution, unless otherwise provided by the Law;
2) of the person deprived of business capacity.

Services referred to in paragraph 2 of this Article shall be used on the basis of the decision of the Social Welfare Centre or on the basis of court decision, in accordance with law.

**Providing data**

**Article 86**

A beneficiary shall provide true personal data, data on his/her income and financial standing and other circumstances on which recognition of the social and child protection rights depends, including during their use.

**Damages**

**Article 87**

Person referred to in Article 84, paragraph 2 of this Law to whom basic financial support has been provided shall repay the amount received if he/she:

1) was paid basic financial support or was paid it in the amount larger than he/she was entitled to by law based on the false data which he/she was aware of or which he/she should have known to be false or has gained this right in another unlawful manner;
2) was paid basic financial support due to the fact that he/she did not report or did report changes belatedly that may affect the loss that is the enjoyment of rights, or may affect the amount of basic financial support, and he/she was aware of or should have been aware of these changes.

As soon as the Social Welfare Centre establishes the circumstances referred to in paragraph 1 of this Article, it shall invite the beneficiary via the written notification to repay the amount of financial support he/she gained on unreasonable grounds within 15 days as of the day of the receipt of notification.

The Social Welfare Centre may enter into a contract with beneficiary for the method and time of repayment of the amount of financial support gained on unreasonable grounds, with regard to the amount of beneficiary’s personal income and his/her social position.

Repayment of the amount of financial support gained on unreasonable grounds shall not be contracted for the period longer than three years.

**VI. INSTITUTIONS OF SOCIAL AND CHILD PROTECTION**

**Status of institution**

**Article 88**
Institution is a legal entity that independently performs the activity for which it was founded, in the manner and under the conditions established by this Law, Memorandum of Association and Statute.

**Establishment**

**Article 89**

Institution may be established by state, municipality or another physical and legal person (hereinafter referred to as: the Founder).

If the institution is established by several entities referred to in paragraph 1 of this Article, mutual rights and obligations of founders shall be established by contract.

**Memorandum of association of the institution**

**Article 90**

Memorandum of Association of the institution shall be adopted by the Founder and it shall contain:

1) Name of the Founder;
2) Name, seat and address of the institution;
3) Activities of the institution;
4) Amount of funds for the establishment and commencement of work of the institution and the way of providing funds needed to carry out activities of the institution;
5) Rights and obligations of the Founder towards the institution and of the institution towards the Founder;
6) Bodies of the institution;
7) Composition and manner of the appointment of managing bodies of the institution;
8) Deadline for the appointment of managing and governance bodies, adoption of the statute and registration of the institution in the Central Registry of Business Entities (hereinafter referred to as: the Registry);
9) Person who will temporarily serve as director of the institution;
10) Period for which the institution is established, if it is founded for a specific period of time, that is, for the execution of a particular job.

The Founder shall submit to the competent state administration body Memorandum of Association of the institution within 15 days as of the day of its adoption.

**Capacity of legal entity**

**Article 91**

The Institution shall acquire capacity of legal entity upon its registration in the Registry.

Parts of the institution shall have no capacity of legal entity.

**Statute of the institution**

**Article 92**

Statute of the institution shall include: name, seat and address of the institution; activities of the institution; scope of managing and governance bodies; conditions and procedure for the election of Director of the institution and his/her removal from office; general acts of the institution and the manner of their adoption; the way of financing; the manner of selecting candidates from among the employees for the appointment of members of managing bodies; the method of
determining the proposal for the dismissal of the member of the managing body from among the employees; transparency of work and other issues important for the work of the institution. Consent to the Statute of the institution shall be given by the Founder.

**Bodies of the institution**

**Article 93**

Bodies of the institution are: Managing Board and Director.

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**Managing the institution**

**Article 94**

The institution shall be managed by the Managing Board. The Managing Board shall:

1) Adopt the Statute and other general acts;
2) Appoint and dismiss Director of the institution;
3) Adopt development program;
4) Adopt annual financial plan;
5) Adopt annual final account;
6) Make investment decisions;
7) Perform other duties in accordance with law and statute of the institution.

**Composition of the Managing Board**

**Article 95**

The Managing Board of the institution shall have its President and at least two members. President or at least one member of the Managing Board of the institution shall be appointed from among the employees of the institution.

**Appointment and dismissal of the Managing Board**

**Article 96**

President and members of the Managing Board shall be appointed and dismissed by the Founder of the institution. Mandate of the President and members of the Managing Board shall be regulated by the Statute of the institution.

**Dismissal of President and member of the Managing Board**

**Article 97**

President and member of the Managing Board of the institution can be dismissed before the end of the term if he/she:

1) Resigns;
2) Acts contrary to the Law or the Statute of the institution;
3) Fails to perform duty for more than six months;
4) Was sentenced to unconditional imprisonment.
Member of the Managing Board from among the institution employees may also be dismissed before the end of the term if he/she fails to represent interests of employees in the manner prescribed by the Statute of the institution.

**Director of the institution**

**Article 98**

Director shall:
1) adopt the act on the internal organization and job description of the institution;
2) organize the work and be responsible for legality of work and implementation of the development program of the institution;
3) perform other duties in accordance with this Law and the Statute of the institution.

Term of Director of the institution shall be determined by the Statute of the institution.

**Status of employees in the institution**

**Article 99**

General regulations on the labour and collective agreements shall apply to the employees in the institution unless otherwise defined by the Law.

**Obligations of founder**

**Article 100**

The Founder shall regularly provide funds for the work of the institution.

Funds referred to in paragraph 1 of this Article shall include: funds for salaries and other fees for employees, material costs, maintenance and safeguarding of facilities and equipment as well as technical and technological equipping of facilities for the implementation of the programme activities of the institution.

**Obligations of the institution**

**Article 101**

The institution shall perform activity for which it was founded, use with designated purpose tools for work and submit to the competent state administration body, by the end of March of the current year, annual report on its work, the report on financial operations for the previous year and work programme for the current year.

**Status changes**

**Article 102**

The Founder can change status of the institution (segregation of one part of the institution into a separate institution, merging of one part of the institution with another institution, organizing new institution by consolidation of parts, that is, by merging of two or more institutions or by transformation of institutions into a business company), under the procedure prescribed for the establishment of an institution, unless otherwise defined by a special law.

Change of the name, business and seat of the institution shall be made by the Memorandum of Association of the institution.

**Reasons for cessation of work of the institution**

**Article 103**

The institution shall cease to work if:
1) It fails to meet the prescribed requirements for conducting the activity;
2) The final court decision establishes registration in the Registry to be invalid;
3) It fails to perform the activity for which it was established;
4) Another situation defined by the Law or Memorandum of Association occurred.
Act on the cessation of work of the institution shall be passed by the Founder.

VII. PUBLIC INSTITUTIONS OF SOCIAL AND CHILD PROTECTION

Establishment of public institution

Article 104
Institution whose founder is state or municipality shall be established as a public institution. Founder of the public institution shall be responsible for the obligations of the public institution. The public institution shall be subject to the provisions on the institution unless otherwise defined by this Law.

Memorandum of Association of public institution

Article 105
Memorandum of Association of the public institution, founded by the state, shall be passed by the Government and Memorandum of Association of public institutions founded by municipality shall be passed by the authorized municipal body.

Act on internal organization and job description

Article 106
Act on internal organization and job description of the public institution founded by the state shall be subject to the consent of the competent state administration body. Act on internal organization and job description of the public institution founded by municipality shall be subject to the consent of the competent state administration body.

Appointment and composition of the Managing Board of public institution

Article 107
President and members of the Managing Board of the public institution, founded by the state, shall be appointed and dismissed by the Government, at the proposal of the competent state administration body.
Managing Board of the Social Welfare Centre shall consist of three representatives of the Founder, one representative of the employees and one representative of municipality. Representative of municipality referred to in paragraph 2 of this Article shall be elected in the manner prescribed by the Act of municipality.
Managing Board of the public institution referred to in Article 112 paragraph 1 items 2, 3 and 4 of this Law shall consist of three representatives of the Founder, one representative of employees and one representative of beneficiary, that is, parents of beneficiary. Representatives of employees and beneficiary shall be elected in the manner prescribed by the Statute of the institution.
President and members of the Managing Board of the public institution, founded by municipality, shall be appointed and dismissed by the competent municipal body.

Dismissal of President and member of the Managing Board of public institution
Article 108
President and member of the Managing Board of the public institution, apart from the reasons referred to in Article 97 of this Law may be dismissed before the end of the term to which he/she was appointed in the manner prescribed by the Statute of the public institution and in case he/she fails to protect public interest.

Managing public institution
Article 109
Public institution shall be managed by a Director.

Election of Director of public institution
Article 110
Director of the public institution founded by the state shall be elected by the Managing Board of the institution based on the open competition and submitted development programme of the institution.
Decision of the Managing Board on the election of the Director referred to in paragraph 1 of this Article shall be subject to the consent of the competent state administration body.
Person with higher education diploma with at least five years of experience in the profession can be elected Director of the public institution referred to in paragraph 1 of this Article.
Term of the Director of the public institution shall last four years.

Dismissal of Director of public institution
Article 111
Director of the public institution may be dismissed before the end of the term, if he/she:
1) Resigns;
2) Acts contrary to the law;
3) Causes damage to the institution with improper and careless actions or conducts his/her duties in a manner that may cause greater disturbances in the work of the public institution;
4) Disturbs in any way the exercise of rights and services under the competence of the public institution;
5) Fails to protect public interest;
6) Other reasons specified by the Law and the Statute of the institution occur.

Types of public institutions
Article 112
Public institutions are:
1) Social Welfare Centre;
2) Institutions for children and youth;
3) Institutions for adults and the elderly;
4) Institutions for relaxation and recreation.

Social Welfare Centre
Article 113
The Social Welfare Centre shall decide on the social and child protection rights in accordance with this Law.
The Centre referred to in paragraph 1 of this Article may be established only by the state, as a public institution in accordance with this Law.

The Centre referred to in paragraph 1 of this Article may be established for the territory of one or more municipalities.

Further requirements of organization, norms, standards and methods of work of the Social Welfare Centre shall be prescribed by the competent state administration body.

Public authorities

Article 114

The Social Welfare Centre shall:

1) Conduct assessment of the current situation, needs, strengths and risks of beneficiaries and other persons important for beneficiary; assess eligibility of the guardian, foster and adoptive parents; create and monitor individual service plans;

2) Decide in the first instance on the applications for the exercise of social and child protection rights;

3) Undertake measures, initiate judicial and other proceedings and take part in them;

4) Keep records and take care of keeping records of beneficiaries;

5) Perform other duties in accordance with the Law.

Other operations of the Social Welfare Centres

Article 115

The Social Welfare Centre shall launch, develop and participate in the implementation of strategies, plans and programmes which contribute to the meeting of needs of citizens and shall cooperate with state administration bodies, municipalities and other organizations in the field of social and child protection in municipality for which it was established.

Standby and duty call

Article 116

In the Social Welfare Centre, standby shall be a special form of work out of working hours during which an employee must be continuously available (on standby) in order to, if necessary, perform immediate intervention.

Standby plan shall be passed by the Director of the Social Welfare Centre.

Other public institutions

Article 117

The public institutions referred to in Article 112 paragraph 1 items 2 and 3 of this Law shall provide support services needed for independent living, counselling and therapy and social and educational services; they also perform activities of accommodation of the children with behavioural disorders, children without parental care, children whose development is hindered by family circumstances, children with disabilities, adults with disabilities, adults and the elderly with psychiatric conditions, the elderly and persons who have had substance abuse treatment as well as other activities in accordance with the Law.

The public institutions which perform operations of accommodation of children, youth, adults and elderly shall transform with the aim of developing support services for independent living,
counselling-therapeutic or socio-educational services, in accordance with the plan of transformation adopted by the competent state administration body.
The public institution referred to in Article 112, paragraph 1, item 4 of this Law shall organize activities for the relaxation and recreation of the child beneficiary of financial support and of the child living in an institution or in a family accommodation - foster family.

Health care activity
Article 118

Public institutions can organize and carry out health care activities at the primary health care level, in accordance with the Law governing the area of health care.

VIII. ANOTHER FORM OF ORGANIZING SERVICE PROVIDERS

Another form of organization
Article 119

Activity in the area of social and child protection, that is, individual services may also be provided, in accordance with this Law, by an organization, an entrepreneur, a business company and a physical person in accordance with law.
Founder’s rights in respect of the appointment of management and governance bodies of another form of organizing shall be exercised in accordance with the regulation governing the establishment of such entity.
Managing with another service provider shall be exercised in the manner set out in the Memorandum of Association in accordance with law.

IX. INSTITUTE FOR SOCIAL AND CHILD PROTECTION

Institute for Social and Child Protection
Article 120

The state administration body responsible for social and child protection (hereinafter: the Institute for Social and Child Protection) shall perform development, counselling, research and other professional activities in social and child protection in accordance with this Law.

Activity of the Institute for Social and Child Protection
Article 121

The Institute for Social and Child Protection shall perform the following tasks:
1) Counselling, research and professional activities in the field of social and child protection;
2) Monitors the quality of professional work and services in institutions, in accordance with this Law;
3) Provides professional supervisory support for the advancement of professional work and social and child protection services;
4) Performs licensing of professional workers and issues operating license in accordance with this Law;
5) Performs professional and organizational activities in the procedure of the program accreditation, that is, the accreditation of the program for service provision which provides vocational training to professional workers and professional associates and service providers;
6) Passes the Code of Ethics for employees in the field of social and child protection;
7) Explores social phenomena and problems, activities and effects of social and child protection, prepares analyses and reports and proposes measures for the improvement in the field of social and child protection;
8) Develops the quality system in the social and child protection, coordinates the development of service standards and proposes to the competent state administration body improvement of the existing and introduction of new standards;
9) Participates in the development, implementation, monitoring and evaluation of the effects of implementation of strategies, action plans, laws and other regulations relating to the development of activities of the social and child protection;
10) Organizes vocational training for professional workers and professional associates;
11) Creates and publishes monographs, journals and collections of papers, professional manuals, guides, bulletins, studies and examples of good practice;
12) Informs professional and general public about the implementation of the social and child protection, points out the needs and concerns of beneficiaries, especially beneficiaries from vulnerable social groups;
13) Performs other duties in accordance with this Law.

X. PERFORMING ACTIVITIES IN SOCIAL AND CHILD PROTECTION

Employees with service provider
Article 122

Professional tasks with service provider shall be carried out by professional workers and professional associates in accordance with this Law.

Professional workers and professional associates
Article 123

Professional worker is a social worker, psychologist, pedagogue, adult-education specialist, special pedagogue, lawyer, sociologist, special education teacher, special educator, rehabilitator and doctor of medicine.
Professional associates are persons of other professions with higher education degrees who perform operations with service provider.

Expert tasks
Article 124

Expert tasks with service provider are grouped according to the nature of work processes and outcomes produced in the course of service delivery.
Expert tasks referred to in paragraph 1 of this Article, as well as detailed requirements and standards for their execution shall be established by the competent state administration body.
Official ID card

Article 125

Professional workers of the Social Welfare Centre shall have the status of person in an official capacity and powers they can prove with their official identification card.

Content and form of the official identification card referred to in paragraph 1 of this Article shall be prescribed by the competent state administration body.

Interns

Article 126

Interns shall perform an internship with service provider in an institution of the social and child protection.

The internship shall be performed according to the established programme of service provider, under the direct supervision of the authorised worker (mentor) with at least the same degree of educational qualification as the intern.

Duration, the way of practicing internship and obligations of service providers towards the intern in the course of the internship shall be regulated by the act of the competent state administration body.

Vocational ability exam

Article 127

Upon the completion of internship with service provider, interns shall take vocational ability exam.

The exam referred to in paragraph 1 of this Article shall be organized and carried out by the competent state administration body.

The vocational ability exam shall be taken before a commission established by the competent state administration body.

The conditions, programme and manner of taking vocational ability exam referred to in paragraph 1 of this Article shall be prescribed by the competent state administration body.

Vocational training of professional workers and professional associates

Article 128

Vocational training, in sense of this Law, shall mean continuous acquisition of knowledge and skills of professional workers and professional associates in the social and child protection.

Professional workers and professional associates in the social and child protection shall have the right and duty, in the course of their professional work, to keep up with the development of science and profession and to improve professional skills in order to maintain and improve professional competence and quality of professional work.

Plan and programme of vocational training

Article 129
Service provider shall provide to professional workers and professional associates vocational training, in accordance with this Law, according to the plan and program of vocational training. Plan and program of vocational training shall be passed by the Institute for Social and Child Protection.
Expenses of vocational training in sense of paragraph 1 of this Law shall be borne by the service provider.

**XI. LICENSE**

**Business license**

**Article 130**

Service provider shall be obliged to obtain business license in line with this Law prior to commencing its business.
License referred to in paragraph 1 of this Article shall be issued by the competent state administration body for a period of six years and shall be renewed in accordance with this Law.
For issuing business license administrative tax shall be paid in accordance with a special law.

**Conditions for issuing business license**

**Article 131**

Business license shall be issued to service provider who:
1) Is registered in the Registry;
2) Meets standards for the provision of service for which license issuance is sought, which refer to: the location and premises, equipment, number and type of professional personnel, evaluation, planning, and activities for the provision of a specific service of the social and child protection.

**Limited business license**

**Article 132**

Notwithstanding Article 130 of this Law, service provider may be granted limited business license which restricts duration, number of beneficiaries and the types of service provided.
License referred to in paragraph 1 of this Article shall be issued for a period of three years and may be issued maximum two times.
The right to limited business license can be exercised by service provider if the provider therein fails to meet the standards in terms of location and space if there is a need for service which cannot be provided by another service provider.

**Renewal of business license**

**Article 133**

Business license can be renewed at the request of service provider, in the manner and following the procedure prescribed for its issuance. The renewal procedure for the license referred to in paragraph 1 of this Article shall be initiated no later than six months before the expiry of the period for which the license is issued.
Suspension of business license
Article 134

If the competent state administration body, during the period for which business license was issued, determines that service provider fails to meet the prescribed requirements, it shall initiate the procedure to suspend its business license. Decision to suspend the license referred to in paragraph 1 of this Article shall establish deficiencies in terms of the requirements of Article 131 of this Law, and set out a deadline for their elimination. Service provider whose business license was suspended may continue to provide services until the expiration of the deadline for the elimination of deficiencies.

Revocation of business license
Article 135

The competent state administration body shall revoke business license from service provider that fails to eliminate deficiencies referred to in Article 134, paragraph 2 of this Law. Further requirements for the issuance, renewal, suspension and revocation of license, as well as the form of business license shall be prescribed by the competent state administration body.

Professional worker’s licence
Article 136

Professional worker employed with service provider must have operating licence. The licence referred to in paragraph 1 of this Article shall be issued by the Institute for Social and Child Protection for a period of six years and shall be renewed in accordance with this Law.

Requirement for the issuance of operating licence
Article 137

Operating licence shall be issued to a professional who:
1) has appropriate qualifications and has passed professional exam in accordance with this Law;
2) has a certificate confirming that he/she has successfully completed the accredited training programme.

Renewal of operating licence
Article 138

The procedure for licence renewal shall be initiated at the request of a professional worker which is submitted no later than three months before the expiry of the period for which the operating licence is issued. Should the Institute for Social and Child Protection fail to renew the operating licence, professional worker shall lose his/her right to perform the tasks for which the licence is intended.

Revocation of licence prior to expiration of its validity
Article 139

Professional worker shall be revoked licence before the expiry of the period for which it is issued, if:
1) he/she fails to perform activities in accordance with the prescribed norms and standards;
2) the employment contract is terminated due to the violation of responsibility or work discipline.
Further requirements for the issuance, renewal and revocation of a professional worker’s operating licence as well as the form of operating licence shall be prescribed by the competent state administration body.

XII. PROGRAMME ACCREDITATION

Accreditation

Article 140

Accreditation of training programmes or service provision programmes (hereinafter referred to as: accreditation) is a procedure in which it is evaluated whether a training programme or a programme of service provision (hereinafter referred to as: training programme) meets the established accreditation standards.
The training programme referred to in paragraph 1 of this Article is intended for professional workers and professional associates with service providers.

Accreditation procedure

Article 141

The procedure of accreditation of the training programme shall be conducted by publishing a public invitation for accreditation.
The decision to publish a public invitation for accreditation of training programmes shall be passed by the Institute for Social and Child Protection.
Public invitation referred to in paragraph 2 of this Article shall be published on the website of the Institute for Social and Child Protection.
Standards for accreditation of training programmes, as well as the manner of conducting accreditation procedure shall be regulated in more details by an act of the competent state administration body.
The Institute for Social and Child Protection shall pass a decision on accreditation of the training programme.
The competent state administration body shall be authorised to decide against the decision referred to in paragraph 5 of this Article.

Right to apply for accreditation of training programme

Article 142

Author of the programme shall be entitled to apply training programme for accreditation, and if the programme is a joint authorship, the right to apply for accreditation shall have all co-authors.
Implementation of the procedure of programme accreditation
Article 143

Application for accreditation of training programmes shall be submitted to the Institute for Social and Child Protection. The Institute for Social and Child Protection shall form a Programme Accreditation Commission. The Commission referred to in paragraph 2 of this Article shall conduct technical evaluation of training programmes and make a list of programmes which meet accreditation standards and perform other duties in accordance with the founding act.

Duration and renewal of accreditation
Article 144

The training programme shall be accredited for a period of five years. The procedure for renewal of accredited training programme shall be initiated at the request of the author or co-author of the accredited training programme at least six months before the expiration of the period for which the training programme is accredited.

Rights and duties of the author of accredited training programme
Article 145

Author of the accredited training programme shall have the right and duty to:
1) immediately implement training programme in the manner specified by the programme or to entrust implementation of the accredited programme to another person;
2) deliver a list of persons who have successfully completed training to the Institute for Social and Child Protection;
3) properly keep records on the implementation of accredited training programmes, including information about the time and place of implementation, individuals who have completed the training, etc.;
4) make the act on accreditation of training programmes available to any interested person;
5) inform potential users and the public about accreditation of training programmes;
6) enable control of the quality of implementation of the accredited training programme;
7) after the expiration of accreditation of training programmes, i.e. after their deletion from the Registry of Accredited Training Programmes, cancel implementation of the programme, and if the implementation was in progress at the time of expiration of accreditation, complete implementation of the training programme.

Revocation of accreditation
Article 146

When the Institute for Social and Child Protection determines that the need for training programmes has ceased to exist or that implementation of the programme significantly derogates from the contents and plan of its implementation, the Institute shall pass a decision on revocation of accreditation.
Certificate

Article 147

Professional workers and professional associates who have successfully completed training within a period of time prescribed by the accredited training programme shall be issued a certificate.

The certificate shall be issued by the Institute for Social and Child Protection on the basis of data submitted by the author of the accredited training programme.

Contents and form of the certificate shall be determined by the competent state administration body.

XIII. RECORDS AND REGISTRIES

Data collections

Article 148

For the purpose of carrying out activities of social and child protection, planning, monitoring, as well as for scientific, research and statistical purposes in the field of social and child protection, data collections shall be held.

Data collections referred to in paragraph 1 of this Article shall contain the following information:

1) data on the rights to social and child protection;
2) service providers;
3) beneficiaries;
4) financing of the activities of social and child protection;
5) other information in accordance with law.

The competent state administration body shall manage, maintain, use, provide security conditions and supervise databases and the overall information system of the social and child protection, and provide IT support to the system of the social and child protection.

The competent state administration body shall issue authorisation and shall determine the scope of authorisation for the access to database and for the entry of new and the use of the existing data.

Data in the system of social and child protection shall be kept in accordance with the law governing protection of personal data.

Further requirements on the contents of database, storage, access, records and documentation shall be prescribed by the competent state administration body.

Data takeover from other bodies

Article 149

For the purpose of exercising rights under this Law, data shall be taken over from electronic and other data collections of the bodies and organisations responsible for their processing.

Further requirements on data takeover from other data collections shall be prescribed by the competent state administration body.

Confidential information about beneficiaries
Article 150

All information about personal and family circumstances of a beneficiary, that service providers keep about the beneficiary, shall be confidential.
Confidential information about the beneficiary may be used by the service provider only for the purpose of service provision.
The beneficiary shall have the right to protect confidentiality of all personal data from the documents processed for the purpose of service provision, reporting on the work of the institution or other service providers, including those concerning his/her personality, behaviour and family circumstances, and manners of using social and child protection services.
Confidential information shall also include:
1) the fact that the beneficiary exercises the right or service;
2) the type of right or service provided to the individual beneficiary;
3) name, address and other personal identification data about beneficiary;
4) data contained in the user's application;
5) information that beneficiary communicates about him/herself;
6) information that other persons communicate about the beneficiary;
7) data about the beneficiary obtained during the provision of service;
8) assessments, findings, professional attitude or opinions of service providers about the beneficiary;
9) data contained in the reports of health care facilities for the beneficiary;
10) information about the beneficiary, such as: beneficiary’s photos, drawings made by the beneficiary during the process of service provision, single-handedly written statements or comments and remarks of the beneficiary, a written record of service provider or beneficiary, audio and video recordings made in connection with the use of service, etc.;
11) content of correspondence with other institutions or organisations, if that correspondence contains information about beneficiary or other persons connected with him/her.

Records
Article 151

The competent state administration body, in order to monitor the situation and form a database, shall keep records of institutions and other service providers.
Institutions and other service providers shall keep records of beneficiaries and social and child protection rights.
Further requirements on the nature, contents and manner of keeping records referred to in paragraphs 1 and 2 of this Article shall be prescribed by the competent state administration body.

Licence registries
Article 152

Business licence shall be entered in the Registry of Licensed Service Providers, which is held by the competent state administration body.
Operating licence shall be entered in the Registry of Licensed Professional Workers, which is held by the Institute for Social and Child Protection.
The manner of keeping and contents of the Registry referred to in paragraphs 1 and 2 of this Article shall be prescribed by the competent state administration body.

**Keeping records of training programmes**  
**Article 153**

Records of applications for accreditation, accredited training programmes, and implemented training programmes shall be kept by the Institute for Social and Child Protection. The manner of keeping and content of the records referred to in paragraph 1 of this Article shall be prescribed by the competent state administration body.

**XIV. FINANCING OF SOCIAL AND CHILD PROTECTION**

**Financing**  
**Article 154**

Funding for the basic financial support and services of the social and child protection shall be provided from the state budget in accordance with this Law. Funding for the performance of social and child protection activities shall be provided from the state budget and municipal budget, as well as from the activities carried out by service providers in accordance with this Law. Funding for the social and child protection services shall be provided through participation of beneficiaries, i.e. their relatives who are required to support them, donations, gifts, endowments, legacies, through the establishment of pious endowments and foundations, etc., in accordance with a special law. Funds for financial support in the social and child protection stipulated in this Law can be provided from the municipal budget, as well as for social and child protection services such as: help at home, day care, the people’s kitchen, relaxation and recreation of children, housing with support, accommodation in a shelter, housing for socially vulnerable persons, in accordance with the law, and other services in accordance with its financial capacity. If municipalities are not able to provide funds for services referred to in paragraph 4 this Article, the state shall take part in their funding in accordance with Article 156 of this Law.

**Construction, maintenance and equipping of the social and child protection institutions**  
**Article 155**

Within the funds for the activities carried out by a public institution for social and child protection financed from the state budget, funds for their construction, maintenance and equipping shall be provided in the state budget. Within the funds for the activities carried out by a public institution for social and child protection financed from the budget of municipality, funds for their construction, maintenance and equipping shall be provided in the budget of municipality. Criteria for the allocation of funds referred to in paragraph 1 of this Article shall be prescribed by the competent state administration body, whereas criteria for the allocation of funds referred to in paragraph 2 of this Article shall be prescribed by the competent municipal body.
Development of social and child protection

Article 156

For the purpose of developing and financing the social and child protection services, funds shall be provided from the state budget, municipal budgets, donations, games of chance and other sources in accordance with the law.

Funds referred to in paragraph 1 of this Article shall be used to finance:

1) social and child protection services for which there is need in municipality;
2) innovative services and services of social and child protection of particular importance for the state.

The amount of funds for the services referred to in paragraph 1 of this Article, criteria for their allocation by individual municipalities, criteria for participation of local self-governments and dynamics of the transfer of funds shall be determined by the competent state administration body.

Criteria and standards for determining prices of social and child protection services

Article 157

Criteria and standards for determining the price of a social and child protection service provided by the state shall be prescribed by the competent state administration body.

Criteria and standards for determining the price of a social and child protection service funded from the municipal budget shall be prescribed by the competent municipal body.

Provisions of paragraphs 1 and 2 of this Article shall apply to public institutions, institutions and other forms of organisation, provided that the social and child protection services are financed from the state budget or the budget of municipality.

Institutions and other forms of organisation shall independently determine criteria and shall independently form the price when providing social and child protection services through direct contracting.

In accordance with the prescribed criteria and standards, price of services referred to in paragraph 1 of this Article shall be determined by the competent state administration body, whereas price of services referred to in paragraph 2 of this Article shall be determined by the competent municipal body.

Participation of beneficiary in the service costs

Article 158

Beneficiary, parent or relative who is required to support beneficiary and another legal or natural person who has taken over payment shall take part in the payment of service with all his/her earnings, income and assets, except for the income earned on the basis of financial support, child allowance, personal disability allowance, one-off financial support, income based on awards and severance pay for retirement.

Criteria and standards for the participation of beneficiaries, parents or relatives in the payment of costs referred to in paragraph 1 of this Article provided by the state shall be prescribed by the competent state administration body.
Criteria and standards for the participation of beneficiaries, parents or relatives in the payment of costs referred to in paragraph 1 of this Article provided by municipality shall be prescribed by the competent municipal body.

**Funds for beneficiary’s personal needs**

**Article 159**

User of accommodation in a public institution for social and child protection shall be provided funds for personal needs to the amount determined by the competent state administration body.

**Covering service costs from the state or municipal budget**

**Article 160**

For persons referred to in Article 158, paragraph 1 of this Law who are not able to participate in covering the service costs, funds shall be provided from the state or municipal budget.

**Service payment contract**

**Article 161**

Service provider shall conclude the service payment contract with beneficiaries who participate in service payment.

**XV. SUPERVISION**

**Supervision of implementation of this Law**

**Article 162**

Supervision of implementation of this Law shall be conducted by the competent state administration body.

**Supervision of professional work**

**Article 163**

Supervision of a service provider’s professional work shall be performed by the competent state administration body, in accordance with this Law. During the supervision of the service provider’s professional work, it shall be determined whether the requirements concerning the application of the prescribed technical procedures and the use of professional knowledge and skills during the reception, assessment, planning, review of the effects of implemented activities and the completion of work with beneficiaries have been met, based on the review of documents and insight into the process of provision of services and their effects.

Upon the completion of supervision of the service provider’s professional work, a report shall be made.

**Inspection control**

**Article 164**
Inspection control of a service provider’s work shall be conducted by the authority responsible for the activities of inspection control.

Rights, duties and authorisations of inspectors for social and child protection

Article 165

Inspector for social and child protection (hereinafter: the inspector) shall be independent in his/her work within the authorisations prescribed by law and regulations adopted for the purpose of implementing the law and shall be personally responsible for his/her work.

The inspector shall act conscientiously and impartially while performing his/her duties of inspection control, keep official confidential information obtained in the course of the control, especially data from the beneficiary’s documentation.

In exercising the control, the inspector shall be authorised to determine legality of work and fulfilment of standards and in accordance with this Law shall:

1) review general and individual acts of the public institution for social and child protection and another service provider;
2) examine documentation of the public institution for social and child protection and another service provider on the basis of which they exercise rights and services of the social and child protection;
3) make direct insight into the exercise of rights and services, warn about detected irregularities and determine measures and deadlines for their elimination, not less than 15 days nor more than six months, and in case of emergency order elimination of the established irregularities and defects immediately;
4) require reports and data on the work of the public institution for social and child protection and another service provider;
5) check fulfilment of the requirements for conducting the activities of the social and child protection in accordance with this Law;
6) hear and take statements from the person responsible, i.e. professional worker and professional associate, as well as from other employees, beneficiaries and other persons;
7) initiate proceedings to establish liability;
8) make direct insight into the implementation of orders pronounced during the inspection control in accordance with this Law;
9) consider complaints of legal and natural persons which refer to work and provision of the social and child protection services;
10) perform other activities in accordance with the law.

Orders and measures of inspectors for social and child protection

Article 166

While carrying out the inspection control, in addition to the measures and actions prescribed by the Law on Inspection Control, the inspector may:

1) determine the minimum labour during the prohibition of work;
2) temporarily prohibit activities of social and child protection or certain activities from the scope of social and child protection to the person who carries out the activity of the social and child
protection contrary to this Law and regulations adopted for implementation of this Law for a period of at least 30 days and no longer than six months as of the day of the receipt of the document which imposes such measure;
3) prohibit independent work to the professional worker who has not received or has not renewed the licence for independent work or whose licence for independent work has been revoked;
4) suggest revocation of licence from the professional worker for the reasons prescribed by this Law.

XVI. PENALTY PROVISIONS

Offences related to the activity
Article 167

A EUR 500.00 to EUR 5,000.00 fine shall be imposed against the legal person provided that:
1) the persons fails to submit the report on its work, the financial statement for the previous year and programme of activities for the current year by the end of March of the current year (Article 101);
2) the persons commences performing the activity of social and child protection prior to obtaining the operating licence (Article 130, paragraph 1);
For the offence referred to in paragraph 1 of this Article, responsible person in the legal person shall also be sanctioned with a EUR 250.00 to EUR 1,000.00 fine.

Beneficiary offences
Article 168

Beneficiary shall be fined EUR 250.00 if he/she provides false information on the income and assets and other circumstances on which recognition of the social and child protection rights depends including during their use (Article 86).

XVII. TRANSITIONAL AND FINAL PROVISIONS

Implementing legislation
Article 169

Regulations for implementation of this Law shall be passed within six months as of the date of entry into force of this Law.
Notwithstanding paragraph 1 of this Article, regulations referred to in Article 135 paragraph 2, Article 139 paragraph 2, Article 141 paragraph 4, Article 147 paragraph 3 and Article 153 paragraph 2 of this Law shall be passed within two years as of the date of entry into force of this Law.
Until the adoption of regulations referred to in paragraph 1 of this Article current regulations shall apply, unless they are contrary to this Law.

Harmonisation of work and operations of institutions of the social and child protection
Article 170
Service provider shall harmonise its work and operations with this Law within one year as of the date of the adoption of regulations referred to in Article 60 paragraph 2 of this Law. Service provider referred to in paragraph 1 of this Article shall be required to submit application for the approval of licence in accordance with this Law not later than one year as of the date of adoption of the regulations referred to in Article 135 paragraph 2 of this Law.

Commencement of work of the Institute for Social and Child Protection
Article 171

The Institute for Social and Child Protection shall commence its work within one year as of the date of entry into force of this Law.

Professional exam
Article 172

Professional workers and professional associates shall pass the exam within one year as of the date of entry into force of this Law.

Request for issuance of operating licence
Article 173

Professional workers who perform professional tasks shall submit the application for the issuance of operating licence not later than one year as of the day of the commencement of work of the Institute for Social and Child Protection.

Election of Managing Board and Director
Article 174

Election of the Managing Board and Director of the public institution in accordance with this Law shall be completed within six months as of the date of entry into force of this Law. Until the bodies referred to in paragraph 1 of this Article are elected, the existing bodies of the institution shall continue to perform tasks.

Initiated procedure for recognition of rights
Article 175

The procedure for exercise of the social and child protection rights, which was initiated before entry into force of this Law, shall be completed in accordance with this Law.

Continuation of the exercise of rights
Article 176
Beneficiaries of the social and child protection who have exercised their right under the regulations that were in force until the day when this Law entered into force and who meet the requirements prescribed by this Law, shall continue to exercise this right.

Cessation of validity
Article 177

On the day of entry into force of this Law, the Law on Social and Child Protection (Official Gazette of the Republic of Montenegro 78/05) and Article 121 of the Law on Amendments to the Law prescribing fines for violations (Official Gazette of Montenegro 40/11) cease to be valid.

Entry into force
Article 178

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro.

No. 19-6/13-1/26
EPA 155 XXV
Podgorica, 28 May 2013

The 25th Parliament of Montenegro
Speaker of the Parliament
Ranko Krivokapić

3. LAW ON PROHIBITION OF DISCRIMINATION (as of 2014)

THE LAW
ON PROHIBITION OF DISCRIMINATION

I GENERAL PROVISIONS

Subject of the Law
Article 1
The prohibition of and protection from discrimination shall be achieved, and the promotion of equality shall be carried out in accordance with this Law.
The prohibition of and protection from discrimination, as well as the promotion of equality shall be, also, exercised pursuant provisions of other laws regulating prohibition of and protection from discrimination on particular grounds or related to exercise of particular rights, as well as the promotion of equality if they are not contrary to this law.

Prohibition of Discrimination
Article 2
Any form of discrimination, on any ground, shall be prohibited.
Discrimination is any unjustified, legal or actual, direct or indirect distinction or unequal treatment, or failure to treat a person or a group of persons in comparison to other persons, as well as exclusion, restriction or preferential treatment of a person in comparison to other persons, based on race, colour of skin, national affiliation, social or ethnic origin, affiliation to the minority nation or minority national community, language, religion or belief, political or other opinion, gender, gender identity, sexual orientation, health conditions, disability, age, material status, marital or family status, membership in a group or assumed membership in a group, political party or other organisation as well as other personal characteristics.

Direct discrimination exists if a person or a group of persons, in the same or similar situation in respect to other person or group of persons, is brought or were brought, or may be brought in an unequal position by an act, action or failure to act, on any ground referred to in paragraph 2 of this Article.

Indirect discrimination exists if apparently neutral provision of a regulation or general act, criterion or practice is bringing or can bring a person or a group of persons into unequal position in respect to other person or group of persons, on any ground referred to in paragraph 2 of this Article, unless the provision, criterion or practice are objectively and reasonably justified by a legitimate purpose and achievable with the means appropriate and necessary to use for achieving that purpose, and when they are acceptable and proportionate in relation to the purpose to be achieved.

Inciting, helping, giving instructions as well as announced intent to discriminate specific person or group of persons on any ground referred to in paragraph 2 of this Article, shall be as well considered to be discrimination.

Protection from discrimination

Article 3

The right on protection from discrimination belongs to all natural and legal persons to which the Montenegrin legislation is applicable, if they are discriminated against on any ground referred to in Article 2, paragraph 2 of this Law.

This Law shall apply to public and private sector.

Persons reporting discrimination

Article 4

No one shall suffer adverse consequences for reporting the case of discrimination, giving deposition before a competent authority or offering evidence in the proceedings investigating a case of discrimination.

Persons are protected from any adverse treatment or effect as a reaction to reporting or a proceeding conducted for violation of the principle of non-discrimination.

Regulations and Special Measures

Article 5

Regulations and special measures aimed at creating conditions for the realisation of national, gender and overall equality and protection of persons being in unequal position on any ground, may be adopted, that is introduced and implemented, within its competences, by authorised state authorities, authorities of the state administration, authorities of the units of local self-
government, public enterprises and other legal persons performing public powers (hereinafter referred to as: authorities), as well as other legal and natural persons.

The measures referred to in this Article shall be applied in proportion to the needs and possibilities and shall last until the goals established by those measures are achieved.

**Consent**

**Article 6**

Consent of a person to be discriminated against shall not relieve from responsibility the person exercising discrimination, giving instruction to discriminate or inciting discrimination.

### II SPECIAL FORMS OF DISCRIMINATION

**Harassment and Sexual Harassment**

**Article 7**

Harassment of a person or group of persons on one or more grounds referred to in Article 2, paragraph 2 of this Law, when such behaviour has the purpose of or which consequence is violation of personal dignity, or causes intimidation, feelings of humiliation or offensiveness or creates hostile or degrading environment, shall be considered as discrimination in the sense of Article 2 of this Law.

Any unwanted verbal, nonverbal or physical behaviour of sexual nature which has the purpose to violate dignity of a person or group of persons, or which achieves such effect, and especially which causes intimidation, creates hostile and degrading environment, and produces feelings of humiliation or offensiveness, shall also be considered as discrimination.

**Segregation**

**Article 9**

Segregation shall also be considered as discrimination in the sense of Article 2 of this Law. Segregation is every act, activity or failure to perform an activity, whereby forced or systemic separation or differentiation of persons is carried out on any of the grounds from paragraph 2 of Article 2 of this Law.

**Hate speech**

**Article 9a**

Hate speech is any form of expression of ideas, statements, information and opinions that spreads, stirs up, encourages or justifies discrimination, hatred or violence against a person or group of persons because of their personal characteristics, xenophobia, racial hatred, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed in form of nationalism, discrimination and hostility against minorities.

**Discrimination in use of facilities/buildings and areas in public use**

**Article 10**

Restricting or disabling the use of facilities/buildings and areas in public use to a person or a group of persons, on any ground referred to in Article 2, paragraph 2 of this Law, shall be deemed to be discrimination.
The right to use the facilities/buildings and areas in public use may be restricted only in accordance with the law.

**Discrimination in goods and service delivery**

**Article 11**
Discrimination in the area of public and private goods and service delivery, on any ground referred to in Article 2, paragraph 2 of this Law shall be deemed to be:
- Making goods and service delivery difficult or impossible,
- Refusing goods and service delivery,
- Conditioning of goods and service delivery with the conditions that are not required from other persons or group of persons,
- Intentional delay or postponement of goods and service delivery, even though the person or group of persons requested and met the requirements for timely goods and service delivery before the other person or group of persons.

**Discrimination based on health conditions**

**Article 12**
Disabling, restricting or making difficult for a person or a group of persons to get employment, to work, to get education or any other unjustified differentiation or unequal treatment based on health conditions, shall be deemed to be discrimination.

**Discrimination based on age**

**Article 13**
Disabling or restricting the exercise of the rights or any other unjustified differentiation or unequal treatment of a person or a group of persons on the bases of age, shall be deemed to be discrimination.

**Political discrimination**

**Article 14**
The discrimination of individuals or groups of persons because of political belief, because of belonging or not belonging to a political party or other organization is prohibited.

**Discrimination in the field of education and vocational training**

**Article 15**
Discrimination in the field of education and vocational training is considered to be making difficult or denying the enrolment into educational institution and institution of high education and the choice of educational programme at all levels of education, expelling from these institutions, making difficult or denying the possibility to attend classes and participate in other educational activities, classification of children, pupils, participants in education and students, abusing or otherwise making unjustified differentiation or unequally treating them, on any ground referred to in Article 2, paragraph 2 of this Law.

**Discrimination in field of labour**

**Article 16**
In addition to the cases of discrimination prescribed by the law regulating the field of labour and employment, discrimination in work shall also refer to the payment of unequal salary or remuneration for work of equal value to a person or a group of persons, on any ground referred to in Article 2, paragraph 2 of this Law.

Persons performing temporary or seasonal work or working under special agreement, students and pupils on practice, as well as other persons participating on any ground in the work for an employer, shall also have the right on the protection from discrimination referred to in paragraph 1 of this Article.

Distinction, exclusion or giving preference is not considered to be discrimination if so require the peculiarities of the particular work in which personal characteristic of a person represent real and decisive condition of doing the work, if the purpose to be achieved that way is justified and if the condition is proportionate, as well as taking measures of protection according to certain criteria of persons referred to in paragraph 2 of this Article.

Racial discrimination and discrimination based on religion and belief

Article 17
Racial discrimination is any differentiation, unequal treatment or bringing in unequal position of persons with the belief that race, skin colour, language, nationality or national or ethnic origin, justify depreciation of person or group of persons, or justify the idea on superiority of a person or group of persons towards those who are not members of that group.

Discrimination on the basis of religion or belief is any treatment which is against the principle of freedom of religion, that is every unequal treatment, differentiation, or bringing in unequal position of persons on the basis of religion or personal belief, as well as on the basis of belonging or not belonging to a certain religious community.

Discrimination of persons with disability

Article 18
Entrance in facilities/buildings and areas in public use which are inaccessible to the persons with reduced mobility and persons with disability, that is making impossible, restricting or making difficult the use of mentioned facilities, in a way which is not disproportionate burden for a legal or natural person who is obliged to provide for that, shall be deemed to be discrimination within the meaning of Article 2 of this Law.

Discrimination against person with disability exists also in the case when special measures to remedy limitations or unequal position this person is facing are not taken.

Discrimination on the basis of gender identity and sexual orientation

Article 19
Any differentiation, unequal treatment or bringing a person in an unequal position based on gender identity or sexual orientation, shall be deemed to be discrimination.

Everyone has the right to express its gender identity and sexual orientation.

No one may be called upon to publicly declare his/her gender identity and sexual orientation.

Gender identity refers to our own gender experience that does not have to depend on a sex given by birth. Gender identity is relevant to every person and does not imply only a binary concept of male or female.
Sexual orientation refers to emotional and/or physical attraction or sympathy towards persons of the same and/or different sex.

**Grave form of discrimination**
**Article 20**
Grave form of discrimination, on any ground referred to in Article 2, paragraph 2 of this Law shall be deemed to be discrimination:
- committed against the same person or the group of persons on multiple grounds referred to in the Article 2, paragraph 2 of this Law (multiple discrimination);
- committed several times against the same person or the group of persons (repeated discrimination);
- committed during longer period of time against the same person or the group of persons (extended discrimination);
- by dissemination through public media, as well as by writing and displaying the materials and symbols of discriminatory content in public places;
- which has particularly grave consequences for discriminated person, group of persons or their property.

**III PROTECTOR OF HUMAN RIGHTS AND FREEDOMS**

**Competency of the Protector**
**Article 21**
The Protector of Human Rights and Freedoms of Montenegro (hereinafter referred to as: the Protector) is competent to:
1) act on complaints relating to discriminatory treatment committed by authority, business entity, other legal person, entrepreneur and natural person, and undertake measures and actions to eliminate discrimination and protect the rights of discriminated person, if the court proceeding is not initiated;
2) provide required information to the complainant who believes to be discriminated by authority, business entity, other legal person, entrepreneur and natural person, about his/her rights and duties, as well as about possibilities of court and other protection;
3) conduct the conciliation proceeding between the person who believes to be discriminated, with his/her consent, and authority, business entity, other legal person, entrepreneur and natural person, referred to in the complaint on discrimination;
4) initiate the procedure for protection against discrimination in court or appear in that proceeding as an intervener if the party makes probable, and the Protector assess that respondent performed discrimination by the treatment on the same ground toward a group of persons with the same personal characteristics;
5) warn the public on appearances of severe forms of discrimination;
6) keep separate records of submitted complaints with regard to discrimination;
7) collect and analyse data on cases of discrimination;
8) undertake activities for promotion of equality;
9) submit to the Parliament of Montenegro, in a separate section within the annual report, the report on the activities conducted regarding protection from discrimination and promotion of equality;
10) perform other tasks related to protection from discrimination prescribed by the separate law governing the competences, powers, manner of operation and acting of the Protector.

**Submitting a complaint**

**Article 22**

Anyone who considers to be discriminated against by an act, action or failure to act made by an authority and other legal and natural persons, may address the Protector with a complaint. The complaint referred to in paragraph 1 of this Article can be submitted to the Protector also by organisations or individuals dealing with the protection of human rights, with the consent of the person or the group of persons discriminated against.

Acting upon the complaints referred to in paragraphs 1 and 2 of this Article, shall be conducted in compliance with regulations setting up the manner of operation of the Protector, unless this law provides otherwise.

**IV COURT PROTECTION**

**Proceeding before the court**

**Article 24**

Anyone who considers to be damaged by discriminatory treatment of an authority, business entity, other legal person, entrepreneur and natural person shall be entitled to the court protection, in accordance with the law.

The proceeding shall be initiated by filing a lawsuit. The provisions of the law regulating civil proceeding shall be accordingly applied on the proceeding referred to in paragraph 2 of this Article, unless this law provides otherwise. The proceeding referred to in the paragraph 2 of this Article is urgent.

In the dispute for protection from discrimination the revision shall be always allowed.

**Territorial jurisdiction**

**Article 25**

In the proceeding for protection from discrimination, beside the court of general territorial jurisdiction, the court on whose territory is the residence or office of the plaintiff shall also have the territorial jurisdiction.

**Lawsuit**

**Article 26**

By lawsuit referred to in Article 24, paragraph 2 of this Law can be claimed also:

- establishment of the fact that the respondent has acted discriminatory against the plaintiff;
- prohibition of exercising the activity that bears potential treat of discrimination, i.e. prohibition of repetition of discrimination activity;
- 2a) elimination of the consequences of discriminatory treatment;
- compensation of damage, in accordance with the law;
- publication in the media of the judgement establishing discrimination on the expenses of respondent.
In the cases referred to in paragraph 1, items 1 and 2 and 2a of this Article, the lawsuit may be exert together with the claim for protection of the right of which is decided in a civil proceeding, if those claims are correlated and based on the same factual and legal ground.

**Deadline for filing the lawsuit**  
**Article 27**  
The lawsuit referred to in Article 24, paragraph 2 of this Law may be filed within one year from the day of cognition about the commission of discrimination and no later than three years from the day on which the discrimination was committed.

**Temporary measures**  
**Article 28**  
Prior to initiation or during the lawsuit proceeding referred to in Article 24 of this Law, upon the proposal of the party, the court may pass temporary measures.  
The proposal for passing a temporary measure must prove the likelihood of the necessity of such measure in order to prevent the danger of irreparable damage, particularly serious violation of the right to equal treatment or prevent violence.  
On a proposal for passing a temporary measure the court is obliged to deliver a decision without delay.  
On the proceeding referred to in paragraph 1 of this Article shall be accordingly applied the provisions of the Law on Executive Procedure.

**Burden of proof**  
**Article 29**  
If the plaintiff proved the likelihood of respondent committing an act of discrimination, the burden of proving that due to that act the violation of equality in rights and equality before the law did not occurred, passes on the respondent.  
The provision of paragraph 1 of this Article shall not apply to misdemeanour and criminal proceedings.

**Other persons who may file a lawsuit**  
**Article 30**  
The lawsuit referred to in Article 26, paragraph 1 items 1, 2 and 4 of this Law may be filed, on behalf of discriminated person or group of persons, also by organizations or individuals who are dealing with the protection of human rights.  
The lawsuit referred to in paragraph 1 of this Article may be filed only with the written consent of a discriminated person or a group of persons.  
The lawsuit under Article 26 of this Law may also be filed by a person who, with intention to directly verify the application of the rules on non-discrimination, introduces him/herself as a person, or put in the position of a person who may be discriminated on the grounds referred to Article 2 of this Law.

**Informing the Protector**  
**Article 31**
Plaintiff referred to in Articles 24 and 30 of this Law, who filed the complaint with the Protector, shall notify the Protector in writing about initiation of the court proceeding.

V INSPECTION CONTROL

The role of inspection

Article 32
Inspection control with respect to discrimination in the field of labour and employment, occupational safety, health care, education, building and construction, traffic, tourism and other fields, shall be performed by inspections competent for those fields, in accordance with the law.

Special Powers

Article 32a
When during an inspection control is found that the law or other regulation is violated, in addition to the powers prescribed by the law, inspector has the power to, on the request of a person who believes to be discriminated and who initiated the proceeding for protection from discrimination before the competent court, temporarily postpone the enforcement of the decision, other act or action of the subject of control, until the final court decision.
The request referred to in paragraph 1 of this Article may be filed within eight days as of the initiation of the proceeding for the protection from discrimination before the competent court. The inspector is obliged to decide on the request referred to in paragraph 1 of this Article within eight days as of the date of filing the request.

VI RECORDS

Keeping the records

Article 33
The courts, the state prosecutor's offices, misdemeanor authorities, the authority responsible for police affairs and inspection authorities are obliged to keep separate records on filed complaints, initiated proceedings and decisions taken within their own jurisdiction in relation to discrimination (hereinafter referred to as: separate records).
The authorities referred to in paragraph 1 of this Article shall deliver data from the separate records to the Protector not later than 31st January of the current year for the previous year, and at the request of the Protector they shall deliver the data from these records as well for a certain shorter period during the year.
Detailed content and manner of keeping the records referred to in paragraph 1 of this Article shall be prescribed by the state authority competent for human and minority rights.

VII PENAL PROVISIONS

Misdemeanours

Article 34
A fine of 500 EUR to 20,000 EUR shall be imposed for misdemeanor on a legal person, if:
by expression of ideas, statements, information, opinions, encourages or justifies discrimination, hatred or violence against a person or group of persons because of their personal characteristics, xenophobia, racial hatred, anti-Semitism, or other forms of hatred based on intolerance, including intolerance expressed in the form nationalism, discrimination and hostility against minorities (Article 9a);
refuses provision of public services, it conditions provision of services with conditions which are not asked to be met by other persons or a group of persons or it is purposefully late or postpones provision of services, although a person or a group of persons requested and met all conditions for timely provision of services before other persons (Article 11);
unjustifiably differentiates or treats unequally, prevents, restricts or hinders employment, work, education or unjustifiably denies other rights to a person or a group of persons, based on health conditions (Article 12);
prevents or restricts the exercise of the rights, unreasonably differentiates or treats unequally the person or group of persons, based on age (Article 13);
hinders or prevents enrolment in educational institution and institution for university education and choice of educational program at all levels of education, excludes from these institutions, hinder or deny the possibility of attendance and participation in other educational activities, classifies children, pupils, attendants of education and students, abuses or otherwise unduly makes difference or unequally treats them, on any of the grounds referred to in Article 2 paragraph 2 of this Law (Article 15);
pays unequal salary or remuneration for work of equal value to a person or a group of persons, on any of the grounds referred to in Article 2 paragraph 2 of this Law (Article 16);
prevents, restricts or hinders the use of access to facilities and areas in public use to persons with reduced mobility and persons with disability (Article 18);
files a lawsuit without the written consent of discriminated person or group of persons (Article 30 paragraph 2);
For misdemeanour referred to in paragraph 1 of this Article the responsible person in the legal person, state authority, authority of local self-government and authority of local government shall also be fined in the amount of 100 EUR to 2,000 EUR.

For misdemeanour referred to in paragraph 1 of this Article the entrepreneur shall also be fined in the amount of 300 EUR to 6,000 EUR.

**Article 34a**
A fine of 100 EUR to 2,000 EUR shall be imposed on the responsible person in the state authority, authority of state administration and authority of the local self-government if:
1) it does not keep separate records on filed complaints, initiated proceedings and decisions taken within its own jurisdiction in relation to discrimination (Article 33 paragraph 1);
2) it fails to deliver the data from the separate records to the Protector within the deadlines referred to in Article 33, paragraph 2 of this Law.

**Article 34b**
For misdemeanours referred to in Article 34, paragraph 1 and 34a of this Law, individually or with a fine or a warning measure, one or more protective measures may be imposed as follows:
1) seizure of objects;
2) prohibition to carry out the occupation, activity or duty;
3) public announcement of a decision.

Protective measure of seizure of objects shall be obligatorily imposed whenever a misdemeanour is committed using the object which is under seizure, or when the object was designated for commitment of the misdemeanour or when the object which is under seizure was made because of committing the misdemeanour.

Protective measure of prohibition to carry out the occupation, activity or duty may be applied for a period which may not be shorter than 30 days or longer than six months.

Protective measure of public announcement of a decision shall be enforced by publishing such a decision in the media available on the entire territory of Montenegro.

VIII TRANSITIONAL AND FINAL PROVISIONS

Proceedings on complaints
Article 35
Proceedings on complaints related to discrimination submitted prior to the entry into force of this Law shall be completed in accordance with the regulations that were applied until the entry into force of this Law.

Secondary legislation
Article 36
Secondary legislation referred to in Article 33, paragraph 3 of this Law shall be delivered within six months from the day of entry into force of this Law.

Entering into force
Article 37

This Law shall enter into force on the eighth day as of the day of publication in the “Official Gazette of Montenegro”.

4. FAMILY LAW OF MONTENEGRO (1 September 2007)

GOVERNMENT OF THE REPUBLIC OF MONTENEGRO

MINISTRY OF JUSTICE

FAMILY LAW

PART ONE
BASIC PROVISIONS
Article 1
This law regulates: marriage and relationships in marriage, relationships between parents and children, adoption, placement in family (fostering), custody, support, property relationships in the family and actions of authorized bodies with regard to marriage and family relationships.

Article 2
The family is a community of living of parents, children and other relatives who in the sense of this law have mutual rights and obligations, as well as the other basic community of living in which children are raised and cared for.

Article 3
Marriage is based on a free decision of a man and a woman to enter into marriage, on their equality, mutual respect and mutual assistance.

Article 4
Relationships between parents and children are based on their mutual rights and duties, especially that of parents to take care of their children’s rights and welfare protection and their responsibility to bring up, educate and train children for independent life, and that of children to take care of their parents and to respect them.

Article 5
Everyone shall act in the best interest of child in all child related activities. The state shall respect and improve the rights of child and undertake all the necessary measures to protect the child from neglect, abuse and exploitation.

Article 6
The rights and duties of parents and other relatives pertinent to children, as well as the rights and duties of children towards their parents and relatives shall be equal, notwithstanding the fact whether the children were born in a marriage or out of it.

Article 7
It is the right of every person to make a free decision on having his/her children, and as a parent to create the possibilities and ensure conditions for their healthy mental and physical development in the family and in the society. Through measures of social, health and legal protection, system of education and informing, employment policy, housing and taxation policy, as well as through development of all other activities to the benefit of the family and its members, the state shall secure conditions for free and responsible parenthood.

Article 8
Through adoption, such relationships are established between the adopter and the adoptee as those existing between parents and children, with the aim of providing to the child being adopted the living conditions enjoyed by the children living in a family.

Article 9
Through custody the state provides protection to minor children who are not under parental custody and to major persons who are not able to or who cannot take care of themselves, their rights and interests by themselves. Activities of custody are carried out by the centre for social work (hereinafter: custodial body).

Article 10
The obligation of support between parents and children and other relatives, as well as between marital and extramarital partners, is an expression of family solidarity and it is in the interest of society.

Article 11
Property relationships in the family are based on the principles of equality, reciprocity and solidarity, as well as on the protection of interests of children.

Article 12
A community for living of a man and a woman lasting longer (common-law community), is equaled with marital community with regard to the right to mutual support and other property-legal relationships.
Common-law community does not produce effect referred to in paragraph 1 of this Article, if the obstacles to enter into a valid marriage existed at the time when it started.

Article 13
Full age is acquired after completing 18 years of life.
Full business capability is acquired with full age and with entering into marriage before full age with a permission of the court.

Article 14
For providing expert assistance and protecting the rights and interests of the child and of other members of the family, for resolving disputes between family members, as well as in all other cases where family relationships are disturbed, the custodial body, the court and the person authorized for mediation shall be competent.

SECOND PART
MARRIAGE

Article 15
Marriage is the community of living of a man and a woman regulated by the law.

I. ENTERING INTO MARRIAGE

1. Conditions for Full Validity of a Marriage
Article 16
A marriage is entered into by consent of the wills of a woman and a man given before of a competent body, in the manner established by this law.

Article 17
A marriage is entered into with a view to realizing a community for living of the spouses.

Article 18
A marriage cannot be entered into by a person whose will is not free.

Article 19
No one can enter into a new marriage until a marriage entered into earlier terminates.

Article 20
A marriage cannot be entered into by a person who due to a mental illness or for other reasons is not able to form its own opinion.

Article 21
A marriage cannot be entered into between blood relation in the first line, nor by a brother and a sister, brother and sister on the side of the mother or the father, between an uncle and a niece, an aunt and a nephew, nor between the children of sisters and brothers and sisters and brothers on the side of the father or the mother.

Article 22
Relationship based on full adoption represents a hindrance for entering into marriage in the same manner as blood relationship.
Relationship based on partial adoption represents a hindrance for entering into marriage only between the adopter and adoptee and his descendants.
As an exception to paragraph 2 of this Article, the competent court may, for justified reasons, allow a marriage to be entered into between the adopter and the adoptee, after previously obtaining the opinion of the custodial body.

Article 23
A marriage cannot be entered into by relatives in law such as: a father in law and a daughter in law, a son in law and a mother in law, a step-father and a step-daughter, a step-mother and a step-son, notwithstanding whether the marriage due to which they came into such relationships is terminated.
As an exception to paragraph 1 of this Article, the competent court may, for justified reasons, allow a marriage to be entered into, after obtaining previously an opinion of the custodial body.

Article 24
A person who has not completed 18 years of age cannot enter into a marriage.
As an exception to paragraph 1 of this Article, the court may allow a marriage to be entered into by a minor person older than 16 in accordance with a separate law.

2. Procedure of Entering into Marriage
Article 25
Persons intending to enter into marriage shall submit an application for entering into marriage to the body competent for conducting registers in the municipality (hereinafter: the Registrar).
Along with the application the birth certificate is submitted for each of them, and when necessary other documents as well.

Article 26
Based on the statements of persons desiring to enter into marriage, documents enclosed and when necessary in some other manner the registrar shall determine whether all the conditions have been met for the validity of marriage.
If s/he determines that not all the conditions established by this law for the validity of the marriage have been met, the registrar shall verbally inform the applicants that they cannot enter into marriage and will make an official record thereon.

Article 27
Persons who have submitted an application for entering into marriage, in the event they do not agree with the verbal report as of Article 26 paragraph 2 of this law may ask the Registrar to submit a decision on refusal of the application for entering into marriage within three days.
Complaint against the decision as of paragraph 1 of this Article may be lodged by the applicants to the competent municipal administration body within 8 days from the day when the decision is received. This body is under an obligation to make a decision on the complaint within 5 days from the day when the complaint is received.

Article 28
The day when the marriage is to be concluded is determined by the Registrar in agreement with the persons wishing to enter into marriage.

Article 29
The registrar shall make a recommendation to the persons desiring to enter into marriage to inform each other on the state of their health, to visit the marriage i.e. family counseling centre and to become acquainted with the expert opinion on the conditions for development of harmonious marriage and family relationships, to visit the health institution for becoming acquainted with the possibilities and advantages of family planning, as well as to make an agreement on the future surname before entering into marriage.

Article 30
If one or both persons submitting an application for entering the marriage do not appear at the agreed time, and do not justify their absence, the application shall be deemed withdrawn.

Article 31
Marriage is concluded before the competent municipal body in a solemn manner, in the official room arranged to suit such purposes.
As an exception, the Registrar may allow the marriage to be concluded at some other appropriate place, if spouses require that and submit justified reasons for it.

Article 32
Both future spouses, a municipal assembly councilor delegated by the municipality, two witnesses and the Registrar shall be present when the marriage is being entered into.
Article 33
In particularly justified cases, the competent municipal body may allow the marriage to be concluded in the presence of one of future spouses and an authorized agent of the other spouse. The authorization, which has to be certified and issued only for the purpose of entering into marriage must include specified personal data of the authorized agent and of the person with which, by the mediation of an authorized agent, the marriage is being entered into and the date when the authorization is issued.
The authorization as of paragraph 2 of this Article shall be valid 90 days from the day of certification.
Complaint against the decision by which the request for entering into marriage by mediation of an authorized representative is refused may be lodged by the applicants to the Ministry competent for interior affairs and public administration.

Article 34
Every person with business capability may be a witness when the marriage is being entered into.

Article 35
Entering into marriage begins by determining the identity of future spouses and by a statement given by the Registrar stating that applicants have started the procedure of entering into marriage and that conditions established by the law for the validity of their marriage have been met.
If the marriage is concluded by mediation of an authorized agent the enclosed authorization shall be read.

Article 36
After the municipal councilor determines that there are no objections to the report of the Registrar, s/he will acquaint the future spouses in an appropriate manner with the provisions of this law on their rights and duties and point out the importance of marriage, and in particular the fact that a harmonious marriage is of utmost significance for family life.
The municipal councilor shall ask individually each one of the future spouses whether they agree to mutually entering into marriage.
After agreeing statements are given on entering into marriage, the councillor proclaims the marriage entered into.

Article 37
The Registrar shall register the marriage entered into in the Register of Marriages, which the spouses, the municipal councilor, the witnesses and the Registrar sign.

Article 38
Immediately after entering into marriage, the spouses are issued a marriage certificate.

II RIGHTS AND DUTIES OF SPOUSES

Article 39
Spouses shall be equal in marriage.
Article 40
Spouses are under an obligation to be faithful to each other, to assist and respect each other and develop and maintain harmonious marital and family relationships.

Article 41
When entering into a marriage the spouses may agree:
1) that each of them keeps his/her surname,
2) to take as a joint surname the surname of one of them,
3) to take both their surnames as a joint surname,
4) that only one of them adds the surname of the spouse to his/her surname.
In case of an agreement on surname as of paragraph 1 item 3 of this Article, spouses shall decide which surname will be used in the first place.

Article 42
The spouses shall determine the place of residence by consent.

Article 43
The spouses are independent in their choice of work and profession.

Article 44
The spouses shall decide on upbringing of their joint children and on how they will regulate the relationships and perform tasks regarding marriage i.e. family community by consent.

III TERMINATION OF MARRIAGE

Article 45
Marriage is terminated by death of a spouse, by proclaiming a spouse dead, by annulment and by divorce of marriage.
If a spouse has been proclaimed dead, marriage terminates on the day which is by a legally valid decision of the court determined as the day of his death.
Marriage is terminated by annulment and divorce when the court decision on annulment or divorce becomes legally valid.

1. Annulment of Marriage

Article 46
A marriage shall be null and void if it is entered into by two persons of the same sex, if statements of will of the spouses were not positive or if the marriage has not been concluded before a competent body.

Article 47
A marriage shall be null and void if it was concluded during the period of an earlier marriage of one of the spouses.
If, during the procedure for annulment of marriage the spouses state that the earlier marriage is not legally valid, a decision shall first be made on the legal validity of the earlier marriage and if that marriage is annulled, their marriage shall not be annulled. A new marriage entered into during an earlier marriage of one of the spouses shall not be annulled if the earlier marriage was terminated. If due to the death of the spouse who entered into a new marriage during the period of an earlier marriage, at the same time both marriages are terminated, the new marriage shall be annulled, except in case when the earlier marriage is annulled, or if the new marriage lasted for a longer time period, and the spouse from the earlier marriage did not take any measures with a view to establishing a marriage community.

Article 48
A marriage shall be null and void if it is entered into by a person who due to a mental illness or for other reasons is not able to form its own opinion. A marriage shall be null and void if it has been entered into between blood relations, between relatives by adoption or relatives in law since it is not allowed according to the law. If a marriage has been concluded between relatives by adoption and between relatives in law, between whom marriage is possible only according to a permission of the court (Article 22 paragraph 3 and Article 23 paragraph 2 herein), the court to which a plea for annulment of the marriage has been filed, may subsequently grant this permission.

Article 49
A marriage may be annulled if a spouse has consented to enter into it for fear caused by force or serious threat.

Article 50
A marriage may be annulled if it was entered into by a person mislead about the personality of the spouse when s/he thought s/he was entering into marriage with one person and entered into marriage with another one, or when marriage was entered into with a certain person but who is not the one it claimed to be. A marriage may be annulled if entered into by a person mislead about significant characteristics of a spouse, which would discourage him/her from entering into marriage had s/he known about them and which have led to serious and permanent disturbance of relationships in the marriage.

Article 51
Marriage shall be null and void if the spouses did not really want to establish a community for living but tried to hide some other legal affair or to achieve some other objective. Such a marriage shall not be annulled if a living community has subsequently been established.

Article 52
The right to lodge a complaint for annulment of marriage for reasons stated in Articles 46 to 48 and Article 51 of this Law belongs to spouses and other persons who have direct legal interest for the marriage to be annulled, as well as to the state prosecutor. After cessation of reasons as of Article 48 of this law, the right to complaint for annulment of a marriage belongs only to a spouse who was seriously mentally ill or who, for some other reasons,
cannot form his own judgment. A complaint may be filed within one year from termination of the above reasons, and if a spouse was completely deprived of business capability, within one year from the coming into force of the decision on return of the business capability.

Article 53
Annulment of marriage entered into under coercion or through misleading may be required only by a spouse who was forced or who consented to enter the marriage after being misled. Annulment of marriage cannot be required if one year elapsed from the day when coercion ceased or when the misleading was noticed, and the spouses lived together during that time.

Article 54
Upon a complaint of a parent or a custodian, investigating all the circumstances, the court may annul a marriage concluded by a person younger than 18 without the consent of a competent court until that person comes of age. The right to complaint belongs also to a person who was minor at the time when marriage was entered into, and within a year from the date when s/he comes of age.

Article 55
The right to take an action for annulment of a marriage is not transferred to successors, but the successors of the suitor may continue already begun procedure with a view to proving the well-foundedness of the complaint.

2. Divorce

Article 56
A spouse may ask for a divorce of a marriage if the relationships in the marriage have seriously and permanently been disturbed or if the purpose of marriage cannot be realized for some other reasons.

Article 57
Spouses may require the marriage to be divorced based on their agreement. Along with a proposal for divorce of a marriage by consent, spouses are under an obligation to submit a written agreement on performance of the parental right and on joint property division.

Article 58
A husband cannot require a divorce of the marriage during pregnancy of his wife, i.e. until their baby completes one year of life, except in cases when the wife consents to divorce.

THIRD PART
RELATIONSHIPS BETWEEN PARENTS AND CHILDREN

I. PARENTAL RIGHT

Article 59
The parental right comprises the rights and duties of parents to take care of the personality, rights and interests of their minor children.
Article 60
The parental right shall belong to the mother and the father together.
If one of the parents died or is not known or has been deprived of the parental right, the parental right shall belong to the other parent.
A parent cannot renounce the parental right.
Abuse of parental right is forbidden.

1. Rights of a Child

Article 61
A child has the right to know who its parents are.
The right of a child to know who its parents are may be limited only by this law.
A child who has completed 15 years of age and who is able to form an opinion may have an insight into the birth register and other documents pertinent to its origin.

Article 62
A child has the right to live with its parents and the right to have its parents take care of it before everyone else.
The right of the child to live with its parents may be limited only by a court decision, when this is to the best interest of a child.
A court may make a decision to separate the child from its parents if there are reasons for restriction or depriving of the parental right or in case of violence in the family.
A child who has completed 15 years of age and who is capable of forming its own opinion may decide which of the parents it wants to live with.

Article 63
A child has the right to maintain personal relationships with the parent it does not live with.
The right of the child to maintain personal relationships with the parent it is not living with may be restricted only by a court decision when this is to the best interest of the child.
The court may make a decision to restrict the right of the child to maintain personal relationship with the parent it is not living with if there are reasons for restrictions or deprivation from the parental right or in case of violence in the family.
A child who has completed 15 years of age and who is able of forming its own opinion may make a decision to maintain personal relationship with the parent it is not living with.
A child has the right to maintain personal relationships also with relatives and other persons it is in particular close to if this is to its best interest.

Article 64
A child has the right to be secured the best possible living and health conditions for its proper and complete development.
A child who has completed 15 years of age and who is able of forming its own opinion may give consent to undertaking of a medical intervention.

Article 65
A child has the right to education in accordance with its abilities, desires and inclinations. A child who has completed 15 years of life and who is able of forming its own opinion may decide which secondary school it will attend.

Article 66
A child who has not completed 14 years of age may undertake legal affairs by which it acquires neither rights nor obligations and legal affairs of small significance.
A child who has completed 14 years of life may undertake, apart from the legal affairs as of paragraph 1 of this Article also all other legal affairs along with a previously or subsequently obtained consent of the parents, i.e. consent of the custodial body for legal affairs as of Article 308 paragraph 2 of this Law.
A child who has completed 15 years of life may undertake legal affairs by means of which it manages and disposes of its revenues or property it acquired by its own work.
A child may undertake also other legal affairs when this is foreseen by the law.

Article 67
A child who is able to form its own opinion has the right to freely express that opinion.
A child has the right to obtain in a timely manner all the information needed for forming its opinion.
Due attention has to be devoted to the opinion of a child in all issues regarding it and in all the procedures in which his rights are decided on, all in compliance with the age and the maturity of the child.
A child who has completed 10 years of age may freely and directly express its opinion in every court and administrative procedure in which his rights are being decided on.
A child who has completed 10 years of life may by its own, or through the mediation of some other person or institution, address the court or an administrative body and require assistance for the realization of its right for free expression of opinion.
Competent authority shall determine what the opinion of the child is through an informal talk conducted in an appropriate place, in cooperation with the school psychologist or the custodial body, family councilor or some other institution specialized for family relationships, and in the presence of a person the child itself chooses.

Article 68
A child is under an obligation to help its parents in accordance with its age and maturity.
A child making an income or having revenues from property is under an obligation to cover partly the needs for its own support or for the support of its parents or a minor brother or sister, on conditions determined by this law.

2. Parental care

Article 69
Parents have a right and a duty to take care of the child.
Taking care of the child includes: watching, raising, upbringing, educating, representing, supporting the child and managing and disposing of its property.
Parents have the right to obtain all information on the child from the educational and health institutions.

Article 70
Parents have a right and a duty to watch and raise the child by taking care personally of its life and health.
Parents must not subject the child to humiliating actions and penalties that offend human dignity of the child and they are under an obligation to protect the child from such actions of other persons.
Parents must not leave a child of pre-school age unattended.
Parents may temporarily entrust the child with another person only if such a person meets the conditions for a custodian.

Article 71
Parents have a right and a duty to develop with the child a relationship based on love, trust and mutual respect, and to direct the child to adopt those values that have a universal character.

Article 72
Parents have a duty to provide primary education to a child, and they are obliged to take care of future education of the child according to their possibilities.

Article 73
Parents have a right and a duty to represent the child in all legal affairs and in all procedures outside the borders of business and processing ability of the child (legal representation).
Parents have a right and a duty to represent the child in all legal affairs and in all procedures within the business and processing ability of a child, unless otherwise stipulated by the law (willingness representation)
Parents have the right to undertake legal affairs by means of which they manage and dispose of the revenues that a child younger than15 has acquired.

Article 74
Parents have a right and a duty to support a child under the conditions stipulated by this law.

Article 75
Parents have a right and a duty to manage and dispose of the property of the child under the conditions stipulated by this law.

3. Exercising the Parental Right

Article 76
Parents exercise the parental right jointly and by consent when living together.
Parents exercise the parental right jointly and by consent even when not living together if they conclude an agreement on joint exercising of the parental right and if the court estimates that such an agreement is to the best interest of the child.
Article 77
An agreement on joint exercising of the parental right includes an agreement of parents to exercise jointly and by consent all the rights and duties contained in the parental right.
An integral part of the agreement on joint exercise of the parental right is also an agreement on what shall be considered the permanent residence of the child.

Article 78
One parent exercises the parental right by its own when the other parent is unknown, or s/he died, or has been utterly deprived of the parental right or business capability.
One parent exercises the parental right alone when only s/he lives with the child, and the court has not yet made the decision on exercising of the parental right.
One parent exercises the parental right by its own based on a court decision when the parents are not living together, and did not conclude an agreement on exercising of the parental right
One parent exercises the parental right by its own based on a court decision when the parents are not living together, and they have concluded an agreement on exercising of the parental right jointly or independently, but the court assesses that the agreement is not to the best interest of the child.
One parent exercises the parental right alone based on a court decision when parents are not living together, and they have concluded an agreement on independent exercising of the parental right and if the court assesses that the agreement is to the best interest of the child.

Article 79
An agreement on independent exercising of the parental right implies an agreement of parents on entrusting their child to one parent, an agreement on the amount of contribution for supporting the child to be provided by the other parent and an agreement on the manner of maintaining personal relationships between the child and the other parent.
Through an agreement on independent exercising of the parental right the exercising of parental right is transferred to that parent who the child has been entrusted with.
A parent who fails to exercise the parental right shall have a right and a duty to support the child, to maintain with the child personal relationships and to make decision on the issues influencing significantly the life of the child together and by consent with the parent exercising the parental right.
Issues that significantly influence the life of the child, in the sense of this law, are considered in particular: education of the child, undertaking of major medical interventions on the child, change of permanent residence of the child and disposing of the child’s property of considerable value.

4. Measures for protection of rights and well-being of a child

Article 80
Custodial body shall give appropriate forms of help and support to parents and undertake necessary measures to protect the rights of a child and in its best interest, on the basis of direct knowledge or notification.
Judicial authorities, other bodies, medical, educational and other institution, nongovernmental organizations and citizens shall notify custodial body as soon as they get to know that a parent is unable to exercise parental right.
Custodial body shall examine the case immediately after the receipt of the notification and undertake measures in order to protect the rights of the child.
Registrar shall report the birth of a child whose one or both parents are unknown to custodial body, in order to undertake the measures for its protection.

Article 81
If thus required by the justified interests of the child, the custodial body shall warn the parents about errors and failures in education and upbringing of the child and assists them to bring up the child properly, and it can direct them to address, alone or with the child, a particular counseling centre, health, social, educational or some other adequate institution.

Article 82
When parents need longer-term support and direction in exercising their parental rights and duties or when an explicit follow up of the situation and conditions in which a child lives is necessary, custodial body shall determine supervision over the exercising parental rights regarding children or a specific individual child.

A decision on supervision made by the custodial body shall define the supervision programme and determine a person to follow up child’s development, monitor acts of parents, submit periodical reports to the custodial body and undertake other measures in the interest of a child.

Article 83
The court may, in extra-judiciary procedure, as per official duty or at the request of parents, respectively custodian or other person to whom a child is entrusted to take care for and to raise it, or at the request of a custodial body, make a decision to send a child to an appropriate institution for upbringing, or to other family if there has been a disturbed behaviour of a child which requires upbringing affect and removal of the child from the surroundings where it lives.

Under the decision referred to in paragraph 1 of this Article, the court shall determine also a time duration for this measure, which cannot be longer than one year.
Before the expiration of the time period defined in the decision, the court may, as per its official duty or at the request of a person referred to in paragraph 1 of this Article, prolong the time for this measure, or order an other measure for the protection of the rights of a child.
Decision on sending shall be immediately submitted by the court to the custodial body which shall then, based on such decision, make a decision on sending a child to an appropriate institution or other family.

Article 84
In justified cases, the custodial body may require the parents to submit the bills on how they manage the child’s property.

In an extra-judiciary procedure, the custodial body may require to court to allow means of insurance on the parents’ property with a view of protecting the property right of the child.

With a view to protecting the property interests of the child, the custodial body may require the court to make a decision according to which the parents shall have the position of a custodian with regard to the management of the child’s property.

5. Restricting Parental Right
Article 85
In an extra-judiciary procedure, the court may by its decision restrict the parental right to the parent who unconscientiously exercises the rights or duties towards the child.
Through the restriction the parent may be deprived of the exercising of one or several rights and duties towards the child, except of the duty to support the child.
The court shall deprive a parent of the right to live with a child if s/he neglects to a larger extent the upbringing and education of the child.
A parent is considered to neglect to a larger extent the upbringing and education of a child in particular if s/he does not pay sufficient attention to nutrition, clothing, medical assistance, regular attendance of school, does not prevent the child from keeping bad company, tramping, begging or theft.

Article 86
The procedure for restricting the parental right is initiated by the court by the official duty upon a proposal of the custodial body, other parent or the child.
The restriction of parental right is determined for a period up to one year.
A complaint against the decision as of Article 85 of this law does not postpone its execution.
Prior to expiry of the notice as of paragraph 2 of this Article, the court shall investigate all the circumstances of the case and to the best interest of the child through a new decision return the restricted right to the parents, prolong duration of the pronounced measure or pronounce another measure for the protection of the child’s best interest.

6. Deprivation of the Parental Right

Article 87
A parent who abuses the exercising of the parental right or neglects seriously the performance of parental duties, shall be deprived of the parental right.
Abuse of the right is present in particular if a parent: abuses the child in a physical, sexual or emotional manner, exploits the child by forcing it to excessive work or to work that threatens morality, health and education of the child, or work which is forbidden by law; instigates the child to perpetrate criminal acts; develops bad habits and tendencies and the like.
Serious neglect of the duty is present in particular if a parent: abandons the child or does not take care at all of the basic living necessities of the child s/he lives with; avoids to support the child or to maintain personal relationships with the child s/he does not live with, i.e. prevents the maintenance of personal relations between child and the parent the child is not living with; if deliberately and in an unjustified manner s/he avoids to create conditions for joint life with the child who is accommodated in social and child protection institution.

Article 88
A parent may be deprived of the parental right with regard to all the children, and if thus required by special circumstances only with regard to one child.
The decision on deprivation of the parental right shall be made by the competent court in an extra-judiciary procedure.
Article 89
The procedure for deprivation of the parental right may be initiated by the other parent, the custodial body or the state prosecutor.
The custodial body is under an obligation to initiate the procedure for deprivation of the parental right when in any manner whatsoever it learns that there are reasons for this established in this law.
If the custodial body learns that there is a danger of abuse of the parental right or a danger of serious neglect of parental duties, it is under an obligation to take urgent measures to protect the personality, rights and interests of the child.

Article 90
In marital disputes and disputes pertinent to relationships between parents and children the court resolving these disputes may by its official duty make a decision on deprivation from the parental right if it determines that there are reasons for this stipulated by this law.

Article 91
A parent may by a court decision be returned its parental right when reasons for which s/he was deprived of the parental right cease to exist.
Proposal for returning of the parental right may be submitted by the parents and the custodial body.
In marital disputes and disputes pertinent to relationships between parents and children, the court making a decision on these disputes may by its official duty make a decision to return the parental right, if it determines that there are reasons for this.

6. 6. Prolongation of the Parental Right

Article 92
The parental right may be prolonged even after the child comes of age if due to a mental illness, mental retardation or bodily defects or for some other reasons it is not able to take care by itself of its personality, rights and interests.

Article 93
The decision to prolong the parental right is made by the court in an extrajudiciary procedure upon a proposal of a parent or a custodial body.
The proposal for prolonging of the parental right is submitted before the child comes of age, but the court may prolong the parental right also in cases when the proposal was not submitted in timely manner, if at the time when the child came of age there were reasons for prolonging of the parental right.
In the decision to prolong the parental right, the courts shall determine whether the person to which the parental right was prolonged was equaled with a child.

Article 94
When reasons due to which the parental right was prolonged cease to exist, the court shall make a decision on termination of prolonged parental right over the person of age, upon the proposal of that person, a parent or a custodial body.
8.6. Termination of the Parental Right

Article 95
The parental right shall be terminated when the child acquires full business capability, when it is adopted or when the child or the parent dies. If a child is adopted by a step-father or a step-mother, the parental right shall not cease for the parent who is the spouse of the adopter.

Article 96
The legally valid court decision on restriction, deprivation, restitution, prolonging and termination of the prolonged parental right shall be entered into the Register of Births, and if such a person owns immovable property into the register of immovables as well.

II. FAMILY STATUS OF THE CHILD
1. Determining of Paternity and Maternity

Article 97
The husband of the child’s mother shall be considered the father of the child born during marriage, or within 300 days from termination of marriage.
If a child was born in a later marriage of the mother, the husband of the mother from that marriage shall be considered the father of the child, provided that 300 days did not elapse from termination of the previous marriage of the mother until birth of the child.
If the husband of the mother from a later marriage denies his paternity, the husband of the mother from the previous marriage shall be considered the father of the child if the child was born within 300 days from the termination of the previous marriage of the mother.

Article 98
A child born in a common law marriage shall be considered born within marriage if its parents enter into a marriage with each other.
If parents of the child born in a common law marriage had an intention to enter into a marriage, and were prevented from doing it for reasons of death of one or both of them or by some marriage obstacle that arose after the child was conceived, in an extrajudiciary procedure and upon a proposal of one of the parents or the child, the court shall proclaim that the child was not born in a marriage.
If the parents are not living or if a living parent is deprived of business capability or of the parental right, the procedure of the court for proclaiming that the child was born in a marriage shall be initiated by the custodial body until the child comes of age.

Article 99
The man who recognizes the child as his own or whose paternity has been determined by a court decision shall be considered the father of the child who was not born in the marriage or within the 300 days notice after termination of marriage.

Article 100
As soon as s/he learns about the birth of a child born in a common law marriage, and prior to its registration into the register of births, the Registrar is obliged to invite the mother of the child to give a statement on who she considers the father of her child. The mother can give this statement also without an invitation.

When s/he receives the statement of the mother on whom she considers the father of her child, the Registrar shall invite the identified person to give a statement on his paternity within 30 days directly before the Registrar or through a certified document.

The invitation must be delivered in person to this person and in the manner so as to ensure secrecy.

If the invited person states that he is not the father of the child or if within 30 days he does not give a statement on paternity of the child, the Registrar shall inform thereon the mother of the child.

If the invited person gives a statement to the minutes in front of the Registrar or by means of a certified document that he is considered the father of the child, the Registrar shall enter him as the father of the child into the register of births and inform on the description the mother of the child.

Article 101
Paternity may be recognized before the Registrar, the custodial body, the court or some other state body authorized to compose official documents. These bodies are under an obligation to submit the certified minutes without delay to the Registrar authorized to enter the child into the birth register.
Paternity may be recognized in a will as well.

Article 102
A statement whereby paternity is acknowledged may be given also before the child is born. This statement has a legal force on condition the child is born alive.

Article 103
After the death of the child paternity may be determined only by a decision of the court upon a request of the persons who have legal interest in it.

Article 104
Paternity may be acknowledged a man able to form its own judgment, who has completed 16 years of life.

Article 105
Acknowledgment of paternity produces legal effect and is entered into the register of births only if the mother of the child consents to the acknowledgment.
The mother can give a statement on consent to the paternity in the manner prescribed in Article 101 herein for acknowledgment of paternity.
The Registrar is under an obligation to invite the mother of the child to give a statement on acknowledgment of paternity within 90 days, unless she had earlier identified the same person as the father of the child.
Article 106
If the child is older than 16, its consent is also needed along with the acknowledgment of paternity. This consent is given in the manner prescribed in Article 100 of this law.
If a child is younger than 16 or older than 16 but has been permanently disabled from forming its own opinion, and the mother is no longer living, or her place of residence is not known, or has been proclaimed dead, or has permanently been disabled for business, the statement on consent to the acknowledgment of paternity is given by the custodian of the child with the permission of the custodial body.

Article 107
If a mother of the child or the child older than 16 or the custodian of the child when its consent is needed do not consent to the acknowledgment of paternity, or do not give a statement thereon within 30 days after receiving the notice on acknowledgment, the person who acknowledged the child as his own may file a complaint to the court for determining that he is the father of the child.
A complaint may be filed within three years from the receipt of the notice on lack of consent of the mother or the child. If paternity of another person was determined in the meantime the complaint cannot be filed after expiry of the notice for contesting the paternity to that person.

Article 108
The statement on acknowledgment of paternity as well as statements of the mother and the child on consent to the acknowledgment of paternity cannot be revoked.
A person who gave a statement on acknowledgment of paternity, or a statement on consent to acknowledgment of paternity, may require annulment of the statement if it was caused by coercion or was given by means of a fraud or if the person was mislead.
A complaint for annulment of the statement may be filed within six months from the day when coercion ceased or from the day when the fraud was noticed.

Article 109
A complaint for determining paternity of a child born out of a wedlock, apart from the person considering himself the father of the child, may be filed by the child and the child’s mother.
A child born out of a wedlock may file a complaint for determining paternity until it completes 23 years of age. If the child is minor or is not capable for business, the complaint may be filed by the mother on its behalf. If the mother is not living, or has been deprived of business capability, or the parental right, as well as when the mother’s place of residence is not known, the complaint may be filed by a custodian along with a consent of the custodial body.
A complaint for determining paternity may be filed by the mother in her own name while exercising the parental right.

Article 110
If a mother has identified a particular person as the father of her child and within one year from the birth of the child does not initiate a procedure for determining of paternity, the custodial body may by its official duty initiate that procedure on behalf of the child. In that case the child is given a special custodian for conducting the procedure.
The custodial body shall not initiate a procedure for determining paternity by its official duty, if for justified reasons the mother opposes this.

Article 111
Provisions of this law pertinent to determining of paternity shall apply duly also to determining of maternity, unless something else results due to the nature of the relationship.

Article 112
Determining of paternity for the child conceived by means of artificial insemination of the mother is not allowed.

2. Contesting Paternity and Maternity

Article 113
A husband may deny paternity of the child who was born in the marriage or before expiry of 300 days from termination of marriage if he considers he is not the child’s father.
The person as of paragraph 1 of this Article shall file the complaint for denying paternity within six months from the day when he learns the fact that he is not the father, but at latest until the child completes five years of life.

Article 114
A mother may contest the fact that the father of her child is the person who according to this law is considered its father.
The complaint for contesting paternity is filed within six months from the birth of the child.

Article 115
A child may contest the fact that its father is the person considered to be its father according to this law.
The complaint for contesting paternity may be filed until the child completes 23 years of life.

Article 116
The person who considers himself the father of the child born out of wedlock, may contest paternity to another person who acknowledged the child as his own, provided he requires his paternity to be determined by the same complaint.
A complaint may be filed within one year from registration of contested paternity into the birth register.

Article 117
The person who considers himself the father of the child born in a marriage may contest paternity to a person considered according to this law the father of the child, if he lived in a community with the mother of the child at the time when the child was conceived or if he established the community with her prior to the child’s birth, on condition he requires by the same complaint that his paternity be determined.
Complaint for contesting paternity in the case as of paragraph 1 of this Article may be filed within one year from the birth of the child.
Article 118
A husband may contest paternity of the child born by his wife during marriage or until expiry of 300 days from the day when the marriage terminated, if the child was conceived without his consent by means of artificial insemination of the mother by the fertilizing cells of another man. The person as of paragraph 1 of this Article may file a complaint for contesting paternity within six months from the moment when he learns that the child was conceived through artificial insemination by means of fertilizing cells of another man, and at latest until the child completes five years of age.

Article 119
After death of a child contesting of paternity is not allowed.

Article 120
Provisions of this law pertinent to contesting of paternity shall apply duly also to contesting of maternity, unless something else results due to the nature of the relationship.

ADOPTION

I THE NOTION OF ADOPTION

Article 121
Adoption is a special form of family-legal protection of children without parents or without adequate parental care, by which parental or the relationship of kinship is created.

Adoption may be established as incomplete and complete.

Article 122
A child has the right to know that it has been adopted. Adopters are under an obligation to acquaint the child with the fact that it has been adopted at latest up to its seventh year of life i.e. immediately after adoption if an older child has been adopted.

II CONDITIONS FOR ENTERING INTO ADOPTION


Article 123
Adoption may be entered into only if it is done to the best interest of the adoptee. A blood relative in the first line, a brother or a sister cannot be adopted. A custodian may not adopt his/her protégée until the custodial body acquits him/her of the custodial duty.

Article 124
A child cannot be adopted before three months from his/her birth expire.
A child born to minor parents cannot be adopted either. As an exception, this child can be adopted after expiry of one year from its birth, if there are no prospects of it being raised in the family of parents or other close relatives. A child whose parents are not known may be adopted only after three months expire from his abandonment.

Article 125
Adoption between a foreign citizen as an adopter and a domestic citizen as an adoptee cannot be established. As an exception, a foreign citizen may adopt a child if no adopter can be found among domestic citizens. For adoption referred to in paragraph 2 of this Article, it is necessary to get the approval from the Ministry competent for the social welfare activities. The approval for adoption from paragraph 3 of this Article is given on the basis of the opinion of expert Commission. Expert Commission referred to in paragraph 4 of this Article is established by the Minister competent for social welfare. The Commission is composed of 5 members who are the persons having professional experience in the work with minors.

Article 126
An adopter can only be a person who is between 30 - 50 years of age and who is older than the adoptee at least 18 years. Adopters, who adopt the same child jointly, may adopt it also if only one of them meets the conditions as of paragraph 1 herein. If there are particularly justified reasons an adopter may also be a person older than 50, but the age difference between the adopter and the adoptee must not be bigger than 50 years. If adopters adopt sisters and brothers, or sisters and brothers who have the same mother or the same father, may enter adoption even if only one of them meets the conditions as of paragraph 1 of this Article in relation to only one child.

Article 127
The following persons cannot adopt a child:
- a. if they have been deprived of parental right or the parental right is restricted to it;
- b. if it is deprived of business capability,
- c. if it suffers from an illness which can have a detrimental effect on the adoptee;
- d. if it does not provide sufficient guarantee that it will perform parental care in a proper manner.
A person whose spouse is characterized by one of the circumstances as of paragraph 1 of this Article cannot be an adopter.

Article 128
Consent of both parents or of one of child’s parents is needed for adoption, unless otherwise stipulated by this law. Consent of parents must be explicit with regard to the type of adoption.
Article 129
Consent to adoption is not needed of adoptees’ parent
1) who has been deprived of the parental right;
2) who does not live with the child, and has for three months already neglected the care of the child;
3) who has been deprived of business capability
4) whose permanent residence has been unknown for at least six months, and who does not care for the child during that period.

Article 130
For adoption of a child under custody consent of the custodian is needed, except if the consent is given by a minor parent.
If the custodian to the person is employed in the custodial body, the consent for adoption is given by the custodian for a special case.

2. Special Conditions for Full Adoption

Article 131
A child up to its tenth year of life can be fully adopted.

Article 132
A child can be adopted completely by spouses jointly, and by the step-mother or the step-father of a child who is being adopted.
A child can be adopted completely by common law marriage partners who have been living in a common law marriage for a long time.

3. Special Conditions for Partial Adoption

Article 133
A child can be adopted partially until it completes its 18th year of life.
For adoption of a child older than 10 and able to understand the meaning of adoption, its consent is needed.

Article 134
A child can be adopted partially by spouses jointly, by one spouse with the consent of the other spouse or by the step-mother or the step-father of the child being adopted.
A person who is not married and partners in a common law marriage living in a common law marriage can adopt partially a child for a shorter period if there are justified reasons for this.

III PROCEDURE FOR ENTERING INTO ADOPTION

Article 135
Adoption is entered into by a decision of the custodial body.

Article 136
For conducting the procedure of entering into adoption the custodial body of the place of residence shall be competent or of the place of permanent residence of the child, if its place of residence cannot be determined.

A person who wishes to adopt a child shall submit a request to the custodial body through the Ministry competent for social welfare. Detailed conditions about the way how to submit the request and conduct the records shall be prescribed by the Ministry competent for social welfare activities.

The public shall be excluded from the procedure of entering into adoption.

Article 137
The custodial body, based on the enclosed or by official duty obtained proofs shall determine whether conditions have been met for entering into adoption as prescribed by this law.

The custodial body by its official duty obtains an opinion on suitability of the person wishing to adopt a child from the custodial body of its residence, the family counseling centre, other adequate institutions, as well as an elaborated opinion of adequate professionals (social worker, psychologist, medical doctor, pedagogue and other).

Article 138
In the procedure of entering into adoption a parent of the child, a spouse of the person intending to adopt the child and the child shall give their consent to adoption before a custodial body conducting the procedure or before the custodial body of their place of permanent residence, or place of residence if permanent residence cannot be determined.

If the consent was given before a body that is not conducting the procedure of entering into adoption, this body shall immediately submit certified minutes to the body conducting this procedure.

A child shall give consent to adoption without presence of parents and the person wishing to adopt it.

Article 139
A parent may give his/her consent to adoption also before initiation of the procedure of entering into adoption, but only when the child completes three years of life.

The custodial body shall acquaint the parent with the consequences of his/her consent and adoption prior to his giving of the consent to adoption.

The consent is given to the minutes, and a certified transcript of the minutes is handed to the parent.

A parent may withhold the consent to adoption within 30 days from the day when minutes as of paragraph 3 of this Article are signed.

A parent whose consent to adoption is not needed, as well as the parent who gave consent to the child being adopted by adopters not known to him/her, is not a party in the procedure.

Article 140
In the procedure of entering into adoption the custodial body shall warn the adopters of the obligation as of Article 122 paragraph 2 of this law.

In the procedure of entering into adoption the custodial body shall meet the parents of the child, the adopters and the child older than 10 with legal consequences of adoption.
Article 141
Prior to making a decision on entering into adoption, the custodial body may decide to place the child into the family of future adopters for a period of six months without compensation, unless when the adopter is a foreign citizen.
During the placement as of paragraph 1 of this Article the child shall be under the special supervision of the custodial body in order to determine whether the adoption is to his/her best interest.

Article 142
In the exposition of the decision on entering into adoption, the custodial body shall state: personal name, date and place of birth and citizenship of adopter, personal name of one parent, personal identification number and the citizenship of adopter, type of adoption and the new personal name of the adoptee.
Against the decision on entering into adoption, the party may file a complaint within eight days from the day when it receives the decision.
Adoption is entered into once the decision on entering into adoption becomes legally valid.
The custodial body is under an obligation to submit a legally valid decision on entering into adoption to the competent Registrar for the purpose of its being entered into the register of births.
The Registrar shall enter into the register of births data as of paragraph 1 of this Article.

Article 143
The custodial body shall keep documents of cases and minutes on adoption, as well as records and documents on the children adopted.
Data on adoption constitute an official secret.
A major adoptee, the adopter and the child’s parent who gave consent to adoption shall have insight into documents of a case.
The custodial body shall allow insight into documents of a case to a minor adoptee if it determines that this is to his interest.
Detailed conditions on the way how to keep records and maintain documents, respectively the files of cases, shall be prescribed by the Ministry competent for social welfare.

IV RIGHTS AND DUTIES FROM FULL ADOPTION

Article 144
Through full adoption an inseparable relationship of kinship equal to blood relationship is established between the adopters and their relatives on one side, and the adoptee and his descendants on the other.
The adopters are registered as parents of the adoptee into the register of births.

Article 145
Through full adoption mutual rights and duties of adoptees and his/her blood relatives cease to exist, except if the child is adopted by a step-mother or a step-father.

Article 146
Adopters shall by consent determine the name of the adoptee.
The adoptee shall obtain a joint surname of the adopters. If the adopters do not have a joint surname, the surname of the adoptee shall be determined by agreement.
If an agreement as of paragraphs 1 and 2 of this Article is not achieved, the custodial body shall make a decision on the name and surname of the adoptee.

Article 147
Contesting and determining of maternity and paternity is not allowed after entering into complete adoption.

V RIGHTS AND DUTIES PERTINENT TO FULL ADOPTION

Article 148
Through full adoption, rights and duties arise between the adopters on one side and the adoptee and his/her descendants on the other which, according to the law, exist between parents and children, unless otherwise stipulated by the law.
Partial adoption does not influence the rights and duties of the adoptee with regard to his/her parents and other relatives.

Article 149
Adopters may determine the name of the adoptee.
The adoptee shall obtain the surname of its adopters except if an adopter decides that the adoptee should keep his/her surname or add the surname of adopters to his/her surname.
For change of name and surname consent of adoptee older than 10 is needed.

VI TERMINATION OF PARTIAL ADOPTION

Article 150
Partial adoption may be terminated by the custodial body by its official duty or upon a proposal of the adopter, if it determines that the justified interests of a minor adoptee require this.

Article 151
The custodial body may make a decision on termination of incomplete adoption also upon an individual or joint request of adopter and an adoptee of age, if it determines there are justified reasons for this.

Article 152
If a minor adoptee has not blood relations who are according to the law under an obligation to support him/her or who are not in a position to support him/her, the custodial body may put an obligation on the adopters to support the adoptee by means of a decision on termination of adoption.
If an adopter is not able to work and does not have sufficient means for living, the custodial body may oblige a major adoptee to support the adopter by a decision on termination, taking into account the reasons that led to termination of adoption.
Through a decision as of paragraphs 1 and 2 of this Article, support may be determined at most for a period of one year.
Article 153
Adoption ceases when decision on termination of adoption becomes legally valid. In the case of termination of adoption, the adoptee may retain the surname of the adopter. The custodial body is under an obligation to submit to the competent Registrar the decision on termination of adoption within eight days from the day when it becomes legally valid, with a view of it being entered into the register of births.

VII TERMINATION OF ADOPTION

Article 154
Adoption terminates by annulment. Adoption is null and void if when entering the adoption the conditions for its legal validity established in this law were not met. Adoption to which consent was given under coercion or by a person who was mislead is null and void.

Article 155
Adopters, the adoptee, the parent or the custodian of the adoptee and other persons having legal interest in adoption being annulled, as well as the state prosecutor shall have the right to file a complaint against adoption. The person who gave a statement on consent to adoption under coercion or misled may file a complaint for annulment of adoption within one year from the day when coercion ceased to exist or after the misleading was noticed.

Article 156
The court shall deliver the decision on annulment of adoption to the custodial body before which the adoption was established. Based on the decision as of paragraph 1 herein the custodial body shall make a decision on annulment of the decision pertinent to the new registration of the adoptee. Based on the decision as of paragraph 2 of this Article the first registration of adoptee’s birth becomes legally valid.

PART FIVE
FAMILY PLACEMENT (FOSTERING)

I NOTION OF FOSTERING

Article 157
A child without parental care and a child whose development was disturbed by circumstances in its own family may be placed with another family for watching, care and education, in the manner and on conditions established by this law. An educationally careless child may be placed and educated in another family, as well as a child with disturbances in physical and mental development.
Article 158  
The custodial body shall make a decision on placement into another family, if this is to the best interest of the child.

II CONDITIONS AND PROCEDURE  
Article 159  
A child may be placed into a family that consents to receive it and which provides sufficient guarantees that the child will be cared for, watched and educated. The family into which a minor protégé is placed has to have secured housing and material conditions. If a child is placed into a family which has both spouses, their consent is needed for the placement.

Article 160  
When placing the child into another family, the custodial body has an obligation to pay special attention to the national, religious and cultural origin of the child, its age, health and social status, as well as to the distance from the place of its previous residence, i.e. residence of its parents and the school it is attending.

Article 161  
A child disturbed in its physical and mental development, or educationally careless child may be placed into another family only if it has been determined that members of that family, according to their characteristics are able to watch, take care of and educate such a child.

Article 162  
Spouses with which the child is given for care into family placement or a person with which the child is given for care into family placement (hereinafter: provider) may be every person of age and with business capacity who, with regard to the characteristics of personality and harmony of family relationships, is in a position to provide a balanced development to the child as well as assistance to return to its own family. The custodial body is under an obligation to provide adequate preparation for upbringing and education of the child placed into a family, and for a child with special needs to provide preparation according to a special programme with regard to the needs of the child. Programme of preparation referred to in paragraph 2 of this Article shall be prescribed by public administration authority competent for social welfare.

Article 163  
As a rule, brother and sisters are placed into the same family.

Article 164  
Family placement of a child who has both or one parent is determined with a previously obtained consent of the parent. If a child is under custody, his custodian shall give the consent.
Prior to determining the family placement, the custodial body is under an obligation to make it possible to the child to express freely its opinion with regard to the family placement and to assess the opinion in accordance with the age and the maturity of the child.

Article 165
If a child without parental care is found in family placement, the custodial body shall set the provider as the custodian.

Article 166
A child shall not be placed into a family:
1) in which some of its members has been deprived of the parental right or convicted for a criminal act against marriage and family,
2) in which one of the spouses does not meet the conditions for a custodian,
3) in which due to an illness of one of the household members its health would be threatened,
4) in which relationships in the family have been disturbed, and
5) which has a relationship of intolerance with its parents.

Article 167
A maximum of three children may be placed into another family or two children whose development is disturbed, while the total number of children living in the provider’s family shall not exceed four children.
As an exception, when this is in the interest of children, more children can be placed into the family of the provider, in the event when they are placed into the family of a relative or when brothers and sisters are being placed.

Article 168
The family into which a minor protégé has been placed is under an obligation to provide information on all the circumstances important for the child’s development, and especially about its health, education and schooling.

Article 169
The family into which a minor child is placed shall have the right to compensation. Costs of placing the child into another family are determined by provisions on social protection. The amount and manner of payment of compensation are determined by an agreement.

Article 170
Decision on placing the child into a family is made by the custodial body at whose territory the child’s place of residence or of permanent residence is. Based on the decision as of paragraph 1 herein, the custodial body shall conclude a written agreement with the provider, which should include:
1) name and surname of the provider into whose family the child is being placed and his/her address
2) the beginning and, if needed, the duration of placement,
3) obligations of the provider and of the family into which the child is being placed with regard to his/her schooling, education and in general preparation for independent life, as well as with regard to food and accommodation,
4) amount and manner in which compensation for accommodation is paid,
5) time and manner of informing on how protection is performed, and
6) notice of dismissal.

Article 171
Parents of the child placed into another family have the right and the duty to represent the child, to manage and dispose of the child’s property, to maintain the child, to maintain personal relationships with the child and to make decisions on issues influencing significantly the child’s life jointly and in agreement with the provider, except when they have been deprived of the parental right or of business capacity or if parents in question do not take care of the child or they take care of it in an inadequate manner.

Article 172
If a child is placed in a family which does not live in the territory of the municipality whose custodial body have concluded an agreement on child’s placement in family, one copy of such agreement shall be submitted to the custodial body in the territory where the family in which the child is placed lives.

Article 173
Custodial body shall point out to the family where child is placed to the failures regarding watching, care and upbringing of minors; propose the measures to remove those failures and advice about all issues, respectively undertake measures being authorized for under the Law.

Article 174
The custodial body that concluded an agreement on placement shall keep record of children who have been placed into other families. These records shall include all the important details on the child who has been placed.

Article 175
Based on the decision by custodial body, a child may be placed in a social and child protection institution.
The institution referred to in paragraph 1 of this Article shall take care of upbringing, education and health status of the child being placed in such institution, while the custodian shall carry out other duties predicted by this Law and take general care for upbringing and education of the child.

III TERMINATION OF CHILD’S PLACEMENT IN FAMILY

Article 176
Placement if a child into another family ceases:
1) by agreement of contracting parties,
2) by expiry of the contractual notice,
3) by revocation of a contract,
4) by termination of a contract,
5) by coming of age and
6) adoption of a child.
Revocation of a contract shall be given in writing.
Custodial body may extend an agreement on placement of the child in other family if the child is on regular education, but no longer than five years after child’s coming of age.

Article 177
The custodial body shall terminate an agreement on placement of a child into another family if any of the cases established in Article 166 of this law arises.

PART SIX
CUSTODY

Article 178
A child without parental care or an adult who has no capacity to take care for him/herself, his/her rights, interests and obligations shall be granted custody.
A person provided with custodian protection in terms of this Law shall be considered as protégé.

Article 179
The purpose of custody over a child shall be that, through providing for, upbringing and education, the personality of a child is developed as fully as possible and that a child is capable for independent life and work.
The purpose of custody over other person, who has no capacity or who is not in a position to care for his/her rights and interests, shall be to protect his/her rights and interests.
The purpose of custody shall also be securing property rights and other rights and interests of the protégées and other persons who are provided with protection according to the provisions of this Law.

Article 180
The decision on granting custody shall be made by a custodial body Decision on granting custody shall obligatorily contain a plan of custody.
In the decision on granting custody, the custodial body shall appoint a guardian and decide on accommodation of the protégée.
If the protégée has any property, the permanent commission of the custodial body shall make the inventory and assessment of the value of the property of the protégée.

I CUSTODIAL BODY

Article 181
The activities of custody shall be performed by the custodial body through an appointed guardian or directly through an expert professional.

Article 182
Custodial body shall undertake necessary measures to achieve the purpose of custody in the best possible manner.
In preparation, making and enforcement of decisions and other specific measures the Custodial body shall use all the forms of social protection, methods of social and other professional work as well as services of social, health, educational and other organizations and institutions.

Article 183
Custodial body may establish an advisory expert body composed of the appropriate experts (doctors of medicine, pedagogues, lawyers, psychologists, social workers etc.) with the task to consider expert issues and to give proposals for undertaking specific custody measures.

Article 184
When granting custody and appointing a guardian, custodial body shall be obliged timely to undertake all the measures aimed at proper accomplishing of the tasks of custody in terms of personality and property of protégée.

Article 185
Custodial body shall continually monitor and examine the conditions of life of protégées, particularly minors and it shall control their accommodation, upbringing, health condition, process of qualifying for independent life, social environment in which they live, social relationships that they have and how their property is managed, as well as how their rights and interests are protected.

Article 186
Custodial body which passed the decision on granting custody of a person whose property is at the territory of another municipality may entrust custodial body of the municipality the property is located in with the activities of custody of the property of that person.
Custodial body entrusted with the custody of property of the person, who is granted custody and who is referred to in the paragraph 1 of this Article, shall determine a special guardian for that property. The custodial body which passed the decision on granting the custody for the person shall continue to make decisions regarding the property.

II GUARDIAN

Article 187
Custodial body shall appoint a guardian for a protégée, if the interests of the protégée and the circumstances of the case do not require that the custodial body performs the duties of the guardian directly.
A guardian shall be a person who has personal characteristics and abilities necessary for performing the duties of a guardian, and who agrees in advance to be a guardian.
If it is in the interest of the protégée and if the guardian agrees, the same person may be appointed as a guardian of several protégées.
When appointing a guardian, custodial body shall carefully analyze the circumstances of the persons who are granted custody and it shall appoint a person who, having these circumstances in mind, shall be in a position to perform the duty of a guardian in the best possible manner.

Article 189
When appointing a guardian, custodial body shall also take into consideration wishes of the protégée, if the protégée is able to express them, as well as the wishes of close relatives of the protégée.
The first choice for a guardian shall be a spouse or a relative of the protégée, if that is in the interest of the protégée.

Article 190
As for a protégée who is placed in an institution for education and upbringing or a health, social or any other institution, custodial body shall appoint a guardian for performing the duties of custody which are performed by the institution within its field of activities.

Article 191
Custodial body may, by a decision, limit the powers of a guardian and decide to perform certain activities of a guardian directly. If the custodial body performs directly duties of the guardian or certain activities of a guardian, the custodial body may entrust other expert persons with certain activities to be performed on behalf of the custodial body and under its supervision.

Article 192
In the decision on appointing a guardian the custodial body shall determine his/her duties and the scope of his/her powers. Before passing the decision referred to in the paragraph 1 of this Article custodial body shall inform the guardian about the importance of custody, about his rights and duties and about all the other important data necessary for performing the duty of a guardian.

Article 193
If a protégée owns immovable property, custodial body shall inform the body competent for keeping the register on immovables about granting custody, or about the cessation of the custody.

Article 194
Guardian shall be obliged to care for the protégée’s personality, rights, duties and interests in an indulgent and conscientious manner, as well to manage the protégée’s property conscientiously.

Article 195
Guardian shall be obliged to undertake, with the support of the custodial body, all the necessary measures to secure funds for enforcing the measures pronounced by the custodial body in the interest of the protégée.

Article 196
Expenditures for implementing certain measures which are undertaken in the interest of the protégée shall be covered by:
1. incomes of the protégée;
2. funds obtained by the persons who are obliged to support the protégée;
3. property of the protégée;
4. funds obtained for the protégée on the basis of social protection and
5. other sources.

Article 197
Guardian shall not be:
1. a person deprived of parental rights;
2. a person who lost business capacity;
3. a person whose interests are in conflict with the interests of the protégée; and
4. a person who cannot be expected to perform the duties of a guardian in a proper manner, due to his/her earlier or current behavior and personal characteristics and relations with the protégée and his/her parents and other relatives.

Article 198
If a protégée has property, custodial body shall pass the decision to make an inventory of the property, to assess the property and to give the property to be managed by the guardian. Commission appointed by the custodial body shall make the inventory and assessment of the property of the protégée. When the inventory and assessment of the property are made, the guardian shall obligatorily be present, as well as the protégée, if he/she is able to understand the situation, and persons who for the protégée hold the property of which the inventory is made.

Article 199
The inventory of the property of the protégée shall be made and, through the accurate inventory, the property shall be identified at the moment of putting it under custody. The property must be exactly labeled in the inventory and the approximate assessment of the value must be given at the rates in the open market. The inventory of the property with the assessment of the value shall be made in two copies, one of which shall be submitted to the custodial body and another to the guardian.

Article 200
Custodial body, which initiated the procedure for granting custody of a person, may make an inventory and assessment of the property and undertake the necessary measures to protect the property before the decision on granting the custody of such a person is made.

Article 201
Guardian may do the following things only with the approval of the custodial body:
1) terminate education of the protégée or change the type of his/her school;
2) decide on choice and type of vocation of the protégée;
3) undertake other important measures regarding the personality of the protégée;
4) alienate or burden the immovable property of the protégée;
5) to alienate movable items of large or special personal value from the property of the protégée or to manage property rights of high value;
6) to make a statement of relinquishment of inheritance and legacy and revocation of a gift;
7) to take other measures determined by the law.

In the procedure of giving approval to the guardian related to governance and management of the property i.e. the rights of the protégée, custodial body shall determine the purpose of the funds obtained and it shall perform the supervision of the use of the funds.

Article 202
Without the approval of the custodial body, guardian may alienate fruit, small stock, items intended for sale, perishable items and other items, if that is done within the regular operations and management of the property of the protégée.
The monetary means obtained by selling the items from the paragraph 1 of this Article may be obtained only for the needs of the protégée.

Article 203
Without the prior approval of the custodial body a guardian may not undertake any activity or work which would go beyond the framework of regular operations and management of the property of the protégée.
Guardian may not give gifts or dispose of the property of the protégée in any other manner without compensation and he/she may not put on the protégée the obligation of a guarantor.

Article 204
Custodial body shall be obliged to provide support to the guardian in performing the activities that the guardian cannot perform him/herself, in particular in drawing up briefs for representation at the court or other bodies etc.

Article 205
Guardian shall represent his/her protégée.
Custodial body shall represent the protégée when it is performing the duty of a guardian directly or if the powers of the guardian are limited and the custodial body decides to represent the protégée itself.

Article 206
In legal issues in which the other party is a spouse or close relatives of the guardian, a protégée shall be represented by custodial body or other guardian appointed by him.

Article 207
Guardian may conclude a legal deal with protégée that he/she is a guardian of, only if the custodial body finds that it is required by the interests of the protégée and if the custodial body gives a prior approval for it.

Article 208
Guardian shall independently and in the name and in the behalf of the protégée perform the activities that fall within the scope of regular operation and management of the protégée’s property.
When undertaking activities referred to in paragraph 1 of this Article, the guardian shall, whenever possible, consult the protégée, if he/she is able to understand the circumstances.

Article 209
Guardian is obliged to submit to the custodial body the report on his/her work. He/she shall do that every year and also when the custodial body asks for that. In case of direct custody, the employee of the custodial body or another person who, in the name of the custodial body performs the activities of the custody shall be obliged to submit the report. The report shall be submitted in a written form or in an oral form with the minutes made about it, and it should contain information about protégée, his/her health, maintenance and qualifying him/her for independent life, data about management and dispose of the protégée’s property, final status of his/her property, as well as information being important for the personality of the protégée.
In addition to the data referred to in paragraph 3 of this Article, the report for minor protégée should also contain information about his/her upbringing and education.

Article 210
A guardian of several protégées who have a joint property may submit a joint report. A guardian may give the report to the custodial body in an oral form with the minutes made of it.

Article 211
Custodial body is obliged to consider the report on work of the guardian, and, if needed, to undertake the appropriate measures for protection of the interests of the protégée. Apart from the control of work of a guardian through considering the report on his/her work, custodial body shall make direct control of the guardian’s work, from time to time.

Article 212
Guardian shall be entitled to reimbursement of all justifiable costs occurred in performing his/her duties. Custodial body may determine an award for the guardian, if he/she has made specific efforts in performing his/her duties. The award and reimbursement of costs shall be approved by the custodial body and they shall be taken from the incomes of the protégée. If maintenance of the protégée would be jeopardized in that way, they shall be taken from the funds for children and social protection.

Article 213
A guardian shall be obliged to compensate to his/her protégée for the damage he/she made by improper and unconscientiously or negligent performing of his/her duties. Custodial body shall determine the amount of the damage and shall invite the guardian to make amends within a certain deadline. If the guardian does not compensate for the damage within the determined deadline, the Custodial body shall directly compensate to the protégée for the damage.
Custodial body may request at the court that the guardian compensate the paid amount from the paragraph 2 of this Article.
In order to secure rights of the protégée, violated by the improper work of the guardian, custodial body shall be obliged to undertake towards the guardian the other measures provided for in the law.

Article 214
If a guardian dies or arbitrarily stops performing the duties of a guardian or if such circumstances appear which prevent the guardian to perform his/her duties, custodial body shall be obliged without any delay to undertake measures for protection of the interests of the protégée until a new guardian is appointed.

Article 215
Custodial body shall remove a guardian from his/her duties if the custodial body finds that in performing his/her duties the guardian is negligent, that he/she abuses his/her powers and that by his/her activities he/she jeopardizes the interests of the protégée, or if it considers that it would be more useful for the protégée to appoint another guardian.
Custodial body shall remove a guardian from his duties when the guardian asks for it. It shall be done at latest within three months from the day of submitting such a request. Custodial body must at the same time undertake all the necessary measures for protection of the interests of the protégée.
The guardian whose duties have ceased shall be obliged to submit a report about his/her work to the custodial body within the deadline determined by the custodial body.

Article 216
In case of cessation of the need for custody, custodial body shall invite the guardian to submit a report about his/her work within a determined deadline, as well as a report about the situation of the protégée’s property. The guardian shall also be requested to hand over all the property to be managed by the protégée, i.e. parent or adopter.
Handing over of the property shall be done in the presence of the guardian, protégée i.e. parent or adopter and a representative of the custodial body.

Article 217
In case of death of the protégée, the guardian shall hand over the duty of the guardian, with the minutes made in the presence of the custodial body in the manner and in the procedure determined by the custodial body.

Article 218
Custodial body shall be obliged to undertake the necessary measures towards the guardian for the protection of rights and interests of the protégée which arise from the improper work of the guardian, as well as measures for protection of the rights and interests of other persons which arise from the custody relations.

III JURISDICTION AND PROCEDURE
Article 219
Territorial jurisdiction of a custodial body shall be determined according to the place of permanent residence and, if this is not possible, the territorial jurisdiction shall be determined according to the temporary residence of the person who is to be granted custody. Permanent i.e. temporary residence shall be determined at the time when conditions have been met for granting custody for a person.

Article 220
If the permanent residence of a protégée is changed, the custodial body, which shall decide whether to change the measures imposed by previous custodial body or not, shall be changed as well.
In case of conflict of jurisdictions related to the change of permanent residence of the protégée, the custodial body responsible for the protégée before the procedure related to the conflict of jurisdictions is initiated, shall be obliged to perform all the activities of caring of the protégée until the final decision is made in the aforementioned procedure.

Article 221
The jurisdiction of the custodial body shall not change during the time in which the protégée is temporarily out of the territory of that body for the purposes of education, professional qualification, rehabilitation, social and health protection or due to similar justified reasons.

Article 222
Procedure for granting custody and for cessation of custody shall be initiated and conducted ex officio by the custodial body.

Article 223
The following persons shall be obliged to inform custodial body about the need to grant custody for a person, or to apply a form of protection, which is provided by the custodial body, as well as to inform the custodial body about the need to have cessation of the custody:
1) registrar, state authorities, local administration bodies, non-governmental organisations, health, social, educational-upbringing and other institutions, when in performing their duties they find out for such a case,
2) relatives, household members and other persons who have an insight in the circumstances of such a person.

Article 224
Procedure for granting custody is an urgent procedure.
When custodial body finds out that a person should be granted custody or that a form of protection provided by the custodial body should be applied in relation to that person, the custodial body shall be obliged to issue a temporary conclusion, within the next 24 hours, on placement of a protégée, and to immediately undertake measures necessary for protection of personality, property, rights and interests of such a person and it shall initiate a procedure to grant custody for such a person, i.e. to apply a form of protection in relation to him/her.
The custodial body shall be obliged to make a decision on granting custody, immediately, and no later than 30 days as of the day when it was informed about the need for custody over the child,
i.e. as of the day when court decision on deprivation of business capability of an adult was received at the custodial body.

Article 225
When deciding on which form of protection to apply in relation to a protégée, custodial body shall primarily be governed by the interests of the protégée, application of modern professional methods of social work and available financial possibilities.

Article 226
Custodial body may change the decisions passed, in the manner regulated by the law, when it is required by the interests of the protégée and if by doing so the rights and interests of third persons are not violated.

Article 227
An objection related to the work of a guardian and custodial body may be filed by the protégée who is capable of doing it, by the judicial and other bodies, institutions, nongovernmental organizations and citizens.
Custodial body shall consider the objections submitted, and if the custodial body finds that they are grounded it shall determine the measures to be undertaken.
If the objection referred to in paragraph 1 of this Article is filed to second instance body, and this body finds that the objection is grounded, it shall give the instructions to the custodial body how to proceed. After receiving the instructions, custodial body shall decide what measures to undertake and it shall inform the second-instance body about it.

Article 228
Enactment on granting custody for a person and the enactment on cessation of the custody shall be delivered to the registrar within 15 days after coming into effect.

Article 229
Custodial body shall be obliged to keep records and documentation about the persons granted custody, about the measures undertaken and about the property of the protégées.
Instruction on keeping the records and documentation from the paragraph 1 of this article shall be prescribed by the Ministry competent for social affairs.

IV. CUSTODY OVER A MINOR

Article 230
Custody shall be granted for a minor whose parents:
1. died, disappeared, are unknown or don’t have a known place of residence for at least a month,
2. are deprived of parental rights,
3. lost business capacities,
4. abused or seriously neglected exercising of parental rights, and
5. are absent and are not in a position to care of the minor regularly, and they have not committed custody of the minor to the person for whom the custodial body has determined that he/she meets the conditions for being a guardian.
Article 231
Guardian of a minor person is obliged as a parent to care of the personality of the minor, and in particular of the health of the minor, his/her upbringing, education and qualifying for independent life and work.

Article 232
A minor protégée who has reached the age of 14 may enter into legal deals by him/herself, however, for the validity of the deals an approval of his/her guardian shall be required. As for the deals which, in terms of this law, may not be concluded by the guardian him/herself, the approval of the custodial body shall be required as well.

Article 233
A minor protégée who is employed may manage his/her earnings by him/herself, provided that he/she shall be obliged to contribute to his/her maintenance, upbringing and education.

Article 234
Custody over a minor protégée shall cease when the minor comes of age, enters into a marriage, is adopted or when he/she dies.

V. CUSTODY OF A PERSONS DEPRIVED OF BUSINESS CAPACITIES

Article 235
A person of full age who, due to mental illness, mental retardation or due to any other cause, is not capable of caring him/herself of his/her rights and interest shall be fully deprived of business capacities.
A person of full age who by his/her actions jeopardizes his/her rights and interests or the rights and interests of other persons due to mental illness, mental retardation, excessive use of alcohol or narcotics, senility or due to other similar reasons shall be partly deprived of business capacities.
Decision on deprivation of the business capacity shall be made by the competent court in non-litigation procedure.

Article 236
Persons who have been partially or fully deprived of their business capacities by a court decision shall be granted custody by the custodial body.
The court shall be obliged immediately to deliver to the custodial body the final decision on deprivation of business capacities or on limiting business capacities. Within 30 days from receiving the decision custodial body shall grant custody for the concerned person deprived of business capacities.

Article 237
Guardian of a person fully deprived of business capacities or with a limited business capacities shall be obliged to care particularly of his/her personality, accommodation, health and causes due
to which the person was deprived of business capacities and to put efforts in eliminating these causes.

Article 238
If the guardian determines that the circumstances have appeared which indicate that there is the need for the person deprived of business capacities to regain business capacities, or that the earlier decision should be changed, the guardian shall be obliged without any delay to inform the custodial body about it.

Article 239
Guardian of a person fully deprived of business capacities shall have the duties and rights of a guardian of a minor under the age of 14.
Guardian of a person partly deprived of business capacities shall have the duties and rights of a guardian of a minor who has reached the age of 14, but the custodial body may, when necessary, determine the activities which the person partly deprived of business capacities can undertake by him/herself without the approval of the guardian.

Article 240
The court that the procedure for depriving a person of business capacities is initiated with shall be obliged immediately to inform the competent custodial body about it. The Custodial body shall, if necessary, appoint a temporary guardian for the person.

Article 241
A temporary guardian shall have the same rights and duties as the guardian of a minor who has reached the age of 14.
Custodial body may, if necessary, extend the rights and duties of a temporary guardian to the duties and rights of the guardian of a minor who is under the age of 14.
Duties of a temporary guardian shall cease when a permanent guardian is appointed or when the court decides that the decision on deprivation of business capacities shall not become final.

Article 242
Custody over persons deprived of business capacities shall cease when by decision of the court they regain business capacities or in case of death of such a person.

Article 243
The provisions of this law that apply to custody of minors shall apply to the custody of persons deprived of business capacities and to custody of persons with a temporary guardian appointed, in relation to whom the procedure for deprivation of business capacities is initiated, if a special law does not regulate otherwise or if it does not arise from the nature of the circumstances of custody of these persons.

VI CUSTODY IN SPECIAL CASES

Article 244
Custodial body shall appoint a guardian for certain activities or a certain kind of activities for an absent person whose temporary or permanent residence is not known and who does not have a representative, for an unknown owner of the property when it is necessary that somebody is managing the property, as well as in other cases when it is necessary for the protection of rights and interests of a person.

Article 245
A court or another body at which the procedure is conducted may, under the conditions determined by the law, appoint a guardian for the persons referred to in the Article 244 of this Law. The court or another body shall be obliged without any delay to inform the custodial body about that.
In relation to the guardian appointed in compliance with the paragraph 1 of this Article, custodial body shall have all the powers it has in relation to the guardian appointed by the custodial body.

Article 246
For a minor whose parents exercise their parental rights in relation to him/her a special guardian shall be appointed for the purposes of a dispute conducted between him/her and his/her parents, for the purposes of making certain business arrangements between them, as well as in other cases when their interests are conflicting.

Article 247
A person who is granted custody shall be appointed a special guardian for conducting a dispute between him/her and his/her regular guardian, for making business arrangements between them, as well as in other cases when their interests are conflicting.

Article 248
When a dispute is to be conducted or a legal arrangement made between children in relation to whom the same person exercises parental rights, or between minors who have the same person as a guardian and where the interests of children i.e. protégées are conflicting, each of them shall be appointed a special guardian for the purposes of the dispute i.e. making the arrangements.

Article 249
When parents, adopters, guardians, judicial and other state bodies in performing their duties find out about the cases from the Articles 246, 247 and 248 hereof, they shall be obliged to report the cases to the custodial body.

Article 250
If international contracts do not specify otherwise, custodial body in the cases provided for by this law, shall undertake necessary measures for protection of personality, rights and interests of a foreign citizen, until the custodial body of the country he/she is a citizen of makes the necessary decision and undertakes certain measures related to him/her.
At the request of a person fully capable to conduct his/her business affairs custodial body may appoint a guardian for that person for performing certain activities if the person is not capable of caring of his/her rights and interests him/herself due to health or other justified reasons.

Article 252
When appointing the guardians for special cases, custodial body shall define duties and rights of the guardians, having in mind the circumstances of every individual case.
Provisions of this law shall be applied to the custody in special cases, if this law does not determine otherwise or if otherwise does not arise from the nature of the matter.

PART SEVEN
ALIMONY

Article 253
Mutual support of family members and other relatives shall be their obligation and right.
In cases in which mutual support of family members or other relatives cannot be exercised fully or partly, the state shall provide, under the conditions determined by the law, the means necessary for the support of family members who don’t have the support secured.
Waiving of the right to maintenance shall not have legal effect.

I SUPPORT OF CHILDREN, PARENTS AND OTHER RELATIVES

Article 254
Parents shall be obliged to provide support for their minor children.
If a child has not completed education before coming of age, parents shall be obliged to provide support for the child according to their possibilities until the expiry of the period required for completing the education in the appropriate school, i.e. faculty, and if the period of education is extended due to justified reasons, they shall be obliged to provide support for their children up to the age of 26.

Article 255
If a child who is of age due to illness or mental deficiency is not capable to work, has no means for living or cannot create the means from the existing property, the parents shall be obliged to provide support for the child for the time in which such a state of affairs exists.

Article 256
A parent deprived of parental rights shall not be released from the duty to provide support for his/her children.

Article 257
Children shall be obliged to support their parents who don’t have capacity to work, and who do not have sufficient means for living or who cannot create such means from the existing property. Exceptionally, the court may reject the request for support when support is requested by a person who was deprived of parental rights and who did not provide support for the child, although he/she had the possibility to do so, or if the court, considering all the circumstances of the case, finds that it would be an obvious injustice towards the child.
Article 258
Stepfather and stepmother shall be obliged to provide support for their minor stepchildren, if the children do not have relatives, who, according to this law, are obliged to provide support for them, or if the relatives do not have the means to do so.
Obligation of stepfather and stepmother to provide support for their minor stepchildren shall exist also after the death of the parent of the children that the stepfather i.e. stepmother was married to, if up to the moment of death of the parent, there was a family union between the stepfather, i.e. stepmother and the stepchildren.
If the marriage between parent and stepfather i.e. stepmother of the child was annulled or divorced, the obligation of the stepfather i.e. stepmother to provide support for the stepchildren shall cease.

Article 259
Stepchildren shall be obliged to provide support for their stepfather and stepmother if the stepfather i.e. stepmother were providing support for them and cared for them for a longer period of time. If the stepfather i.e. stepmother have children, the obligation shall be shared with the children.

Article 260
Brothers and sisters shall be obliged to provide support for their minor brothers and sisters who do not have means for living when their parents are not alive, or have no possibility to provide support for them.

Article 261
The obligation of providing support exists also among other blood relatives in the line of ascent. The blood relatives shall exercise the right to support in the order of inheritance according to the law.
If several persons share the obligation to provide support, the obligation of providing the support shall be shared depending on their circumstances.

II. SPOUSAL SUPPORT (ALIMONY)

Article 262
A spouse who does not have sufficient means for living, who does not have the capacity to work or who cannot get employment is entitled to alimony provided by his/her spouse, in proportion to his/her financial circumstances.
Taking into consideration all the circumstances of the case, the court may reject a request for alimony, if the alimony is requested by a spouse who, without a serious cause given by the other spouse, behaved rudely or disorderly in the marital community or if he/she deserted his/her spouse without a justified cause, or if his/her request would be an obvious injustice towards his/her spouse.

Article 263
Under the conditions from the Article 262 of this Law, the financially unsecured spouse is entitled to request that in the judgment by which the marriage is divorced he/she is awarded
alimony which shall become the burden on the other spouse, in proportion to his/her financial circumstances.

Exceptionally, the spouse who in the divorce proceedings did not request to be awarded alimony as a burden on the other spouse, may, due to justified reasons, submit such a request in a separate litigation, within a year after the marriage is divorced, but only if the prerequisites for alimony have occurred before the divorce of the marriage and lasted continuously until the closure of the main hearing in the proceedings for maintenance, or if in this term incapacity for work occurred as a consequence of a bodily injury or damaged health from the time before the divorce of the marriage.

If in the case of divorce of marriage spouses agreed about the alimony, or if one spouse without an explicit agreement participated in the alimony for the other spouse by paying certain amounts of money, by leaving his/her property to be used by the other spouse or in some other manner, the deadline from the paragraph 2 of this Article for submitting the request for alimony shall start from the day on which the last contribution for the purposes of the alimony was given, i.e. from the day on which the spouse was given his/her property back.

Article 264
If the community of spouses ceased to exist permanently and if the spouses for a large number of years were committed to provide means for alimony completely independently, and if such circumstances existed up to the divorce of the marriage, the court may, considering all the circumstances of the case, reject the request to award alimony to the benefit of such a spouse.

Article 265
Court may decide that the obligation to provide alimony shall last for a limited period of time if the person requesting alimony is in the possibility to provide means for living in the foreseeable future.

In case that the marriage lasted for a short time, the court may, considering all the circumstances, decide that the obligation of alimony shall last for a limited period of time, or reject the request for alimony, regardless of the possibilities of the requestor to provide other means for living in the foreseeable future, if the person requesting alimony is not bringing up a minor child. The court shall particularly take into consideration whether the financial circumstances of the spouse changed when entering into the marriage.

In justified cases, the court may extend the obligation of providing alimony. The action for extension of the obligation to provide alimony may be submitted only before the expiry of the period for which the alimony was awarded.

Article 266
The right of a divorced spouse to alimony shall cease when the conditions of the Article 262 paragraph 1 hereof cease to exist, when the period for which the alimony was awarded expires, when a divorced spouse exercising the right to maintenance enters into a new marriage, into a common-law marriage, or if the court, analyzing all the circumstances, finds that a divorced spouse has become unworthy of exercising the right.

The spouse whose right to alimony ceased once may not exercise the right to alimony from the same spouse again.
Article 267
In case of annulment of a marriage, the spouse, who at the time of entering into marriage did not know of the cause of the nullity of the marriage, may request that he/she is awarded alimony which shall become the burden on the other spouse, under the conditions under which the divorced spouse may exercise the right to alimony.

III SUPPORT OF A PARTNER FROM A COMMON-LAW MARRIAGE

Article 268
If a common-law marriage of a woman and a man ceases to exist, each of them, under the conditions referred to in the Article 262, paragraph 1 hereof, is entitled to be provided alimony by the other partner if the common-law marriage lasted for a longer period of time. The action for alimony may be submitted at latest within a year from the moment of cessation of the common-law marriage, but only under the conditions that the prerequisites for alimony occurred before the cessation of the common-law marriage and lasted continuously up to the closure of the main hearing in the litigation proceedings related to the alimony. The court may reject a request for alimony, if it is requested by the partner from the common-law marriage who, without a serious cause given by the other partner, behaved rudely or disorderly in the common-law community or if he/she deserted his/her partner without a justified cause, or if his/her request would be an obvious injustice towards his/her partner.

Article 269
Court may decide that the obligation to provide alimony shall last for a limited period of time, particularly if the person requesting alimony is in the possibility to provide other means for living in the foreseeable future. In justified cases the court may extend the obligation to provide alimony. The action for extension of the obligation to provide alimony may be submitted only before the expiry of the period for which the alimony was awarded.

Article 270
The right of a partner from a common-law marriage to alimony shall cease when the conditions from the Article 262 paragraph 1 hereof cease to exist, when the period for which the alimony was awarded expires, when the partner exercising the right to alimony enters into a marriage, into a new common-law marriage, or if the court, analyzing all the circumstances, finds that the partner has become unworthy of exercising the right.

SUPPORT FOR A CHILD'S MOTHER

Article 271
Regardless of the fact whether between the parents of the child born out of wedlock there was a common-law marriage or not, the father shall, under the conditions referred to in the Article 262, paragraph 1 of this Law, be obliged to participate in providing support for the mother of his child in proportion to his circumstances and in the period of three months before the childbirth and a year after the childbirth.
Provision of the paragraph 1 of this Article shall also apply in the case of a stillborn child or if the child dies after the birth, during the period of incapacity to work caused by the childbirth, but at longest for the period of a year from the day of childbirth.
The court may reject the request of the mother for support if accepting her request would be an obvious injustice towards the father.

IV DETERMINING ALIMONY

Article 272
Liabilities of the family members who are obliged to provide support shall be determined in proportion to their circumstances, and within the bounds of the needs of the requestor of support. The total amount of the funds necessary for support referred to in the paragraph 1 of this Article may not be lower than the amount of the permanent allowance in money, which is according to the regulations on social protection given to persons with no income in the municipality which is the place of residence of the dependant.

Article 273
When assessing the needs of a dependant the court shall take into account his/her financial standing, level of his capacity for work, possibility to find employment, health condition and other circumstances that the decision on determining the maintenance shall depend on.
When support is requested for a child, the court shall take into account the age of the child too, as well as the needs for his education.
When assessing the possibilities of the person obliged to provide support the court shall take into account all his/her incomes and real possibilities to make an earning, as well as his/her own needs and legal obligations of providing support.

Article 274
In the dispute of parents about the support for their child, the court shall particularly take into account the activities and care of the parent who is committed custody of the child. These activities shall by the court be considered to be his/her contribution to the support for the child.

Article 275
Custodial body shall, on behalf of a minor initiate and conduct the dispute regarding support, i.e. for increasing of the support, if the parent who is committed custody of the child is unjustifiably not exercising that right.
If a parent does not request for the enforcement of the decision on awarding the support, the Custodial body shall on behalf of the minor child submit to the court the proposal for enforcement of the decision, in compliance with the provisions of the Law on Executive Procedure.

Article 276
The court shall be obliged to deliver every decision to the competent custodial body.

Article 277
Custodial body shall be obliged to keep records of supported children and parents, persons obliged to provide support and to undertake measures for the parents to reach agreement about the support for the child out of the court, i.e. that the amount awarded as support is adjusted to the changed needs of the child and the changed possibilities of the parents.

Article 278
Custodial body may on behalf of an old and self-supporting person, at his/her proposal or at its own initiative, initiate and conduct a procedure for exercising his/her right to be provided support by his/her relatives, who according to this law shall be obliged to provide support for such a person. If such a person opposes that, the Custodial body shall not be authorized to initiate the procedure on his/her behalf.

Article 279
Support is, as a rule, awarded in form of money. Support may also be awarded in a different manner if the person providing support and the dependant agree about it.

Article 280
At the request of the dependant, or the person obliged to provide support, the court may increase, reduce or revoke support awarded by an earlier decision of the court, if the circumstances on the basis of which the decision was made change after the decision is made.

Article 281
The court shall order the person obliged to provide support to pay the future amounts in the fixed determined monthly amounts of money.

If the person who is obliged to provide support has regular monthly incomes in money the court shall, at the request of the dependent, determine the future amounts of support as a percentage of the salary, pension or any other regular money income.

If the amount of support is determined as a percentage of regular monthly money incomes of the person obliged to provide maintenance (salary, compensation of the salary, pension, author’s fee, etc), it, as a rule, may not be lower than 15% or higher than 50% of the regular monthly money incomes of the persons obliged to provide support.

If the person who is receiving the maintenance is a child, the amount of support should provide at least such a level of the standard of living for the child which is enjoyed by the parent of the person who is paying the support.

Article 282
If the parent, who on the basis of the court decision is obliged to pay certain amount for support of his/her child, does not fulfill his/her obligations regularly, custodial body shall, at the proposal of other parent or ex officio, undertake measures to provide temporary support for the child according to the regulations on social and children protection until the parent starts fulfilling his/her obligation.

Article 283
Physical or legal entity which bore the costs of support for a person may by an action request a compensation of the costs from the person who is according to this law obliged to provide support, if the costs incurred were necessary.
If several persons share the obligation to provide support, they shall jointly be responsible to the third person for the incurred costs of support, up to the amount of their financial circumstances.
In case of death of the person who was entitled to the permanent monetary support according to the regulations on social protection, the costs of this support may be covered by his/her estate, regardless of whether his/her inheritors are the persons who were legally obliged to support him/her or not.

Article 284
The right to alimony provided by a spouse or a partner in a common-law marriage shall be exercised sooner than the right to support provided by relatives.
If, at the same time, there are several persons in need of support, the right of a child to support shall be the priority.

PART EIGHT
PROPERTY RELATIONS

1. Property of spouses

Article 285
Spouses may have separate and joint property.

Article 286
Separate property shall consist of the property that a spouse obtained before entering into the marriage, as well as the property that the spouse obtained during the marriage by inheritance, gift or other forms of obtaining property free from encumbrances.
Every spouse shall independently manage and dispose of his/her separate property, if the spouses do not agree otherwise.

Article 287
If during the marital community there was a slight increase in the value of the separate property of one spouse, the other spouse shall have the right to claim in money the amount proportional to his/her contribution.
If during the marital community there was a slight increase in the value of the separate property of one spouse, the other spouse shall have the right to a share of the property which would be proportional to his/her contribution.

Article 288
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 on games of chance, unless a spouse invested his/her separate property into the game.
Article 289
Rights of spouses regarding joint property, in terms of the article 288 of this Law, shall be registered in register of immovables and other appropriate registers under the names of both spouses as their joint property without determining the ownership over the parts of it. If only one spouse is entered in register of immovables and other appropriate registers as the owner of the joint property, it shall be considered that the entry was made on behalf of both spouses, if the entry was not made on the basis of a written agreement made between spouses. If both spouses are entered in register of immovables and other appropriate registers as co-owners on the precisely defined parts of the property, it shall be considered that they have divided the joint property in that way.

Article 290
A spouse may not manage his/her share in the undivided joint property and he/she cannot place legal encumbrances on the property *inter vivos*.

2. Managing joint property

Article 291
Joint property, during the marriage, shall be managed and disposed of jointly and by mutual consent of both spouses.

Article 292
Spouses may conclude a contract regulating that one of them shall perform the activities of managing and disposing of the whole joint property or its parts. The contract can be limited only to the management or only to the disposition. When not agreed otherwise, management shall include disposition within regular business operation. Contract may refer to all the activities of management and disposition or only to the activities of regular management or to certain individual activities. Each spouse may terminate the contract on management or disposition of joint property at any time, except in the time in which it is obvious that termination of the contract shall inflict damage to the other spouse.

3. Settlement of joint property of spouses

Article 293
Spouses may amicably divide the joint property by determining the parts in the whole property or a part of the property or of an individual item, as well as by determining that each spouse obtains certain items or rights from the property or that one spouse pays the other spouse the monetary value of his/her part. The agreement referred to in the paragraph 1 of this Article must be made in written form.

Article 294
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 cooperation in management, maintenance and increase of joint property.

Article 295
Settlement of joint property of spouses may be requested during the marriage and after cessation of a marriage.

The right to request the settlement of joint property belongs to spouses, inheritors of a deceased spouse or a spouse who was pronounced dead, as well as a claimant of one of the spouses if he cannot cover his claims from the separate property of the spouse.

Article 296
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.

Article 297
The spouse who is committed custody of children, shall, apart from his/her part of the property, obtain also the items that are used by children only or that are intended only for being directly used by the children.

In the process of settling the property the spouse who is committed custody of children shall be given the items for which it is obvious that it is in the interest to be in the possession and ownership of the spouse who is committed custody of the children.

Article 298
When in the executive procedure the final judgment is made to sell the part of the joint property awarded to one spouse, the other spouse shall have the right of prior purchase of that part of the property.

4. Liability of spouses for debts to third persons

Article 299
Each spouse shall be liable for his/her own liabilities taken on before or after entering into the marriage. He/she shall be liable by his/her separate property and his/her share in the joint property.
Article 300
As for the liabilities to third parties that one spouse takes on for the purposes of satisfying current needs of marital community, and as for liabilities which, according to general regulations, are a burden of both spouses, spouses shall be jointly liable for them by both their joint property and their separate properties.
The spouse, who out of his separate property covers the joint liabilities, shall be entitled to request the other spouse to compensate for his/her part of the liabilities.

5. Marital Agreement
Article 301
During the marriage or before entering into marriage, spouses may by an agreement (marital agreement) regulate all their property relations related to the existing or future property. Marital agreement shall be concluded in a written form and it must be certified by the notary, who shall be obliged before certifying the agreement to read it to the spouses and to warn them that the agreement excludes the legal regime for the joint property. Marital agreement which refers to immovable property shall be registered in the register of immovables.

Article 302
Guardian of the spouse deprived of business capacity may conclude the marital agreement on behalf of such a spouse and with the approval of the custodial body.

Article 303
Spouses may not make an agreement to have the application of the right of another state to their property relations.

6. Returning gifts of spouses
Article 304
If a marriage ceases to exist through divorce or annulment, the gifts that the spouses gave to each other before entering into marriage or during the marriage shall not be returned. The gifts from separate property of the spouse that are of disproportionally large value in comparison to his/her whole property at the time of submitting the request for returning the gifts to the gift-giver shall be returned in case of divorce or annulment of the marriage. The spouse shall not be obliged to return such a gift if it would mean the obvious injustice towards him/her, or if it would bring him into difficult material circumstances.

Article 305
Instead of gifts that have been alienated, the monetary values or the things that have been received in exchange for the gifts shall be returned. Value in money shall be determined in the amount for which the gift was alienated or in the value that the gift had at the time of the alienation, at the choice of the gift-giver. If a gift has been alienated or destroyed with a malicious intent, the donee shall be obliged to compensate to the gift-giver for the value of the gift, and he/she shall be obliged to compensate the market price at the time when the item was supposed to be returned.
Provisions of the Article 304 of this Law and paragraphs 1 to 3 of this Article shall apply also in the case of establishing that there was a basis for annulment i.e. divorce of the marriage.

7. Property relations of the persons in common-law marriage
Article 306
The property obtained by work of the persons in common-law marriage which lasted for a longer period of time shall be considered their joint property.
The provisions of this Law on property relations of spouses shall apply accordingly to the property relations of partners in common-law marriage.

8. Property relations of parents and children
Article 307
The property of a child which was not obtained by the work of the child shall by the time the child comes of age be to the benefit of the child managed and disposed of by the parents of the child.
The child shall by him/herself manage and dispose of the property that he/she obtains by his/her work.

Article 308
Incomes from the property of the child may be used by the parents primarily for the support of the child and covering his/her medical treatments, upbringing and education, as well as for support of the members of immediate family, if they do not have sufficient means.
It is only with the approval of the competent custodial body that parents may alienate or burden the immovable property, more valuable movable property and the property rights of the child for the purposes of maintenance of the child and child’s medical treatments, upbringing and education, or if other important interest of the child requires so.

Article 309
Child and parent who exercises the parental rights shall have the right of occupancy in the flat owned by the other parent of the child if the child and parent who exercises the parental rights do not have the right of ownership over a habitable flat.
The right of occupancy shall last until the child comes of age.
The child and the parent shall not have the right of occupancy if accepting their request for the right of occupancy means an obvious injustice towards the other parent.

9. Property relations of the members of a family community

Article 310
When in a family community with spouses i.e. partners in common-law marriage there are their children and other relatives who live with them and work on a homestead or perform other activities jointly, or make earning together in another manner, the property obtained within the duration of such a community shall be a joint property of all the members of the family community who participated in obtaining of such a property.

Article 311
Members of the family community shall jointly and by agreement manage and dispose of the joint property.  
Minor members of the family community who reach the age of 15 shall participate independently in obtaining and disposing of the joint property.  
A number of members of the family community may, by consent of all the members of the family community, be entrusted with the management of the joint property. In such a case the decision on exercising the rights of management shall be passed by majority of votes.  
Every member of the family community may request that the decision on entrusting some members with the management of joint property is revoked, and if other members of the family community do not agree with that the decision shall be made by the court in non-litigation procedure.

Article 312  
The rights of the members of the family community related to the immovable property which is their joint property in terms of the Article 311 of this Law shall be registered into register of immovables and other appropriate registers under the names of all the members of the family community who participated by their work in obtaining the unallocated items.  
If one of the members of the family community or certain members of family community are registered as owners in the register of immovables and other appropriate registers, the person who is registered shall be considered to be the owner until, at the proposal of other members of the family community, the note of the right of joint ownership is registered in the land register i.e. other public records.  
Members of the family community may challenge a contract by which one member of the family community as the owner of the entry alienated or burdened the property obtained in the family community, only if at the time of concluding the contract the note on the right of joint property was registered in the register of immovables or if at the time of concluding the contracts they distinctly informed the third party the contract was concluded with that the property is a joint property.  
Unauthorized alienation of a movable item of joint property may be challenged only if the title transferee was unconscientious.  
If a member of a family community alienates in an unauthorized manner the item which was jointly obtained within the family community, other members of the family community shall have the right to request that they are awarded the appropriate part of other items and claims or that the member of the family community who performed the alienation pays the compensation in form of money according to the size of their shares.

Article 313  
If the law does not stipulate otherwise, the provisions of this law regarding the property relations of spouses shall be accordingly applied to the property relations of the members of the family community referred to in the Article 310 of this Law.  
Article 314  
Members of family community may regulate their mutual property relations by a contract or in another manner.
Contract referred to in the paragraph 1 of this Article shall be valid only if it is made in a written form, if it includes all the members of the family community who participate in obtaining the property by their work and if the contract is certified by the notary. When certifying the contract, the notary shall read the contract and warn the parties of the consequence of the contract.

If minor members of the family community participate in concluding the contract the court shall before certifying the contract ask for the opinion of the custodial body.

Article 315
General rules of property law shall apply to the property relations of the members of the family which are not regulated by this law.

PART NINE
SPECIAL COURT PROCEEDINGS

1. Common provisions

Article 316
The proceeding related to family relations shall at the first instance be heard by a panel of one judge, and in the appellate procedure it shall be heard by the panel consisting of three judges. Individual judge and chairman of the panel referred to in paragraph 1 of this Article shall be the persons who acquired specific knowledge in the field of the rights of the child.

Article 317
The proceeding related to family relations is urgent if it refers to a child or a parent who exercises parental rights.
In the proceeding related to family relations referred to in the paragraph 1 of this Article the action shall not be delivered to the respondent for getting his/her response.
The proceeding referred to in the paragraph 1 of this Article shall be finalized by the court, as a rule, in at most two hearings.
The first hearing shall be scheduled in such a manner that it takes place within 15 days from the day on which the action or proposal was received by the court.
The court at second instance shall be obliged to pass the decision within 30 days from the day on which the appeal was delivered to the court.

Article 318
In the proceedings related to family relations the court may establish the facts even if the parties do not dispute about them and the court may independently examine the facts that none of the parties presented.

Article 319
Public shall be excluded from the proceedings related to family relations.
Data from court records shall have the status of official secret and all the participants in the proceedings who have access to the data shall be obliged to keep them confidential.

Article 320
The court shall decide about compensation of the expenses of the proceedings related to family relations in its discretion, taking into account the grounds of fairness.

Article 321
Revision shall always be allowed in the proceedings related to family relations, unless this Law stipulates otherwise.

2. Proceedings in matrimonial disputes

Article 322
The proceeding in matrimonial dispute shall be initiated by an action.
The proceedings for divorce by mutual consent shall be initiated by a joint proposal of spouses (proposal for divorce by mutual consent).
If one spouse brings an action for divorce of the marriage, and the other spouse at latest before the closure of the main hearing explicitly states that he/she does not dispute the merits of the statement of claim, it shall be considered that the spouses have submitted a proposal for divorce by mutual consent.

Article 323
Spouses shall have the right to institute proceedings for divorce. This right shall not be transferred to the inheritors, but the inheritors of the plaintiff may continue with the initiated proceedings in the aim of proving the merits of the action.
If the merits of the action are proved, the surviving spouse shall loose the right to be an inheritor to his/her deceased spouse’s estate and the right to benefits from the will or other benefits in other kind of disposal in case of death.

Article 324
A guardian of a mentally disordered spouse, or a guardian of a person who is not of sound mind, may bring an action for divorce of marriage only after the approval of the custodial body.

Article 325
If the action for annulment or divorce of marriage is brought by an attorney of a party, the power of attorney must explicitly state the reason of bringing the action.
The power of attorney referred to in the paragraph 1 of this Article must be certified.

Article 326
In the disputes for divorce of marriage upon the action of one of the spouses, the procedure of mediation shall be conducted in accordance with the Law on Mediation and this Law.
Upon receiving the action the court shall schedule hearing and ask the spouses to make statements immediately as for which mediator they want to approach for the purposes of the attempt at reconciliation or i.e. achieving agreement on regulation of the legal consequences of the divorce of their marriage.
If spouses do not reach the agreement about the mediator, the mediator shall be appointed by the court.

Article 327
The court shall without any delay forward the action to the mediator, together with the enactment of appointing him/her as mediator, the names and addresses of spouses and data on joint children, if any.

Article 328
The mediator shall, within eight days from the day of receiving the enactment of appointment, invite the spouses, according to the rules of direct service, to attend the procedure of reconciliation without proxies. In the procedure of reconciliation they shall attempt to resolve the disturbed relations without conflicts and without divorce of marriage.

Article 329
If spouses reconcile in the reconciliation hearing, it shall be considered that the action for divorce has been withdrawn.

Article 330
If one or both spouses, although duly summoned, fail to respond to the mediator’s invitation to reconciliation, and they do not justify their absence, it shall be considered that reconciliation was unsuccessful and the procedure of mediation shall continue in the aim of reaching the agreement of spouses on exercising parental rights after the divorce and agreement on settlement of joint property.
Both spouses and their proxies shall be invited to the meeting aimed at reaching the agreement referred to in the paragraph 1 of this Article.

Article 331
The procedure of mediation aimed at attempting reconciliation of spouses must be conducted within a month from the day of forwarding the action to the mediator. The procedure of mediation aimed at achieving agreement on consequences of the divorce must be conducted within 60 days from the day of termination of the reconciliation procedure.

Article 332
Mediator shall be obliged to inform the court the action was brought to about the success of mediation and to deliver to the court the minutes on reconciliation and the minutes containing the agreement of the spouses about exercising of parental rights and about the settlement of joint property, i.e. the statements of spouses that the agreement was not achieved.

Article 333
The agreement of spouses about the settlement of joint property shall be entered into the declaration of court judgment on divorce of the marriage.
The agreement of spouses about exercising parental rights shall be entered into the declaration of court judgment on divorce of the marriage if the court estimates that the agreement is in the best interest of the child.

Article 334
If one or both spouses, although duly summoned, fail to appear upon the invitation of the mediator related to reaching the agreement on exercising parental rights or settlement of joint
property, and they do not justify their absence, the mediation shall be considered unsuccessful and the proceedings upon the action for divorce of marriage shall continue.

Article 335
Procedure of mediation for the purposes of reaching the agreement on exercising parental rights and agreement on settlement of joint property after annulment of the marriage shall be completed within 60 days after forwarding the court decision on annulment of the marriage to the mediator.

Article 336
During the whole proceedings for divorce of marriage the court shall be obliged to cooperate with the custody agencies and other professional services which deal with the issues of marriage and family, especially when spouses have joint minor children.

Article 337
The main hearing may not be scheduled before the expiry of the term of a month from the day of unsuccessful reconciliation or from the decision of the court not to attempt the reconciliation because it is impossible or it is connected to extreme difficulties.

Article 338
During the procedure in matrimonial disputes, upon the proposal of a spouse, the court may make a decision imposing temporary measures for the purposes of providing maintenance and accommodation to the spouse. The appeal against the decision from the paragraph 1 of this Article shall not delay enforcement of the decision.

Article 339
Judgment in default of appearance or the judgment on the basis of confession or waiver may not be pronounced in matrimonial disputes. Parties in matrimonial disputes may not conclude judicial settlements.

Article 340
When the procedure is initiated by the proposal of the spouses for divorce of marriage by mutual consent the facts on which the proposal is based shall not be examined, but the court may decide to conduct the evidence procedure, as in the case of the action for divorce of marriage, if the court estimates that the justified interests of the joint minor children require for the marriage to survive.

If the proposers have children together the court may examine the facts and conduct the evidence procedure, related to the part of the proposal of the spouses which refers to exercising parental rights, if the court is of the opinion that the agreement of the parents about these issues cannot provide sufficient guarantees that the interests of their minor and incapable children shall be sufficiently protected by such an agreement.

Article 341
In matrimonial disputes the plaintiff may without the consent of the defendant withdraw the action until the moment of the closure of the main hearing. If the plaintiff has the consent of the defendant the action may be withdrawn until the moment of final completion of the proceedings. The joint proposal for divorce of marriage by mutual consent may be withdrawn by spouses until the decision on divorce of the marriage comes into effect. The proposal shall also be considered withdrawn if one spouse gives up on it. In cases from paragraphs 1 and 2 of this Article, if withdrawal of the action or joint proposal for divorce of marriage by mutual consent happened after the judgment was passed at the first instance, the court of the first instance shall by a decision state that the judgment is without legal effect and that the procedure is stayed. The court shall proceed in the same manner also when only one of the spouses gives up on the proposal for divorce of marriage by mutual consent. The court shall also proceed in the manner referred to in the paragraph 3 in case of death of a spouse, which does not affect the rights of inheritors to continue the procedure in terms of the Article 325 of this Law. In matrimonial disputes giving up on statement of claims has the same legal effect as withdrawing of the action.

Article 342
In the judgment on matrimonial dispute the court shall be obliged to decide on exercising parental rights. In the judgment on matrimonial dispute the court may decide on limitation or deprivation of parental rights.

Article 343
The judgment by which marriage is divorced upon the proposal of spouses for divorce by mutual consent, can be attacked in the part referring to the divorce of marriage, only due to significant violation of provisions of litigation procedure or due to the fact that the proposal was given in delusion, or under the influence of force or fraud.

Article 344
If a marriage is divorced or annulled by a final judgment, the decision on cessation of the marriage cannot be changed by use of ancillary remedy, regardless of whether any of the parties has entered into a new marriage.

3. Procedure in paternity and maternity disputes

Article 345
In the disputes for determination or denial of paternity or maternity a minor child may bring an action either at the court of general territorial competence or at the court at the territory of whose jurisdiction the place of permanent or temporary residence of the child is. The child may bring an action to the court of territorial jurisdiction in the place of his/her permanent or temporary residence, even after he/she comes of age, but only if the defendant does not have the place of temporary or permanent residence at the territory of Montenegro. Provision of the paragraph 1 of this Article shall apply also in case that the child brings the action together with another person.
Article 346
Parties in the dispute for determination of paternity shall be the persons whose paternity is being determined, the child and the mother of the child.
Parties in the procedure for denial of paternity of the person who is legally considered to be the father of the child shall be that person, the child and the mother of the child.
When the person who considers himself father of a child challenges the paternity of the person who has acknowledged the child, the parties in the procedure shall be the person who challenges the acknowledged paternity, the person whose paternity is challenged, the child and the mother of the child.

Article 347
If the action for determining, i.e. challenging paternity does not include all the persons referred to in the Article 346 of this Law, the court shall ask the plaintiff to extend the action in order to include all of them. These persons may not oppose the extension of the action.
If in the procedure for challenging paternity in the period determined by the court a plaintiff does not extend the action to the persons not included in the action, or if those persons do not join the action as new plaintiffs in that period, the action shall be rejected.
If in the procedure for challenging paternity in the period determined by the court a plaintiff does not extend the action to the persons not included in the action, or if those persons do not join the action as new plaintiffs in that period, the court shall inform custodial body about that and determine the deadline in which the action may be extended to persons who are not included in the action. If in that deadline the action is not extended, the court shall reject the action.

Article 348
The parties who are jointly bringing the action for determining or challenging of paternity, i.e. the parties who are sued by the same action, shall be considered one party in litigation, so that in case that one of the jointly interested parties fails to perform any of the activities in the litigation, the effect of the activities performed by the other jointly interested parties shall be extended to the ones who did not perform those activities.

Article 349
If the child and the parent who legally represents the child together bring the action for determining or challenging paternity, or if they are sued by the same action, that parent shall represent the child in the litigation, but custodial body may determine a special guardian to the child if between the parent and the child there are conflicting interests in that litigation procedure.
If the child and the parent, who legally represents the child, appear in the litigation with opposite litigation roles – the roles of the plaintiff and the defendant, the custodial body shall appoint a special guardian for the child.

Article 350
If the action in the procedure regarding paternity and maternity is brought by an attorney of a party, the power of attorney must be certified and issued only for the purposes of representation in this procedure. Power of attorney should contain the particulars in terms of the kind of action or grounds for instituting the procedure.
Article 351
Judgment in default of appearance or the judgment on the basis of confession or waiver may not be pronounced in procedures regarding paternity and maternity, neither may a judicial settlement be concluded.
If in the procedure for determining paternity the defendant acknowledges paternity the procedure shall be suspended, and the court shall immediately deliver the certified transcript of the minutes with the statement on acknowledgment of paternity to the registrar competent for entering the child into the register of births.

Article 352
Within procedures regarding paternity and maternity, the court shall be obliged to include into the judgment the decision on exercising of parental rights. The court may also decide on limitation and deprivation of parental rights.

4. Procedure in disputes for protection of the child’s rights

Article 353
A child may bring an action in the dispute for protection of his/her rights or in a dispute for exercising parental rights before the court of territorial jurisdiction or the court in the jurisdiction of which the child has the permanent i.e. temporary place of residence.

Article 354
Actions for protection of a child’s rights may be brought by: the child, parents of the child, state prosecutor and custodial body.
Actions for protection of a child’s rights may be brought in relation to all the rights that children have according to this law and which are not protected by some other procedure.
All the children institutions, health and educational institutions or institutions for social protection, judicial and other state bodies, associations and citizens have the right and duty to inform the state prosecutor or custodial body about the reasons for protection of a child’s right.

Article 355
An action for exercising parental rights may be brought by: the child, parents of the child and custodial body.

Article 356
If there are conflicting interests between the child and his/her legal representative, the child shall be represented by a “guardian in case of conflict of interests” (hereinafter: collision guardian).
The child who has reached the age of 10 and who is capable of reasoning may by him/herself or through another person or institution request from the custodial body to appoint a collision guardian.
The child who has reached the age of 10 and who is capable of reasoning may by him/herself or through another person or institution request from the court to appoint a temporary representative for him due to the fact that there are conflicting interests between him/her and his/her legal representative.
Article 357
In the dispute related to protection of a child’s rights and in the dispute related to exercising parental rights the court shall always be obliged to be governed by the best interests of the child. If the court estimates that in the dispute related to protection of a child’s rights and in the dispute related to exercising parental rights the child as a party is not represented in an appropriate manner, the court shall be obliged to appoint a temporary representative for the child. If the court establishes that in the dispute related to protection of a child’s rights and in the dispute related to exercising parental rights the party is a child capable of forming an opinion, the court shall be obliged:
1. to provide that the child timely obtains all the information that he/she might need;
2. to allow the child to express his/her opinion directly and to pay due attention to the opinion of the child, in line with the age and maturity of the child;
3. to take the statement of the opinion of the child in the manner and on the place which is in line with the child’s age and maturity, unless that would be obviously in conflict with the best interest of the child.

Article 358
If the collision guardian or temporary representative establishes that in the dispute related to protection of a child’s rights and in the dispute related to exercising parental rights i.e. deprival of parental rights he/she is representing a child who is capable of forming an opinion, he/she shall be obliged:
1. to provide that the child timely obtains all the information that he/she might need;
2. to provide explanation to the child related to the possible consequences of the actions he/she is undertaking;
3. to convey to the court the opinion of the child, if the child did not directly express the opinion at the court, unless that would obviously be in conflict with the best interest of the child.

Article 359
Provisions of the Articles 356-358 of this Law shall apply in other court proceedings related to family relations if these proceedings also refer to the rights of a child. Bodies conducting other proceedings shall be obliged to apply provisions of the Articles 356-358 of this Law if these proceedings also refer to the rights of a child.

Article 360
Procedure for protection of a child’s rights shall be particularly urgent. The first hearing shall be scheduled in such a manner that it takes place within eight days from the day on which the court received the action. Second-instance court shall be obliged to pass the judgment within 15 days from the day on which it was delivered the appeal.

Article 361
Before passing the judgment on protection of a child’s rights or on exercising parental rights, the court shall be obliged to ask for findings and expert opinion of custodial body, family guidance clinic or other specialized institution.
Article 362
Judgment in default of appearance or judgment on the basis of confession or waiver may not be pronounced in a dispute related to protection of a child’s rights and in a dispute related to exercising of parental rights.
In a dispute related to protection of a child’s rights and in a dispute related to exercising of parental rights parties may not conclude a judicial settlement.

Article 363
Agreement of parents on joint or individual exercising of parental rights shall be entered into the declaration of judgment on exercising parental rights if the court estimates that such an agreement is in the best interest of the child.
If the parents have not made an agreement on exercising parental rights or if the court estimates that their agreement is not in the best interest of the child, the court shall pass the decision on committing custody of the child to one parent, the decision on the amount of contribution for alimony which is to be given by the other parent and the decision on the manner of keeping personal relations between the child and the other parent.
If the court passes a decision on joint or individual exercise of parental rights at the time when the child is not with the parent who is to exercise the parental rights, the court shall order that the child is immediately handed over to the parent who is to exercise the parental rights.

5. Proceedings in the disputes related to the alimony

Article 365
In matrimonial disputes related to caring for and upbringing of children, the court shall ex officio decide upon alimony for minor children and children of age for whom the parental rights have been extended.
Agreement of parents on alimony for their child shall be accepted by the court only if it is in accordance with the provisions of this law on awarding alimony.
Court shall ex officio decide on alimony for a child, when in a procedure for determining paternity the court establishes that the defendant is the father of the child or when in the procedure of establishing maternity the court establishes that the defendant is the mother of the child.

Article 366
The proceeding in the disputes regarding alimony is urgent.
The first hearing shall be scheduled within eight days from the day on which the court received the action.
Second-instance court shall be obliged to pass the judgment within 15 days from the day on which it was delivered the appeal.

Article 367
The court shall not be tied by the bounds of the statement of claims for alimony.

Article 368
When the court establishes that parents, neither individually nor jointly, are in the position to satisfy the needs of support for a minor child in the amount provided for by this Law, the court shall inform the custodial body about that, and, if needed, the court shall suspend the proceedings until the expiry of the deadline determined for the custodial body to express its opinion. Custodial body may in such a case on behalf of the minor extend the action for support to other persons who are legally obliged to provide support. These persons may not oppose extension of the action. Legal representative of a minor child shall also have the right to extend the action under the conditions from the paragraph 2 of this Article. If in the further procedure it is established that other relatives are also not in a position to satisfy the needs of support for the child, custodial body shall undertake all the necessary measures in order to secure the means for support of the child according to the regulations on social protection.

Article 369
In the disputes regarding support for minor children and children for whom parental rights have been extended, as well as in other disputes in which the decision on support for these children is passed ex officio, the court shall ex officio pronounce temporary measures for the purposes of providing support, if both parents do not participate in support of the child with the appropriate contributions. In the disputes for legally awarded support for a capable adult persons the court may pronounce temporary measures for support for these persons only at the request of the requestor of support. Temporary measures referred to in the paragraphs 1 and 2 of this Article shall be pronounced by the court if the facts that the right to support depends on are likely to be true. In procedures for determining paternity i.e. maternity such measures shall also be pronounced if it appears to be likely that the defendant is the father of the child, i.e. that the defendant is the mother of the child.

Article 370
Custodial body shall be obliged at the request of the court to collect all the data important for passing the court decision on support. In the procedures of deciding on legally awarded support for minor children and children for whom the exercising of parental rights has been extended, the procedure shall be conducted according to the provisions of the Article 366 of this Law.

Article 371
When a person obliged to provide support, in relation to whom the executive court decision on support is enforced, has its employment terminated, the body, organization or community i.e. employer, whose treasury has been issued an order or forced collection of contribution for support, shall be obliged to deliver the data on the executive document and approval of execution, as well as the name and the address of the person the payment is made to, to the body, organization or community, i.e. employer that employed the person obliged to provide support. Body, organization or community, i.e. employer that employed the person obliged to provide support shall be obliged immediately to inform the person who, according to the court decision, is paid the support.
6. Application of the Code on Civil Procedure

Article 372
Unless this Law regulates otherwise the provisions of the Code on Civil Procedure shall apply to the proceedings of the court related to family relations.

7. Application of the Law on Non-litigation Procedure

Article 373
The provisions of the Law on Non-litigation Procedure shall apply in legal matters for which this Law stipulates that they shall be solved in a non-litigation procedure.

8. Executive proceedings

Article 374
The court which has the general territorial jurisdiction for the party which is demanding enforcement of the decision, as well as the court within whose territorial jurisdiction the child happens to be shall be competent for deciding on proposal for enforcement of the decision of the court which includes the order to hand the child over to its parent or to some other person i.e. organization which is committed custody of the child.
The court in whose territory the child happens to be shall have the territorial jurisdiction for implementing the enforcement.

Article 375
When implementing coercive enforcement, the court shall take into account the urgency of the procedure and the need that the personality of the child is protected to the largest possible extent. After considering all the circumstances of the case, the court shall decide whether to implement the enforcement by pronouncing fines against the person that keeps the child or by taking the child away from that person.
If the purpose of enforcement may not be achieved by pronouncing and enforcing decision on fines, enforcement shall be implemented by taking the child away from the person who keeps the child and by handing the child over to the parent, i.e. other person or organization which is committed custody of the child.
In the procedure of enforcement the court shall ask for the support of the custodial body.

Article 376
Unless otherwise regulated by this or some other law the provisions of the Law on executive procedure shall be applied in the procedure of enforcement and securing the decision on protection of the rights established by this law.

PART TEN
TRANSITIONAL AND FINAL PROVISIONS

Article 377
Marriage contracted before this Law came into effect shall be valid if it was contracted according to the regulations which were in force at the time of contracting the marriage.

Article 378  
Provisions of this Law shall also apply to family relations which were created before the day of the beginning of application of this Law, unless this law provides otherwise.

Article 379  
Provisions of this Law shall be applied in the proceedings at a court, or custodial body in the matters in which up to the day of the beginning of application of this law no decision at the first-instance was passed.

Article 380  
If before the day of the beginning of application of this Law the first-instance decision was made by which the procedure is completed at the first-instance court, custodial body or other body, further procedure shall continue, according to the regulations which were in force up to the day when this Law came into effect. If after the beginning of application of this law a first instance decision from the paragraph 1 of this Article is overruled, further procedure shall be conducted according to the provisions of this Law.

Article 381  
Regulations for enforcement of this Law shall be passed within 6 months from the date when this Law enters into force.

Article 382  
Family Law (“Official Gazette of the Socialist Republic of Montenegro”, No 7/89) ceases to be valid on the day on which this Law comes into effect.

Article 383  
This Law shall come into effect on the eight day from the day on which it is published in the “Official Gazette of the Republic of Montenegro” and it shall be applied from September 1st 2007.

5. **EXCERPTS OF THE CRIMINAL CODE**

*Excerpts of the Criminal Code (2011) to be read together with extracts from the Law Amending the Criminal Code (30 July 2013)*

**GENERAL PART**

[...]

**Extreme Necessity**

**Article 11**  
(1) An act committed in extreme necessity shall not constitute a criminal offence.
(2) Extreme necessity is a condition under which a perpetrator committed an act to eliminate concurrent or imminent danger to his good or good of another person which he did not cause and which could not have been eliminated in any other manner, provided that the harm caused thereby does not exceed the harm threatened.

(3) Where a perpetrator caused danger by negligence, or where he exceeded the limits of extreme necessity, he may receive a lighter punishment, and where he exceeded the limits under particularly mitigating circumstances, punishment may be remitted.

(4) Where a perpetrator was under an obligation to expose himself to the danger threatened, such an act may not constitute extreme necessity.

Force and Threat

Article 12

(1) An act which was committed under the influence of absolute force shall not constitute a criminal offence.

(2) If a perpetrator committed a criminal offence to eliminate danger to his good or good of another person and where such danger was represented by either force which is not absolute or a threat, the perpetrator shall be subject to the provisions of Art.11 hereof mutatis mutandum, and the force and threat shall be considered to be a danger which he did not cause.

(3) If a perpetrator committed a criminal offence under force or threat, where the conditions referred to in paras 1 and 2 hereof are not met, the perpetrator thereof may receive a lighter punishment, and where such an offence was committed under particularly mitigating circumstances, punishment may be remitted.

(4) In the cases referred to in paras 1 and 2 hereof, where the person who was under force or threat is not considered to be the perpetrator of that criminal offence, then the person who applied force or threat shall be considered to be the perpetrator.

[...]

3. Complicity in Criminal Offence

Principal and Co-principal

Article 23

(1) A principal shall be a person who commits a criminal offence himself or a person who carries out the crime through another person provided that this other person cannot be considered to be the principal.

(2) Where several persons jointly take part in the commission of a crime with wrongful intent or by negligence, or where they follow their prior arrangement and jointly act with wrongful intent and thus make a significant contribution to the commission of the criminal offence, each person shall receive a punishment prescribed for the crime in question.

Instigation

Article 24

(1) Anyone who acts with wrongful intent to instigate another person to commit a criminal offence shall receive a punishment as if he committed the crime by himself.

(2) Anyone who acts with wrongful intent to instigate another person to commit a criminal offence which carries a five year prison term or a more severe punishment but does not even
attempt commission shall receive the punishment laid down by law for the attempted criminal offence.

Aiding
Article 25
(1) Anyone who acts with wrongful intent to aid another in the commission of a criminal offence shall be punished as if he committed it himself, but may receive a lighter punishment.
(2) The following, in particular, shall be considered as aiding in the commission of a criminal offence: giving counsel or instructions on how to commit the crime, supplying the perpetrator with the means for commission of the crime, creating conditions or removing obstacles to the commission of crime as well as promising one prior to the commission to conceal the crime, a perpetrator, the means by which the crime was committed, any traces of the crime, or the proceeds of crime.

Limits of Liability and Punishment of Accomplices
Article 26
(1) Co-principal liability is defined by his wrongful intent or negligence, and instigator and aider liability by their wrongful intent.
(2) Where a co-principal, instigator or an aider voluntarily prevented the commission of a criminal offence, punishment may be remitted.
(3) Personal relations, capacity and circumstances for which the law excludes culpability or allows for the remission of punishment and which serve as ground to qualify an offence as serious or minor, or have an impact on the punishment imposed, may apply only to the principal, co-principal, instigator or aider with whom such relations, capacity and circumstances exist.

Punishment of Instigator and Aider for Attempt and for Minor Criminal Offence
Article 27
(1) Where the commission remains incomplete, the instigator and aider shall receive a punishment for an attempt.
(2) Where the principal commits a minor criminal offence than the one that instigation or aiding refers to and which would have been contained in it, the instigator and aider shall receive punishment for the criminal offence committed.
(3) The provision of para. 2 hereof shall not apply if the instigator would receive a more severe punishment under Art.24, para. 2, hereof.

[…]

General Rules for Fixing Punishment
Article 42

(1) The court shall fix the punishment for the perpetrator of a criminal offence within the statutory limits for that particular offence taking into account the purpose of punishment and giving due consideration to any circumstances which result in lighter or more severe punishment (mitigating and aggravating circumstances) as well as the following, in particular: degree of culpability, motives for the commission of offence, degree of peril or injury to the protected
good, circumstances under which the offence was committed, perpetrator’s history, his personal
situation, his behaviour after the commission of criminal offence, particularly his attitude towards
the victim of the criminal offence as well as any other circumstances concerning the perpetrator’s
personality.
(2) In fixing a fine the court shall give particular consideration to the perpetrator’s financial
situation.
(3) The circumstance which is an element of the criminal offence may not be additionally taken
into consideration as either an aggravating or mitigating circumstance, except where it exceeds
the measure required for establishing the criminal offence or a certain form of criminal offence,
or where there are two or more such circumstances of which only one is sufficient for the
establishment of a more serious or minor form of the criminal offence.

[...]
(3) The measures referred to in para. 2 above may be imposed on a perpetrator whose mental capacity has been significantly diminished provided that he has already received a punishment or suspended sentence.

(4) Mandatory medical treatment of drug addiction, mandatory medical treatment of alcoholism, disqualification from a profession, activity or duty, driving prohibition, confiscation of objects and publication of the judgment may be imposed if the perpetrator has already received punishment, suspended sentence or judicial admonition or if his punishment has been remitted.

(5) The measure of expulsion of a foreign national from the country may be imposed provided that the perpetrator has already received punishment or suspended sentence.

(6) A security measure shall be imposed for concurrent criminal offences provided that it was pronounced for at least one of the concurrent criminal offences.

**Mandatory Psychiatric Treatment and Placement in Medical Institution**

**Article 69**

(1) The court shall impose mandatory psychiatric treatment and placement in an appropriate medical institution on a perpetrator who committed a criminal offence in the state of significantly diminished mental capacity if it establishes that in consideration of the committed offence and the state of mental alienation there is a serious threat that the perpetrator may commit a more serious criminal offence and that it is necessary to order his medical treatment in such an institution in order to eliminate this threat.

(2) If the conditions referred to in para. 1 above are met, the court shall order mandatory treatment and placement in a medical institution to a perpetrator who while in the state of mental incapacity committed an unlawful act that constitutes a criminal offence by law.

(3) The court shall suspend the measure referred to in paras 1 and 2 above once it has established that the need for treatment and confinement of the perpetrator in a medical institution has ceased.

(4) The measure referred to in para. 1 above that is imposed together with a prison term may last longer than the imposed sentence.

(5) The time spent in a medical institution by the perpetrator who committed a criminal offence in the state of significantly diminished mental capacity and who has been punished by prison term shall be included in the prison term imposed. If the period spent in a medical institution is shorter than the duration of the punishment imposed, once the security measure ends, the court shall order that the convicted person serves the remainder of punishment or be released on parole. In taking a decision on the release on parole, the court shall give due consideration in particular to the success of the treatment, his health condition, the time spent in a medical institution and the remainder of punishment not yet served, in addition to the conditions referred to in Art.37 hereof.

**Mandatory Outpatient Psychiatric Treatment**

**Article 70**

(1) A perpetrator who in the state of mental incapacity committed an unlawful act which constitutes a criminal offence by law shall be imposed the measure of mandatory outpatient psychiatric treatment provided that the court determines that there is serious threat that the perpetrator may commit an unlawful act which constitutes a criminal offence by law and that in order to eliminate this threat his outpatient treatment will be sufficient.
(2) The measure referred to in para. 1 above may be imposed also on a mentally incapacitated perpetrator on whom mandatory psychiatric treatment and placement in an appropriate medical institution have been imposed when the court establishes on the basis of the results of such treatment that his placement and treatment in that institution is no longer needed, and that his outpatient treatment would suffice.

(3) Under the conditions referred to in para. 1 above, the court may also impose mandatory outpatient psychiatric treatment on a perpetrator whose mental capacity was significantly diminished provided that he was imposed a suspended sentence or was released on parole pursuant to Art.69, para. 5 hereof.

(4) Mandatory outpatient psychiatric treatment may be occasionally conducted in an appropriate medical institution if this is necessary in view of a more successful treatment thereof, whereby the periodic treatment in a medical institution may not last longer than fifteen days continuously, or longer than two months in total.

(5) Mandatory outpatient psychiatric treatment shall last as long as there is a need for the treatment, limited to three years.

(6) In the case referred to in paras 1 through 3 above, if the perpetrator does not undergo outpatient treatment, or terminates it of his own free will, or if despite treatment thereof there is danger that he will commit again an unlawful act which constitutes a criminal offence by law that may render his treatment and confinement in a relevant medical institution necessary, the court may impose mandatory psychiatric treatment and confinement in such an institution.

Mandatory Medical Treatment of Drug Addiction

Article 71

(1) The court shall impose mandatory treatment on a perpetrator who committed a criminal offence due to his addiction to narcotics and where there is a serious danger that he may reoffend due to this addiction.

(2) The measure referred to in para. 1 above shall be enforced in an institution for the enforcement of the punishment or in an appropriate medical or other specialized institution and shall last for as long as there is a need for treatment, limited to three years.

(3) When the measure referred to in para. 1 above is imposed in addition to a prison term, it may last longer than the imposed sentence, limited to three years.

(4) The time spent in the institution for medical treatment shall be included in the prison term.

(5) Where the measure referred to in para. 1 above is imposed in addition to a fine, a suspended sentence, judicial admonition or remission of penalty, it shall be enforced outside of any confinement and may not exceed three years.

(6) If for no justified reason a perpetrator decides not to undergo outpatient treatment or decides to leave the treatment of his free will, the court shall order the coercive enforcement of the measure in an appropriate medical or other specialized institution.

Mandatory Medical Treatment of Alcoholism

Article 72
The court shall impose a mandatory medical treatment on a perpetrator who committed a criminal offence due to his addiction to alcohol and where there is a serious danger that he might reoffend due to this addiction.

(2) The measure referred to in para. 1 above shall be enforced in an institution for enforcement of prison sentences or in an appropriate medical or other specialized institution and shall last for as long as there is a need for treatment, limited to the duration of the prison term imposed.

(3) The time spent in an institution for medical treatment shall be included in the prison term.

(4) Where the measure referred to in para. 1 above is imposed in addition to a fine, suspended sentence, judicial admonition or remission of punishment, it shall be enforced out of confinement and be limited to two years.

(5) If for no justified reason a perpetrator does not undergo an outpatient treatment or leaves the treatment of his free will, the court shall order the coercive enforcement of the measure thereof in an appropriate medical or other specialized institution.

**Disqualification from Profession, Activity or Duty**

**Article 73**

(1) The court may disqualify a perpetrator from a certain profession, activity, all or some of duties related to the disposition, utilization, management or handling of someone else’s property or taking care of that property, if it is reasonable to believe that his further engagement in that activity would be dangerous.

(2) The court shall determine the duration of the measure referred to in para. 1 above, limited to minimum one and maximum ten years counting from the date of the final judgment, provided that the time spent in a prison or medical institution in which the security measure was enforced shall not be included in the term of this measure.

(3) If it imposes a suspended sentence, the court may order that the sentence be revoked if the perpetrator violates the prohibition thereof to engage in a profession, activity or duty.

**Driving Prohibition**

**Article 74**

(1) The perpetrator of a criminal offence against public traffic safety may receive the measure of driving prohibition.

(2) When imposing the measure referred to in para. 1 above, the court shall specify the type and category of vehicles that the prohibition applies to.

(3) The measure referred to in para. 1 above may be imposed where the court finds that the seriousness of the offence committed, the circumstances under which it was committed or the perpetrator’s prior violations of traffic regulations indicate that it is dangerous to let this person drive a motor vehicle of a certain type or category.

(4) The court shall set the term for which the measure referred to in para. 1 above will apply to a period from three months to five years counting from the date of the final judgment whereby the time served in a prison or institution where a security or a corrective measure was enforced may not be included in the term of this measure.

(5) The perpetrator of a criminal offence against public traffic safety which resulted in the death of one or more persons may receive the measure referred to in para. 1 above without time restriction (permanently) if he has previously received this security measure.

(6) Where the measure referred to in para. 1 above is imposed on a person who holds a foreign driver’s license, the prohibition shall refer to driving on the territory of
Montenegro.

(7) Where the court imposes a suspended sentence, the court may order that the sentence be revoked if the perpetrator violates the driving prohibition.

(8) A mandatory driving prohibition may be laid down by law.

Confiscation of Objects

Article 75

(1) The objects which were used or intended for use in the commission of a criminal offence or which resulted from the commission of a criminal offence may be confiscated provided that they are owned by the perpetrator.

(2) The objects referred to in para. 1 above may be confiscated even if they are not owned by the perpetrator if so required for reasons of security of people or property, or for moral reasons, but also where there is still a risk that they may be used for the commission of a criminal offence notwithstanding however the rights of third persons to claim damages from the perpetrator.

(3) Mandatory confiscation and the requirements to be met for confiscation of objects may be laid down by law.

(4) Mandatory destruction of confiscated objects may be laid down by law.

Expulsion of Foreigner National from the Country

Article 76

(1) A foreign national who committed a criminal offence may be expelled from the territory of Montenegro under a court judgment for a term from one to ten years, and where a foreign national is a repeat perpetrator, he may be expelled for good (Art.43).

(2) In deciding whether to impose the measure referred to in para. 1 above, the court shall give due consideration to the nature and seriousness of the offence committed, the motives out of which the criminal offence was committed, the manner in which it was committed, and any other circumstances that indicate why the foreign national should not be allowed to stay in Montenegro.

(3) The term of expulsion shall commence on the date of final judgment thereof, whereby the time spent in prison may not be included in the term for which the measure is imposed.

(4) The measure referred to in para. 1 above shall not be imposed against a perpetrator who enjoys protection under ratified international treaties.

Publication of the Judgment

Article 77

(1) Where it renders a judgment of conviction for a criminal offence committed through media or a criminal offence which endangered life or health of humans, where the publication of the judgment would help eliminate or diminish such danger, the court may order that the judgment be published in whole or in part in the media or in some other appropriate manner, whereby the costs of such publication shall be borne by the convicted person.

(2) Mandatory publication of judgment may be laid down by law. In that case the court shall specify the media of publication and whether it shall be published in its entirety or in summary form.

(3) The judgment shall be published within not longer than thirty days of the date of the final judgment.
Suspension of Security Measures by Court Decision

Article 78
(1) The court may order suspension of enforcement of the security measures of disqualification from a profession, activity or duty and driving prohibition provided that three years have lapsed since the date their enforcement started.
(2) In deciding whether to order suspension of the security measures referred to in para. 1 above, the court shall give due consideration the convict’s behaviour following the conviction, whether he has compensated for the damage inflicted by the criminal offence, whether he has returned the pecuniary gain obtained through the commission of the criminal offence as well as any other circumstances that may indicate it is justified to order suspension of the enforcement.

[...]

Applicability of Criminal Legislation of Montenegro to Perpetrators of Specific Criminal Offences Committed Abroad

Article 135
Criminal legislation of Montenegro shall be applicable to anyone who commits abroad a criminal offence referred to in Articles 357 through 369, Articles 371 through 374 and Articles 447 through 449 hereof or referred to in Art.258 hereof provided that counterfeiting refers to money that was the legal tender in Montenegro at the time of commission of the criminal offence.

Applicability of Criminal Legislation of Montenegro to National of Montenegro who Commits Criminal Offence Abroad

Article 136
(1) Criminal legislation of Montenegro shall also be applicable to a national of Montenegro where he commits abroad a criminal offence other than those referred to in Art.135 hereof, provided that he is found in the territory of Montenegro or gets extradited to Montenegro.
(2) Subject to the conditions referred to in para. 1 above, the criminal legislation of Montenegro shall also apply to a perpetrator who became a national of Montenegro after the commission of a criminal offence.

Applicability of Criminal Legislation of Montenegro to Foreign Nationals who Commit Criminal Offence Abroad

Article 137
(1) Criminal legislation of Montenegro shall also be applicable to a foreign national who commits outside the territory of Montenegro against Montenegro or its national a criminal offence other than those referred to in Art.135 hereof or who commits a criminal offence referred to in Articles 276a, 276b, 422, 422a, 423 and 424 hereof, in the commission of which a national of Montenegro is involved in any way, provided that he is caught in the territory of Montenegro or gets extradited to Montenegro.
(2) Criminal legislation of Montenegro shall also be applicable to a foreign national who commits a criminal offence abroad against a foreign country or a foreign national where such offence is punishable under the law of the country where it was committed by a prison term of five years or
longer, provided that he is caught in the territory of Montenegro but not extradited to a foreign country. Unless otherwise provided for by this Code, in such a case a court may pronounce punishment which is more severe than the punishment provided for by the law of the country where the criminal offence was committed.

**Special Conditions for Criminal Prosecution**

**Article 138**

(1) Where in the case referred to in Art.134 hereof the criminal proceedings were instituted or completed in a foreign country, prosecution in Montenegro shall be instituted only upon approval of the Supreme Public Prosecutor of Montenegro.

(2) In the case referred to in Art.134 hereof, prosecution of a foreign national may be referred, under the condition of reciprocity, to a foreign country.

(3) In the cases referred to in Art. 136 and 137 hereof, prosecution shall not be instituted if:

1) the perpetrator has served the punishment he was imposed abroad;

2) the perpetrator has been released abroad under a final judgment or if his punishment has become time barred or pardoned;

3) an appropriate security measure has been applied abroad against a mentally incapacitated perpetrator;

4) under a foreign law, such criminal offence is prosecuted upon request of the injured party, and such a request has not been filed.

(4) In the cases referred to in paras 136 and 137 hereof, prosecution shall be instituted only where the criminal offence in question is also punishable under the law of the country where the offence was committed, with the exception of criminal offences referred to in Articles 276a, 276b, 422, 422a, 423 and 424 hereof. In the case referred to in Art. 136 and 137, para. 1 hereof, where the criminal offence in question is not punishable under the law of the country where it was committed, prosecution shall be instituted solely upon the approval of the Supreme Public Prosecutor.

(5) In the case referred to in Art.137, para. 2 hereof, if at the time of commission the offence in question was considered a criminal offence under the general legal principles recognized by international law, prosecution may be undertaken in Montenegro upon the approval of the Supreme Public Prosecutor, irrespective of the law of the country where the criminal offence was committed.

**Inclusion of Time of Detention and Punishment Served Abroad**

**Article 139**

Detention, any other deprivation of liberty in relation to a criminal offence, deprivation of liberty during an extradition procedure, as well as the punishment served by a perpetrator under a judgment of a foreign court, shall be included in the term of punishment imposed by a national court for the same criminal offence; and where punishments are not of the same kind, such calculation shall be subject to court assessment.

**Applicability of Law of a Member State Which Lays Down Criminal Offence**

**Article 140**

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Applicability of the General Part of This Code

Article 141
Provisions of the general part of this Code shall be applicable to all criminal offences laid down by this Code or other law.

TITLE THIRTEEN
MEANING OF TERMS

Meaning of Terms Used in this Code

Article 142
(1) The territory of Montenegro shall mean land, territorial sea, and water areas within its borders, as well as air space above them.
(2) Criminal legislation of Montenegro shall mean this Code, and all other criminal provisions contained in other laws of Montenegro.
(3) A public official shall mean:
   1) a person who performs official duties in a state authority;
   2) an elected, appointed or designated person in a state authority, local self-government authority or a person who performs on a permanent or temporary basis official duties or official functions in these authorities;
   3) a person in an institution, business organization or other entity who is delegated authority to carry out public functions, a person who decides the rights, obligations or interests of natural and legal persons or public interest;
   4) and any other person performing official duties under a law, regulations adopted pursuant to laws, contracts or arbitration agreements, as well as a person who is entrusted with the performance of certain official duties or affairs;
   5) a military person, with the exception of provisions of Chapter Thirty Four of this Code.
5a) a person performing in a foreign state legislative, executive, judicial or other public function for a foreign state, a person who performs official duties in a foreign country on the basis of laws, regulations adopted in accordance with a law, contract or arbitration agreement, a person performing official duty in an international public organization and a person performing judicial, prosecutorial or other office in an international tribunal.
(4) A responsible officer is understood to mean the owner of a business organisation or other entity, or a person in a business organisation, institution or other entity who is entrusted by virtue of his function the funds invested or his authority, with a range of duties with respect to property management, production or other activity or with activities or their supervision or is tasked with the discharge of certain affairs. Also considered to be a responsible officer shall be a public official where he is designated as the perpetrator of any of the criminal offences which are are not included in the chapter of this Code governing criminal offences against official duties, or as criminal offences against a public official.
(5) A military person is understood to mean the following: professional military person (soldiers under contract, non-commissioned officers, non-commissioned officers under contract, officers and officers under contract), members of the reserve forces (reserve soldiers, reserve non-commissioned officers and reserve officers), civilians performing a specific military duty and persons who in state of war or emergency are subject to military service.
(6) Where a public official, a responsible officer or a military person is designated as a perpetrator of specific criminal offences, persons referred to in paras 3, 4 and 5 above may be perpetrators of these acts unless the elements of an individual offence or an individual regulation imply that the perpetrator may be only one of these persons.

(7) A child is understood to mean a person who has not reached the age of fourteen.

(8) A juvenile is understood to mean a person who has reached the age of fourteen, but not yet the age of eighteen.

(9) A minor is understood to mean a person who has not reached the age of eighteen.

(10) A perpetrator is understood to mean principal, co-principal, instigator and aider.

(11) Force is understood to mean the use of hypnosis or overpowering agents with the purpose of bringing someone against his will to the state of unconsciousness or inability to give resistance.

(12) Elections are understood to mean the elections to the Parliament of Montenegro, President of Montenegro, local self-government authorities and other elections called for and conducted on the basis of the Constitution and law.

(13) Referendum is understood to mean the expression of citizens’ will whereby they decide the issues as set by the Constitution and law.

(14) Narcotic drugs are understood to mean substances and preparations declared as narcotics in accordance with regulations based on law.

(15) A movable object is understood to also mean every generated or collected energy for production of light, heat or movement, a telephone impulse, as well as a computer data and a computer program.

(16) A computer system is understood to mean every device or a group of mutually connected or conditioned devices, of which one or several, depending on the programme, perform automatic data processing.

(17) A computer data is understood to mean any presentation of facts, data or concepts in the form that is suitable for processing in a computer system, including programmes by which a computer system performs its functions.

(18) A computer programme is understood to mean a set of ordered computer data on the basis of which a computer system performs its functions.

(19) A computer virus is understood to mean a computer programme which threatens or alters the functions of a computer system and alters, jeopardizes or uses computer data without authorization.

(20) Computer traffic data are understood to mean all computer data generated by computer systems, which make a chain of communication between two computer systems that communicate, including themselves.

(21) Protected natural good is understood to also mean a good which enjoys previous protection under regulations on the protection of natural good.

(22) A cultural good is understood to also mean a good which under regulations on the protection of cultural good enjoys previous protection, as well as a part of cultural good and the protected surrounding of an immovable cultural good.

(23) Money is understood to mean both metal coins and paper banknotes or money made of some other material which by law is a legal tender in circulation in Montenegro or in a foreign country.

(24) Tokens of value are understood to also include foreign tokens of value.

(25) A motor vehicle is understood to mean every engine powered means of transport used in road, waterborne and air transport.
(26) A document is understood to mean any object which is suitable or designated to serve as evidence of a specific fact of relevance to legal relations, as well as a computer data.

(27) A file, letter, parcel and a document may also be in an electronic form.

(28) A family or family community is understood to also mean former spouses, cousins and relations through full adoption in a direct line without limitation, and in a collateral line conclusively with the fourth degree, relatives through incomplete adoption, relatives through marriage conclusively with the second degree, persons who live in the same household and persons that parent a child or a child on the way, even where such persons have never shared a household.

(29) The expression “shall not be punished” means that there exists no criminal offence in that case.

(30) When an imperfective verb is used to define the act of a criminal offence, the offence shall be understood to have been committed provided that the act has been committed once or more times.

SPECIAL PART
TITLE FOURTEEN
CRIMINAL OFFENCES AGAINST LIFE AND LIMP

Homicide
Article 143
A person who takes life of other person shall be punished by prison term from five to fifteen years.

Aggravated Homicide
Article 144
Punished by a prison term of not less than ten or over forty years shall be a person who:
1) takes life of another person in a cruel or insidious manner,
2) takes life of another person behaving carelessly and violently,
3) takes life of another person and thereat acts with wrongful intent to endanger life of another person,
4) takes life of another person out of greed, in order to commit or conceal other criminal offence, out of unscrupulous revenge or other base motives,
5) takes life of a public official or military person while serving or in relation to serving an official duty,
6) takes life of a child or pregnant woman,
7) takes life of a member of his own family or a family community who he has previously abused,
8) acts with wrongful intent to take life of several persons, where such acts do not constitute manslaughter, killing a child at birth, or taking life out of mercy.

Manslaughter
Article 145
A person who takes life of another person on the spur of the moment, after being brought without his fault into a state of strong irritation by attack, abuse or serious insult coming from the person slaughtered shall be punished by a prison term from one to eight years.

**Killing a Child at Birth**

**Article 146**

A mother who takes life of her child either during or immediately after delivery, while in the state of childbirth anxiety disorder shall be punished by a prison term from six months to five years.

**Mercy Killing**

**Article 147**

A person who takes life of an adult person out of mercy because of that person’s serious health condition and upon his serious and explicit request shall be punished by a prison term from six months to five years.

**Negligent Homicide**

**Article 148**

A person who takes life of another person by negligence shall be punished by a prison term from six months to five years.

**Instigation to Suicide and Assisted Suicide**

**Article 149**

(1) Anyone who instigates another person to suicide or assists him in committing suicide where such suicide is completed or attempted shall be punished by a prison term from one to five years.

(2) Anyone who assists another person in committing suicide under the conditions referred to in Art.147 hereof where such suicide is completed or attempted shall be punished by a prison term from three months to five years.

(3) Anyone who commits the act referred to in para. 1 above against a juvenile or a person in the state of significantly diminished mental capacity shall be punished by a prison term from two to ten years.

(4) Where the offence referred to in para. 1 above was committed against a child or a mentally incapacitated person the perpetrator shall be punished under Art.144 hereof.

(5) Anyone who treats in a cruel or inhuman manner a person who is his subordinate or dependent, where due to such treatment the person concerned commits or attempts a suicide, and where such suicide may be attributed to the perpetrator’s negligence, shall be punished by a prison term from six months to five years.

**Unlawful Termination of Pregnancy**

**Article 150**

(1) Anyone who, in breach of the regulations governing the termination of pregnancy, carries out an abortion with the pregnant woman’s consent, starts carrying out an abortion or assists a pregnant woman in terminating her pregnancy shall be punished by a prison term from one to eight years.

(2) Anyone who carries out or starts carrying out an abortion without the consent of a pregnant woman and, where she is younger than eighteen, without her consent or a written agreement of
her parent, adoptive parent or guardian shall be punished by a prison term from one to eight years.
(3) Where, due to the acts referred to in paras 1 and 2 above, the woman subjected to abortion
dies or her health is heavily impaired or another serious bodily injury is inflicted upon her, the
perpetrator shall be punished for the offence referred to in para. 1 above by a prison term from six
months to six years and for the offence referred to in para. 2 above by a prison term from two to
defence years.

Serious Bodily Injury
Article 151
(1) Anyone who inflicts a serious bodily injury to another person or who seriously impairs his
health shall be punished by a prison term from six months to five years.
(2) Anyone who inflicts a serious bodily injury to other person or impairs his health so
seriously that the injured person’s life is endangered or that any vital part of his body gets destroyed or
permanently or considerably damaged or weakened, or that the injured person’s permanent
inability to work or permanent and serious impairment of his health or deformation is caused
shall be punished by a prison term from one to eight years.
(3) Where, due to the acts referred to in paras 1 and 2 above, the injured person has died, the
perpetrator shall be punished by a prison term from two to twelve years.
(4) Anyone who commits the acts referred to in paras 1 and 2 above by negligence shall be
punished by a prison term up to three years.
(5) Anyone who commits the acts referred to in paras 1 to 3 above on the spur of the moment,
being previously brought into the state of strong excitement without his guilt by an attack, abuse
or a serious insult coming from the slaughtered person, shall be punished by a prison term up to
three years for the act referred to in para. 1, by a prison term from three months to four years for
the act referred to in para. 2, and by a prison term from six months to five years for the act
referred to in para. 3.

Minor Bodily Injury
Article 152
(1) Anyone who inflicts a minor bodily injury upon other person or who lightly impairs his health
shall be punished by a fine or a prison term up to one year.
(2) Where such an injury is inflicted by means of weapons, dangerous tools or other instruments
suitable for inflicting serious bodily injuries or seriously impairment health, the perpetrator shall be
punished by a prison term of up to three years.
(3) A court may impose a judicial admonition to the perpetrator referred to in para. 2 above
provided that the perpetrator was provoked by rude or indecent behaviour of the injured party.
(4) Prosecution for the offence referred to in para. 1 above shall be initiated upon a private
charge.

Participation in an Affray
Article 153
Anyone who participates in an affray resulting in the death or serious bodily injury shall be
punished on the grounds of participation itself by a prison term from three months to three years.
Causing Danger in Affrays or Brawls by Means of Dangerous Tools
Article 154
Anyone who while involved in affrays or brawls reaches for weapons, dangerous tools or other instruments suitable for causing serious bodily injury or impairment of health shall be punished by a fine or a prison term of up to six months.

Exposure to Danger
Article 155
(1) Anyone who leaves another person without help in a situation and under the circumstances that are dangerous to life or health and are caused by himself shall be punished by a prison term from three months to three years.
(2) Where, due to the acts referred to in para. 1 above, the health of the abandoned person is seriously impaired or where other serious bodily injury is inflicted upon him, the perpetrator shall be punished by a prison term from one to five years.
(3) Where, due to the act referred to in para. 1 above, the abandoned person dies, the perpetrator shall be punished by a prison term from one to eight years.

Abandonment of Helpless Person
Article 156
(1) Anyone who leaves a helpless person entrusted to his care or who leaves a helpless person he regularly takes care of without help in a condition and under circumstances that are dangerous to life or health shall be punished by a prison term from three months to three years.
(2) Where, due to the acts referred to in para. 1 above, the abandoned person’s health is seriously impaired or where other serious bodily injury is inflicted upon him, the perpetrator shall be punished by a prison term from one to five years.
(3) Where, due to the acts referred to in para. 1 above the abandoned person dies, the perpetrator shall be punished by a prison term from one to eight years.

Duty to Rescue
Article 157
(1) Anyone who omits to render aid to a person in imminent danger to life, although he could have done so without subjecting himself or another to serious danger shall be punished by a fine or a prison term of up to one year.
(2) Where, due to omission to render aid, the health of a person in the state of an imminent danger to life is seriously impaired or where other serious bodily injury is inflicted upon such a person, the perpetrator shall be punished by a fine or a prison term up to two years.
(3) Where, due to omission to render aid, the person in the state of imminent danger to life dies, the perpetrator shall be punished by a prison term from three months to three years.

TITLE FIFTEEN
CRIMINAL OFFENCES AGAINST FREEDOMS AND RIGHTS OF PERSONS AND CITIZENS

Violation of the Right to Use of Language and Alphabet
Article 158
Anyone who in breach of the regulations governing the use of language and alphabet of peoples or members of minorities and other minority national communities residing in Montenegro denies or restricts to citizens their right to use their mother tongue or alphabet when exercising their rights or addressing authorities or organizations shall be punished by a fine or a prison term up to one year.

**Violation of Equality**

**Article 159**

1. Anyone who on the grounds of his national or ethnic affiliation, affiliation with a race or religion, or on the ground of absence of such an affiliation, or on the grounds of the differences with respect to his political or other beliefs, sex, language, education, social status, social origin, financial standing or other personal characteristic denies or restricts to another person his human rights and freedoms provided for by the Constitution, laws or other regulations or general legal acts or ratified international treaties or, on the grounds of such differences, grants privileges or exemptions shall be punished by a prison term of up to three years.

2. Where the offence referred to in para. 1 above was committed out of hatred towards a member of a group designated on the grounds of race, skin color, religion, origin, national or ethnic affiliation, the perpetrator shall be punished by a prison term from three months to five years.

3. Where the offence referred to in para. 2 above was committed by a public official while acting in his official capacity, the perpetrator shall be punished by a prison term from one to eight years.

**Violation of Freedom of Expression of National or Ethnic Affiliation**

**Article 160**

1. Anyone who denies other person the right to express his national or ethnic affiliation or culture shall be punished by a fine or a prison term up to one year.

2. The punishment referred to in para. 1 above shall also apply to anyone who forces other person to declare his national or ethnic affiliation.

3. Where the offence referred to in paras 1 and 2 above was committed by a public official while acting in his official capacity, the perpetrator shall be punished by a prison term up to three years.

**Violation of Freedom of Worship and Practice of Religious Ceremonies**

**Article 161**

1. Anyone who denies or restricts the freedom of confession or worship shall be punished by a fine or a prison term up to two years.

2. The punishment under para. 1 above shall also apply to anyone who prevents or obstructs the practice of religious ceremonies.

3. Anyone who forces another person to declare his religious beliefs shall be punished by a fine or a prison term up to one year.

4. A public official who commits the offence under paras 1 to 3 above shall be punished by a prison term up to three years.

**Unlawful Deprivation of Liberty**

**Article 162**
(1) Anyone who unlawfully incarcerates, keeps in custody, or in any other manner unlawfully deprives another person of liberty or limits his freedom of movement shall be punished by a prison term up to one year.

(2) Where the offence under para. 1 above was committed by a public official by virtue of his official position or authority, he shall be punished by a prison term from six months to five years.

(3) Where the offence of unlawful deprivation of liberty lasts longer than thirty days, or where it is conducted in a cruel manner, or where the health of a person unlawfully deprived of liberty is seriously impaired or where other grave consequences occur, the perpetrator shall be punished by a prison term from one to eight years.

(4) Where the offences under paras 1 and 3 above resulted in the death of the person unlawfully deprived of his liberty, the perpetrator shall be punished by a prison term from two to twelve years.

(5) An attempted offence under para. 1 above shall be subject to punishment.

**Violation of Freedom of Movement and Residence**

**Article 163**

(1) Anyone who unlawfully denies or restricts the right of another person to freedom of movement or residence in the territory of Montenegro shall be punished by a fine or a prison term up to one year.

(2) Where the offence under para. 1 above was committed by a public official while acting in his official capacity, the public official shall be punished by a prison term up to three years.

**Abduction**

**Article 164**

(1) Anyone who, by use of force, threat, deception or in other manner takes away or keeps someone with the intention to extort money or other pecuniary gain from that person or to force him or other person to act, refrain from acting, or endure something shall be punished by a prison term from one to eight years.

(2) Anyone who in view of accomplishing the aim of abduction threatens by murder or serious bodily injury to the abductee shall be punished by a prison term from two to ten years.

(3) Where the abductee is kept for more than ten days or is treated with cruelty or where the abductee’s health is heavily impaired or where other grave consequences occur, or where the offence referred to in para. 1 above was committed against a minor, the perpetrator shall be punished by a prison term from two to twelve years.

(4) Where, due to the acts referred to in paras 1, 2 and 3 above, the abductee dies or where the offence was committed by several persons in an organized manner, the perpetrator shall be punished by a prison term from five to fifteen years.

**Coercion**

**Article 165**

(1) Anyone who by use of force or threat compels someone to act or refrain from acting or to endure something shall be punished by a prison term from three months to three years.

(2) Anyone who commits the act referred to in para. 1 above in a cruel manner or by threat of murder or serious bodily injury or abduction shall be punished by a prison term from six months to five years.
(3) Where, due to the acts referred to in paras 1 and 2 above, a serious bodily injury is inflicted or other grave consequences occur, the perpetrator shall be punished by a prison term from one to eight years.
(4) Where, due to the acts referred to in paras 1 and 2 above, the person under coercion dies, or where the offence was committed by several persons in an organized manner, the perpetrator shall be punished by a prison term from two to twelve years.

Extortion of Testimony
Article 166
(1) A public official who while acting in his official capacity uses force or threat or other inadmissible means or inadmissible manner with the intention to extort a testimony or another statement from an accused, witness, expert witness or other person shall be punished by a prison term from three months to five years.
(2) Where the extortion of testimony or statement is accompanied by severe violence, or where extremely grave consequences occur for an accused in the criminal proceedings due to extorted testimony, the perpetrator shall be punished by a prison term from two to ten years.

Ill-treatment
Article 166a
(1) Anyone who ill-treats another or treats another in a manner that offends human dignity shall be punished by a prison term up to one year.
(2) Where the offence under para. 1 above was committed by a public official while acting in his official capacity, he shall be punished by a prison term from three months to three years.

Torture
Article 167
(1) Anyone who inflicts severe pain or heavy suffering, whether bodily or mental, in order to obtain from him or a third party a confession or other information or in order to unlawfully punish or intimidate him, or to exert pressure over him or to intimidate or exert pressure over a third party, or does so for other reasons based on discrimination shall be punished by a prison term from six months to five years.
(2) Where the offence under para. 1 above was committed by a public official while acting in his official capacity or where the offence was committed under his explicit or implied consent, or where a public official incited another person to commit the offence under para. 1 above, the public official shall be punished for the offence under para. 1 above by a prison term from one to eight years.

Endangering Safety
Article 168
(1) Anyone who endangers the safety of another person by threatening to attack his life or body or a person close to him shall be punished by a fine or a prison term up to one year.
(2) Anyone who commits the act under para. 1 above against more than one person, or the act that has caused anxiety of citizens or other grave consequences shall be punished by a prison term from three months to three years.
Breach of Inviolability of Dwelling

Article 169
(1) Anyone who enters without authorisation somebody else’s dwelling or closed premises or does not leave such dwelling or premises upon the request of an authorized person shall be punished by a fine or prison term up to one year.
(2) Where the offence under para. 1 above was committed by a public official while acting in his official capacity, he shall be punished by a prison term up to three years.
(3) An attempted offence under paras 1 and 2 above shall be subject to punishment.

Unlawful Search

Article 170
A public official who while acting in his official capacity unlawfully conducts the search of dwellings, premises, or persons shall be punished by a prison term up to three years.

Unauthorized Disclosure of Secret

Article 171
(1) An attorney-at-law, a physician or another person who discloses without authorization a secret that has come to his knowledge while performing his professional duties shall be punished by a fine or a prison term up to one year.
(2) A person who discloses a secret in the public interest or in the interest of another person, where such interest has priority over the interest to keep a secret, shall not be punished for the offence under para. 1 above.

Violation of Privacy of Correspondence and Other Communication

Article 172
(1) Anyone who without authorization opens somebody else’s letter, telegram or other closed document or parcel or infringes in any other manner their privacy or who without authorization withholds, conceals, destroys or delivers to other person somebody else’s letter, telegram or other parcel or who violates the privacy of electronic mail shall be punished by a fine or a prison term up to one year.
(2) The punishment under para. 1 above shall also apply to anyone who communicates to other the contents he has come to the knowledge of by violation of privacy of somebody else’s letter, or any other document or parcel, telegram or other closed document or parcel or who makes use of such contents.
(3) Where the offence under paras 1 and 2 above was committed by a public official while acting in his official capacity, he shall be punished by a prison term up to three years.

[...]

TITLE EIGHTEEN
CRIMINAL OFFENCES AGAINST SEXUAL FREEDOM

Rape
Article 204
(1) Anyone who forces another into a sex act or other act of equivalent nature by using force or threatening to take life and harm the body of that or of other person shall be punished by a prison term from two to ten years.
(2) Where the offence under para. 1 above was committed under a threat of revealing information about that or other person that would harm their honour or tarnish their reputation or by a threat of committing other grave wrong, the perpetrator shall be punished by a prison term from one to eight years.
(3) Where as a result of the offences under paras 1 and 2 above a serious bodily injury was inflicted on a person, or where the offence was committed by several persons in an especially cruel or especially degrading manner, or upon a juvenile, or where the offence resulted in pregnancy, the perpetrator shall be punished by a prison term from three to fifteen years.
(4) Where as a result of the offences under paras 1 and 2 above the victim died or where the offence was committed upon a child, the perpetrator shall be punished by a prison term from five to eighteen years.

Sex Act Over Helpless Person
Article 205
(1) Anyone who performs over another person a sex act or other act of equivalent nature by taking advantage of the person's mental illness, arrested mental development or other mental alienation, helplessness or some other state of that person due to which he is not able to give resistance shall be punished by a prison term from one to ten years.
(2) Where as a result of the offences under para. 1 above a serious bodily injury was inflicted on a helpless person or where the offence was committed by several persons or in an especially cruel or degrading manner or where it was committed on a juvenile or where the offence resulted in pregnancy, the perpetrator shall be punished by a prison term from two to twelve years.
(3) Where as a result of the offences under paras 1 and 2 above the victim died or where the offence was committed upon a child, the perpetrator shall be punished by a prison term from five to eighteen years.

Sex Act Over Child
Article 206
(1) Anyone who performs a sex act or other act of equivalent nature over a child shall be punished by a prison term from one to ten years.
(2) Where as a result of the offence under para. 1 above a serious bodily injury was inflicted to the child over whom the act was committed, or where the offence was committed by several persons or where it resulted in pregnancy, the perpetrator shall be punished by a prison term from two to twelve years.
(3) Where the offences under paras 1 and 2 above resulted in the child’s death, the perpetrator shall be punished by a prison term from five to eighteen years.
(4) A perpetrator of the act under para. 1 above shall not be punished provided that in terms of their mental and physical development there is only a minor difference between the perpetrator and the child.

Sex Act through Abuse of Position of Authority
Article 207
(1) Anyone who uses his official position to incite another into a sex act or other act of equivalent nature where the injured party is in a subordinate or dependent position in relation to the perpetrator shall be punished by a prison term from three months to three years.
(2) A teacher, instructor, guardian, adoptive parent, parent, stepfather, stepmother, or another person who by virtue of his employment or his position of power incites to engage in a sex act or other act of equivalent nature a juvenile entrusted to him for study, education, support and care shall be punished by a prison term from one to ten years.
(3) Where the offence under para. 2 above was committed over a child, the perpetrator shall be punished by a prison term from two to twelve years.
(4) Where the offences under paras 1 to 3 above resulted in pregnancy, the perpetrator shall be punished for the offence under para. 1 above by a prison term from six months to five years; for the offence under para. 2 above by a prison term from two to twelve years, and for the offence under para. 3 above by a prison term from three to fifteen years.
(5) Where the offence under para. 3 above resulted in the child’s death, the perpetrator shall be punished by a prison term from five to eighteen years.

**Unlawful Sex Acts**

**Article 208**

(1) Anyone who under the conditions referred to Art.204, paras 1 and 2, Art.205, paras 1 and 2, Art.206 para. 1 and Art.207, paras 1 to 3 hereof performs some other sex act shall be punished by a fine or a prison term up to two years.
(2) Where as a result of the offences under para. 1 above a serious bodily injury was inflicted to a person, or where the offence was committed by several persons or in an extremely cruel or degrading manner, the perpetrator shall be punished by a prison term from two to ten years.
(3) Where as a result of the offence under para. 1 above a person over whom the offence was committed died, the perpetrator shall be punished by a prison term from three to fifteen years.

**Solicitation and Making Arrangements for Sex Act**

**Article 209**

(1) Anyone who solicits a minor for a sex act, another act of the same nature, or another unlawful sex act shall be punished by a prison term from three months to five years.
(2) Anyone who makes arrangements for another to perform a sex act, another act of the same nature, or some other sex act over a minor shall be punished by a prison term up to three years.

**Pandering**

**Article 210**

(1) Anyone who solicits or instigates another for prostitution services or participates in procuring one person to another for prostitution or who through media and by other similar means promotes or advertises prostitution shall be punished by a fine or a prison term up to one year.
(2) Where the offence under para. 1 above was committed against a minor, the perpetrator shall be punished by a prison term from one to ten years.

**Displaying Pornographic Material to Children and Production and Possession of Child Pornography**

**Article 211**
(1) Anyone who sells, shows or publicly exhibits or otherwise makes accessible to a child the texts, pictures, audio-visual material or other objects of pornographic content or shows the child a pornographic performance shall be punished by a fine or a prison term up to six months.

(2) Anyone who exploits a juvenile to produce pictures, audio-visual material or other objects of pornographic content or for a pornographic performance shall be punished by a prison term from six months to five years.

(3) Anyone who procures, sells, shows, attends the display of, publicly exhibits or electronically and otherwise makes available the pictures, audio-visual material or other objects of pornographic content resulting from the commission of the acts under para. 2 above, or who possesses such objects shall be punished by a prison term up to two years.

(4) If the offences under paras 2 and 3 above were committed against a child, the perpetrator shall be punished for the offence under para. 2 by a prison term from one to eight years, and for the offence under para. 3 by a prison term from six months to five years.

(5) If the offence under para. 2 above was committed by use of force or threat, the perpetrator shall be punished by a prison term from two to ten years.

(6) -deleted-

(7) The objects referred to in paras 1 and 3 above shall be confiscated and destroyed.

Inducement of Minor to Observe Criminal Offences against Sexual Freedom
Article 211a
(1) Whoever induces a child to observe rape, sex act, another act of equivalent nature, or other unlawful sex act shall be punished by a prison term from three months to three years.

(2) Where the offence under para. 1 hereof was committed upon a juvenile by the use of force or threat, the perpetrator shall be punished by a prison term from six months to five years.

(3) Where the offence under paragraph 1 hereof was committed by the use of force or threat, the perpetrator shall be punished by a prison term from one to eight years.

Prosecution for Criminal Offences against Sexual Freedom
Article 212
Prosecution for criminal offences under Articles 204 and 205 hereof committed against a spouse shall be instituted by a private charge.

TITLE NINETEEN
CRIMINAL OFFENCES AGAINST MARRIAGE AND FAMILY

Bigamy
Article 213
(1) Anyone who concludes a new marriage while being already married shall be punished by a fine or a prison term up to two years.

(2) The punishment under para. 1 above shall also apply to anyone who marries a person knowing that person is married.

Concluding a Void Marriage
Article 214
(1) Anyone who concludes a marriage concealing from the other party a fact which makes marriage void or who misleads or keeps the other party mislead on that fact shall be punished by a prison term from three months to three years.
(2) Prosecution may be undertaken only if the marriage thus concluded is declared void for reasons referred to in para. 1 above.

Allowing Conclusion of Unlawful Marriage

Article 215
Where a public official authorized to conclude marriages knowingly allows while acting in his official capacity the conclusion of a marriage which by law is prohibited or void, he shall be punished by a prison term from three months to three years.

Customary Marriage with Juvenile

Article 216
(1) An adult person who cohabitates in a customary marriage with a juvenile shall be punished by a prison term from three months to three years.
(2) A parent, adoptive parent or a guardian who allows a juvenile to cohabitate in a customary marriage with another or instigates him into such marriage shall be punished by the punishment under para. 1 above.
(3) Where the offence under para. 2 above was committed for gain, the perpetrator shall be punished by a prison term from six months to five years.
(4) Where the marriage is already concluded, prosecution shall not be instituted, and where it is in the process of being concluded, it shall be suspended.

Abduction of Minor

Article 217
(1) Anyone who unlawfully keeps or takes away a minor from his parents, adoptive parent, guardian, or other person or institution that the minor has been entrusted to or who prevents enforcement of the decision under which the minor is entrusted to a specific individual shall be punished by a fine or a prison term up to two years.
(2) Anyone who prevents enforcement of a decision which was given by a competent authority and which stipulates the manner in which the minor will maintain his personal relations with his parent or other blood relation shall be punished by a fine or a prison term up to one year.
(3) Where the offence under para. 1 above was committed for gain or other base motives or where it resulted in a serious threat to the health, upbringing or education of the minor the perpetrator shall be punished by a prison term from three months to five years.
(4) Where a perpetrator of the offences under paras 1 and 3 above voluntarily surrenders a minor to a person or institution that the minor has been entrusted with or who allows for enforcement of the decision giving custody of the minor, punishment may be remitted by court.
(5) Where the court pronounces a suspended sentence for the offences under paras 1 to 3 above, the court may order the perpetrator to hand over the minor within a specified term to the person or institution that the minor is entrusted with or to enable enforcement of the decision giving custody of the minor to a person or institution or the decision stipulating the manner in which the minor will maintain his personal relations with his parent or other blood relation.
Change of Family Status

Article 218
(1) Anyone who foists a child onto another person, who substitutes, or otherwise changes a child’s family status shall be punished by a prison term ranging from three months to three years.
(2) Anyone who foists a child onto another or otherwise changes a child’s family status by negligence shall be punished by a prison term up to one year.
(3) An attempt of the offence referred to in para. 1 above shall be subject to punishment.

Neglect or Abuse of Minor

Article 219
(1) A parent, adoptive parent, guardian or other person who acts with gross negligence in carrying out his duty to provide care and education to a minor that he is responsible for shall be punished by a prison term up to three years.
(2) A parent, adoptive parent, guardian or other person who abuses a minor or forces him into excessive labor, labor not appropriate to his age, or beggary, or who induces him out of greed to perform other acts that are detrimental for his development shall be punished by a prison term from three months to five years.

Domestic Violence

Article 220
(1) Anyone who uses gross violence to violate bodily and mental integrity of his family members or members of a family community shall be punished by a fine or a prison term up to one year.
(2) Where the offence under para. 1 above was committed by means of weapons, dangerous tools or other instruments suitable for inflicting serious bodily injury or for seriously impairing one’s health the perpetrator shall be punished by a prison term from three months to three years.
(3) Where the offences under paras 1 and 2 above resulted in serious bodily injury or harm to one’s health or where such offences were committed against a minor, the perpetrator shall be punished by a prison term from one to five years.
(4) Where the offences under paras 1, 2 and 3 above resulted in the death of a family member of a member of family community the perpetrator shall be punished by a prison term from three to twelve years.
(5) Anyone who violates the measures which were ordered on the basis of law by court or other state authority as protection against domestic violence shall be punished by a fine or a prison term up to six months.

Omission to Provide Maintenance

Article 221
(1) Anyone who does not provide maintenance for a person they are under duty to maintain under law, where such duty is laid down by an enforceable court decision or an enforcement settlement before a court of law or other competent body in the amount and in the manner specified by the decision or the settlement shall be punished by a fine or a prison term up to one year.
(2) A perpetrator of the offence under para. 1 above shall not be punished if he omitted to provide maintenance for justified reasons.
(3) Where the offences under para. 1 above resulted in grave consequences for the person maintained, the perpetrator shall be punished by a prison term from three months to three years.
(4) Where the court imposes a suspended sentence, the court may order the perpetrator to settle his due liabilities and meet the maintenance requirements regularly in the future.

Breach of Family Obligations

Article 222
(1) Anyone who, in breach of his statutory family obligations, abandons in a situation of distress a family member who is unable to take care of himself shall be punished by a prison term from three months to three years.
(2) Where the offences under para. 1 above resulted in severe impairment of the family member’s health the perpetrator shall be punished by a prison term from one to five years.
(3) Where the offences under para. 1 above resulted in the death of the family member the perpetrator shall be punished by a prison term from one to eight years.
(4) Where the court imposes a suspended sentence for the offences under paras 1 and 2 above the court may order the perpetrator to fulfill his statutory family obligations.

Incest

Article 223
An adult who performs a sex act or other act of equivalent nature over a minor blood relation in the direct line of descent or over a minor brother, or sister shall be punished by a prison term from six months to five years.

TITLE TWENTY
CRIMINAL OFFENCES AGAINST LABOR RIGHTS

[...]

TITLE THIRTY-TWO
CRIMINAL OFFENCES AGAINST PUBLIC LAW AND ORDER

Causing Panic and Disorder

Article 398
(1) Anyone who by disclosing or spreading false news or allegations causes panic or seriously disrupts public law and order, thwarts or hampers the enforcement of decisions and measures of state authorities or organizations exercising public powers shall be punished by a fine or a prison term up to one year.
(2) Where the offence under para. 1 above was committed through media or other means of public information or other similar means or at a public meeting, the perpetrator shall be punished by a prison term up to three years.

Violent Behaviour

Article 399
Anyone who, by rude insults or illtreatment of other persons, by acts of violence over another person or by causing an affray, or by rude and arrogant conduct endangers the peace of citizens or disturbs public law and order, where such acts are committed by a group, or where they
resulted in light bodily injury or grave degradation of citizens shall be punished by a prison term from three months to five years.

[...]

**Trafficking in Persons**

**Article 444**

(1) Anyone who by use of force or threat, deceiving or keeping in deception, abuse of power, trust, dependence, position of vulnerability of another person, dispossessions of personal documents or giving or receiving payments or other undue advantage to achieve the consent of a person having control over another person commits any of the following: recruits, transports, transfers, surrenders, sells, buys, mediates in sale, conceals or keeps another person for the purpose of exploitation of his labour, forced labour, submission to servitude, commission of criminal activity, prostitution or other type of sexual exploitation, begging, exploitation for pornographic purposes, unlawful extraction of organs for transplantation, or for exploitation in armed conflicts shall be punished by a prison term from one to ten years.

(2) The acts under para. 1 above shall constitute criminal offences when committed against minors even where the perpetrator did not use force, threat or any other of the methods listed above.

(3) Where the offence under para. 1 above was committed against a minor, the perpetrator shall be punished by a prison term not shorter than three years.

(4) Where the offence under paras 1 to 3 above resulted in a serious bodily injury, the perpetrator shall be punished by a prison term from one to twelve years.

(5) Where the offence under paras 1 and 3 above resulted in the death of one or more persons, the perpetrator shall be punished by a prison term not shorter than ten years.

(6) Anyone who regularly engages in the commission of the criminal offences under paras 1 to 3 above or where the offence was committed by several persons in an organised manner shall be punished by a prison term not shorter than ten years.

(7) Anyone who uses the services of a person knowing that the person is a victim of the offence under para. 1 above shall be punished by a prison term from six months to five years.

(8) Where the offence under para. 7 above was committed against a minor, the perpetrator shall be punished by a prison term from three to fifteen years.

**Trafficking in Children for Adoption**

**Article 445**

(1) Anyone who abducts for adoption a person who has not reached the age of fourteen in breach of valid regulations or anyone who adopts such a person or mediates in such adoption or whoever for that purpose buys, sells or surrenders another person who has not reached the age of fourteen or who transports, provides accommodation for or conceals such a person shall be punished by a prison term from one to five years.

(2) Anyone regularly engages in the commission of the offences referred to in para. 1 above or participates in their organized commission together with several other persons shall be punished by a prison term not shorter than three years.
Extracts from the Law on Amending the Criminal Code (30 July 2013)

Article 2
Following Article 36, a new Article is added as follows:
“Imprisonment sentence executed in the residential premises”

Article 36a
“(1) If the perpetrator of a criminal offense is pronounced an imprisonment of up to six months, the court may pronounce at the same time that this sentence will be executed in the manner that the perpetrator will serve it in the residential premises thereof, if, considering the personality of the perpetrator, previous life thereof and behavior following the offense, degree of guilt and other circumstances under which the perpetrator committed the offense, it may be expected that the purpose of punishment will be fulfilled in this manner.
(2) The convicted person who has been pronounced execution of imprisonment sentence in the manner stipulated in Paragraph 1 of this Article shall not leave the residential premises thereof, except in cases stipulated by the law regulating execution of criminal sanctions. If the convicted person leaves at his own free will the residential premises thereof once for more than six hours or twice in the duration of up to six hours, the court will decide that the convicted person shall serve the remaining part of the imprisonment sentence in the Institute for the execution of criminal sanctions.
(3) Person convicted of a criminal offense against marriage and family, who lives with the injured party in the same household or family community unit shall not be pronounced execution of imprisonment sentence in the manner stipulated in Paragraph 1 of this Article.”

Article 3
Following Article 42, a new Article is added as follows:

“Special circumstances in weighing of sentence for a hate instigated criminal offense”

Article 42a
If a criminal offense was instigated by hate due to race, religion, national or ethnic background, gender, sexual orientation or gender identity of another person, the court will assess such circumstances as aggravating, unless this is stipulated as a characteristic of a basic or graver form of a criminal offense”.

Article 4
In Article 67, Paragraph 1, following Item 9, two additional items are added as follows:
“10) restraining order;
11) order of removal from the apartment or other place of residence.”

Article 5
In Article 68, following Paragraph 5, a new Paragraph is added as follows:
"(6) restraining order and order of removal from the apartment or other place of residence may be issued if the perpetrator was sentenced to imprisonment or fined".

Previous Paragraph 6 now becomes Paragraph 7.

Article 6
In Article 74 Paragraph 6 shall be erased.
Previous Para. 7 and 8 now become Paragraphs 6 and 7.

Article 7
In Article 76 Paragraph 4 shall be amended as follows:
"(4) Measure from Paragraph 1 of this Article shall not be pronounced to a perpetrator who may be subject to torture or inhuman or degrading treatment in the country of expulsion or if the perpetrator enjoys other form of protection in accordance with the confirmed international agreements”.

Article 8
Following Article 77 two new articles are added as follows:
"Restraining order
Article 77a
(1) The court shall issue a restraining order to the perpetrator of a criminal offense against sexual liberty, criminal offense of domestic violence or violence in a family community and criminal offense of incest or other criminal offense endangering life or body of a person or a criminal offense of unauthorized production, possession and sale of narcotics, by which the perpetrator is prohibited from approaching a victim or other person or group of persons, or from approaching a specific place if there is a danger that the perpetrator may commit again the same criminal offense or offense of the same type against those persons or in that location.
(2) The court shall determine duration of the measure from Paragraph 1 of this Article, which shall not be shorter than one or longer than five years, starting from the date when the judgment becomes effective, whereas the time spent in prison shall not be counted as period of duration of this measure.
(3) After one year from the commencement of the measure referred to in Paragraph 1 of this Article, at the proposal of the convicted person, the court may suspend the execution of the measure, if it establishes that the danger referred to in Paragraph 1 of this Article no longer exists.
(4) The court shall inform the special organizational unit of the Ministry responsible for judiciary, which supervises the implementation of probation, about the effectively pronounced measure referred to in Paragraph 1 of this Article.

Removal from the apartment or other place of residence
Article 77b
(1) The court shall issue an order of removal from apartment or other place of residence to the perpetrator of a criminal offense of domestic violence of violence in the family community, if there is danger that the perpetrator could commit this criminal offense again.
(2) The court shall decide on the duration of the measure referred to in Paragraph 1 of this Article, and it shall not be shorter than three months or longer than three years, starting from the date when the judgment became effective, whereas the time spent in prison shall not be counted as period of duration of this measure.

(3) In the presence of the police officer, the person that was pronounced measure referred to in Para.1 of this Article shall leave without delay the apartment or other place of residence that represents a jointly used household.

(4) After six months from the commencement of the measure referred to in Paragraph 1 of this Article, at the proposal of the convicted person, the court may suspend the execution of the measure, if it establishes that the danger referred to in Paragraph 1 of this Article no longer exists.

(5) The court shall inform the special organizational unit of the Ministry responsible for judiciary, which supervises the implementation of probation, and the administrative body responsible for police affairs, about the effectively pronounced measure referred to in Paragraph 1 of this Article."

Article 9
Article 129 is amended as follows:
"Criminal prosecution and execution of sanction for criminal offenses stipulated in Articles 401, 401a, 422 to 424, and 426 to 431 of this Code shall not be subject to statutory limitation, as well as for criminal offense for which statutory limitations do not apply according to the confirmed international agreements".

Article 10
In Article 133 Para. 2 shall be erased.
Paragraphs 3, 4 and 5 therefore become Paragraphs 2, 3 and 4.

Article 11
In Article 135 the words: “Article 258" shall be replaced by the words: “Articles 258 and 268”.

Article 12
In Article 137, Para. 1 the words: “a foreigner who” shall be replaced by the words: “person who is not a citizen of Montenegro who”. In Para. 2 the words: “foreigner who” shall be replaced by the words: “Person who is not a citizen of Montenegro who”, and the words: “five years” shall be replaced by the words “four years”.

Article 13
In Art. 138 Para. 4 the words: “acts referred to in Art. l. 276a" shall be replaced by the words: acts referred to in Articles 268, 276a.

Article 14
In Article 142 following Paragraph 10 three new paragraphs are added as follows:
“(11) Victim shall be the person subject to physical or psychological suffering or pain, property damage or violation of human rights and freedoms by an unlawful act stipulated in the code as a criminal offense.
(12) Property gain obtained through a criminal offense shall be property gain directly obtained through a criminal offense, which consists of any increase or prevention of decrease of property resulting from the commission of a criminal offense, property for which property gain was exchanged or in which property gain directly obtained through a criminal offense was transformed, and any other benefit obtained from property gain directly obtained through a criminal offense or property for which it was exchanged or in which it was transformed, irrespective of whether it is situated in the territory of Montenegro or outside of it.
(13) For the purpose of this law, bribe shall represent a gift or other unlawful property or intangible gain, irrespective of the value thereof.”

Previous Paragraphs 11 through 30 shall become Paragraphs 14 to 33.

Article 15
In Article 159, Para. 1, following the word “origin” and a comma, the words: “sexual orientation, gender identity” shall be added.

Article 16
In Article 168 Para. 2 following the words: “serious consequences” the comma shall be erased and the following shall be added: “or it was committed due to hate.”

Following Paragraph 2 a new article is added as follows:
“(3) If the act referred to in Para. 2 of this Article was committed by a person in official capacity during the discharge of duties thereof, that person shall be punished with imprisonment sentence ranging from three months to three years”.

Article 17
In Article 169, Para. 2, Article 170, Article 172 Para. 3, Article 173 Para. 3, Article 174 Para. 2, Article 175 Para. 2, Article 177 Para. 2, Article 178 Para. 2, Article 179 Para. 3 and Article 181 Para. 2, following the word “imprisonment” the following words shall be added: “sentence of three months”.

Article 18
In the title of Article 176 following the word “collection” the words “and use” shall be added. Following paragraph 2 a new paragraph 3 shall be added as follows:
“(3) Person who takes the identity of another person in an unauthorized manner and under that name uses a certain right of that person or obtains a gain for himself or another person, or through the use of the identity thereof interferes with the personal life of that person or violates personal dignity thereof or causes damage to that person, shall be punished by imprisonment sentence of up to one year.”

Previous Para. 3 shall become Para. 4 and shall be amended as follows:
“(4) If a person in official duty commits an act referred to in Paragraphs 1 and 3 of this Article during the discharge of duty, that person shall be punished by imprisonment sentence ranging from three months to three years”.

163
Article 19
Following Article 176 a new article shall be added as follows:
“Exemption from sanctions for criminal offenses referred to in Art. 172 to 176 of this Code
Article 176a
A person who prevents or reveals a criminal offense punishable by the law with a five year imprisonment sentence or a more severe sentence by committing one of the offenses referred to in Articles 172 to 176 of this Code shall not be punished for that offense.”

Article 23
In Article 205 Para. 1 the words: “one to ten” shall be replaced by the words: “two to ten”.
In Para. 2 the words: “two to twelve” shall be replaced by the words “five to fifteen”, and in Para. 3 the words “from five to eighteen” shall be replaced by the words: “minimum ten”.

Article 24
In Article 206, Para. 1 the words: “one to ten” shall be replaced by the words: “three to twelve”.
In para. 2 the words: “two to twelve” shall be replaced by the words “five to fifteen” and in para. 3, the words: “five to eighteen shall be replaced by the words: “minimum ten”.

Article 25
In Article 207 para. 3 the word “two” shall be replaced by the word “three”.
In Para. 5 the words: “from five to fifteen” shall be replaced by the words: “minimum ten”.

Article 26
In Article 209, Para. 1, the words: “three months to five” shall be replaced by the words: “one to eight”.
In Para. 2 the words: “up to three” shall be replaced by the words: “from six months to five”.

Article 27
In Article 210 Para. 2 the word “one” shall be replaced by the word “two”.
Following Para. 2 a new paragraph is added as follows:
“(3) Person using sexual services of a juvenile shall also be punished with the sentence referred to in Para. 2 of this Article.”

Article 28
Article 211 shall be amended as follows:
“Child pornography Article 211
(1) A person who sells, makes a gift, presents or through public presentation using ICT, or makes available in some other manner photos, texts, audio-visual or other items of a pornographic character or presents to the child a pornographic performance, shall be punished with imprisonment sentence ranging from six months to five years.
(2) A person instigating or using a child for production of photos, audio-visual or other items of a pornographic nature (child pornography) or for a pornographic performance, shall be punished by imprisonment sentence ranging from one to eight years.
(3) A person who records in an unauthorized manner, or produces, offers makes available, distributes, imports, exports, obtains for himself or some other person, sells, gives, presents, publically exhibits or holds photos, audio-visual or other items of a pornographic nature (child pornography) shall be punished with the sentence referred to in Paragraph 2 of this Article.
(4) If the act referred to in Paragraphs 1 and 2 of this Article was committed against a juvenile, the perpetrator shall be punished with an imprisonment sentence ranging from three months to three years.
(5) If the act referred to in Paragraph 2 of this Article was committed by use of force or threat, the perpetrator shall be punished with imprisonment sentence ranging from two to ten years.
(6) Items referred to in paragraphs 1 to 3 shall be seized and destroyed.”

Article 29
Following Article 211, a new article is added as follows:
“Luring a child in order to commit criminal offenses against sexual freedom
Article 211b
An adult who arranges a meeting with a child through the use of ICT or in some other manner, for the purpose of committing a criminal offense referred to in Article 204, Paragraph 4, Article 205, Para. 3, Article 206, Article 207, Para.3, Article 208, Para. 1, Article 209, Article 210, Para. 1 and Article 211, Para. 1 and 4 of this Code, and takes action to actually meet with the child, shall be punished with imprisonment sentence ranging from six months to five years”.

Article 30
Article 212 shall be erased.

Article 31
Article 214 shall be amended as follows:
"Concluding a void marriage
Article 214
(1) A person who concluding a marriage hides from the other party a fact due to which the marriage becomes void or deceives or keeps the other party deceived regarding that fact, shall be punished by imprisonment sentence ranging from three months to three years.
(2) A person who forces another person by the use of force or threat to conclude a marriage shall be punished by imprisonment sentence ranging from six months to five years.
(3) Prosecution for the offense referred to in Para. 1 and 2 of this Article shall be initiated only if the marriage concluded in this manner is pronounced to be null and void.

Article 32
In Article 216 Para. 3 shall be amended as follows:
(3) “If the act referred to in Paragraph 2 of this Article was committed by force, under threat or out of greed, the perpetrator shall be punished with imprisonment sentence ranging from six months to five years.

Article 33
In Article 220 Para. 1 the word “members” shall be replaced by the word “member”.

Article 34
In Article 224, Para. 1 the words “disabled persons” shall be replaced by the words “disabled persons” (more appropriate term in Montenegrin language, in English it remains the same).

Following Para. 1, a new paragraph is added as follows:
(2) A person who cancels the labor contract to an employee who filed a report or contacted responsible persons or authorities based on a justified suspicion that a criminal offense with elements of corruption was committed, shall be punished with imprisonment sentence of up to three years.

Article 35
Following Article 225 a new article is added as follows:
“Unlawful employment
Article 225a
A person who employs a foreigner who is not a citizen of an EU member state and does not enjoy the right to free movement in the EU, and who is unlawfully residing in the territory of Montenegro, under labor conditions that are abusing or being aware that s/he is a victim of human trafficking or is under 18 years of age or is re-employed, or employs a larger number of such foreigners, shall be punished by imprisonment sentence ranging from “six months to five years”.

Article 52
Following Article 295, two new articles are added as follows:
“Trafficking in human bodily parts
295a
(1) A person who, by use of force or threat, deceit, imposture, abduction, abuse of office or relationship of dependence, obtains, holds, transports, transfers, saves or receives a human organ, tissue, cell, embryo or body of a deceased person for the purpose of taking bodily parts, shall be punished with imprisonment sentence ranging from one to eight years.
(2) A person who unlawfully obtains a human organ, tissue, cell, embryo or body of a deceased person shall be punished with imprisonment sentence ranging from six months to five years.

(3) A person who, with the intention to obtain property gain, encourages or assists other person in giving his own organ, tissue, cell, embryo or fetus for a financial compensation or other benefit shall be punished with the sentence referred to in Paragraph 2 of this Article.

Announcement of trade in human bodily parts

Article 295b
A person who announces purchase or sale of a human organ, tissue, cell, embryo, fetus or body of a deceased person shall be punished with imprisonment sentence of up to three years.”

“Crime of aggression

Article 442
(1) A person who invites or encourages others to commit an act of aggression shall be punished with imprisonment sentence ranging from two to twelve years.

(2) A person who instructs commission of an act of aggression or participates in decision-making on committing an act of aggression shall be punished with imprisonment sentence of minimum ten years or an imprisonment sentence of forty years.

(3) A person who prepares an act referred to in Paragraph 2 of this Article shall be punished by imprisonment sentence ranging from six months to five years.

Article 82
In Article 443 Paragraph 1 the word “ratified” shall be replaced by the word “confirmed”. Paragraph 3 shall be amended as follows:

“(3) A person who spreads the ideas of superiority of one race over the other or promotes hate and intolerance based on race, gender, disability, sexual orientation, gender identity or other personal characteristic or instigates racial or other discrimination, shall be punished with imprisonment sentence ranging from three months to three years.”

Following Paragraph 3 a new paragraph is added as follows:

(4) A person who commits an act referred to in Paragraphs 1 to 3 of this Article by abuse of office, or if these acts resulted in riots or violence, shall be punished for the offense referred to in Paragraphs 1 and 2 of this Article with imprisonment sentence ranging from one to eight years, and for the offense referred to in Paragraph 3 of this Article, with imprisonment sentence ranging from six months to five years.”

Article 83
In Article 444 Paragraph 1 following the word “servitude”, the following words are added: “slavery or a position similar to slavery” and a comma, and following the words “pornographic use” the words “entry into an unlawful marriage” shall be added.

Paragraph 3 shall be amended as follows:
(3) If the offense referred to in Paragraph 1 of this Article was committed against a juvenile or the offense referred to in Paragraph 1 of this Article was committed by a person in official duty during the discharge of duty or if lives of one or several persons were put at risk with an intent, the perpetrator shall be punished with imprisonment sentence of minimum three years”.

Following Paragraph 8 a new paragraph shall be added as follows:

"(9) Consent of a victim subject to the offense referred to in Paragraphs 1 to 3 of this Article, with no impact on the existence of that criminal offense”.

Article 84

In the title of Article 445 the word “children” shall be replaced by the words “juveniles”.

In Paragraph 1 the words “person under the age of fourteen” shall be replaced by the word “juvenile”.

6. EXCERPTS OF THE LAW ON MISDEMEANORS (22 December 2010)

PART ONE

SUBSTANTIVE LEGAL PROVISIONS

Chapter I

GENERAL PROVISIONS

Subject Matter

Article 1

This Law shall govern the standards for determining misdemeanours and misdemeanour sanctions, misdemeanour liability, misdemeanour proceedings, and the procedure for the enforcement of misdemeanour sanctions.

Defining Misdemeanours

Article 2

A misdemeanour is an act that constitutes a violation of public order, and which is defined as a misdemeanour under the law and for which sanctions are provided.

The Principle of Legality in Determining Misdemeanours and Imposing Misdemeanour Penalties

Article 3

No person may be given a misdemeanour sanction for an act that did not constitute a misdemeanour or for which a sanction was not provided under the law at the time when it was committed.
Prescribing Misdemeanours

Article 4
Misdemeanours sanctions may be prescribed only in accordance with this Law.

Types of Misdemeanour Sanctions

Article 5
Misdemeanour sanctions are: penalties, warning measures, protective measures and corrective measures.

The General Purpose of Imposing Sanctions

Article 6
The general purpose of prescribing, imposing and applying misdemeanour sanctions is for the citizens to respect the legal system, to express public disapproval towards an offender for committing a misdemeanour, and to influence him and all other persons to refrain from committing misdemeanours in the future.

Proceeds from the Payment of Fines

Article 7
Proceeds gained from the payment of fines imposed for the commission of a misdemeanour are considered part of the state budget revenue, except for proceeds gained from fines for misdemeanours that are violations of laws whose application is the responsibility of a local administrative body, in which case such proceeds are part of the revenue of that local administrative body.

Temporal Applicability

Article 8
(1) The legislation in force at the time the misdemeanour was committed shall apply.
(2) If the legislation was amended after the misdemeanour was committed, the law that stipulates the lighter sanction for the offender shall apply.

Territorial Jurisdiction

Article 9
An offender shall be sanctioned for committing a misdemeanour prescribed by the laws of Montenegro if the misdemeanour was committed on the territory of Montenegro or if it was committed on a Montenegrin vessel or aircraft outside the territory of Montenegro.

Diplomatic Immunity

Article 10
Misdemeanour proceedings cannot be initiated nor conducted against persons that have diplomatic immunity.

 Meaning of Terms

Article 11
(1) For the purpose of this Law the following terms shall mean:
1) **Convicted person** refers to a person that is declared guilty of commission of a certain misdemeanour by a final and legally binding judicial decision;
2) **Sentenced person** refers to a person upon whom a sanction has been imposed through a final and enforceable Misdemeanour Order.

(2) The terms **legal entity** and **responsible person in a legal entity** shall have the meanings set forth in Article 4 paragraph 1 items 1 and 2 of the Law on the Liability of Legal Entities for Criminal Offences.

(3) The terms **responsible person in a state body, state administrative body, local self-government body, military personnel** and **offender** shall have the meanings ascribed to them in Article 142 paragraphs 3 and 10 of the Criminal Code.

(4) Grammatical gender, masculine or feminine, as used in this Law in reference to natural persons, refers to both genders.

**Chapter II**

**COMMITTING A MISDEMEANOR**

**Committing a Misdemeanour**

**Article 12**

(1) A misdemeanour may be committed either by acting or failing to act.
(2) A misdemeanour is committed by failure to act when the offender fails to undertake an action that he was obligated to take.

**Attempt to Commit a Misdemeanour**

**Article 13**

No person may be held liable for attempting to commit a misdemeanour unless otherwise provided by law.

**Applicability of the Criminal Code**

**Article 14**

The provisions of the Criminal Code on manner, time and place of perpetration, self defence, necessity, force and threat shall apply accordingly to misdemeanour offenders.

[...]

**Chapter IV**

**MISDEMEANOR SANCTIONS**

**I PENALTIES**

**Types of Penalties**

**Article 22**

(1) The following may be prescribed for a misdemeanour:
1) A sentence of imprisonment;
2) A fine;
3) A fine or a sentence of imprisonment.

**Sentence of Imprisonment**

**Article 23**
(1) The term of imprisonment imposed may not be less than ten or longer than 60 days.
(2) A term of imprisonment may be imposed only for misdemeanours that if committed may pose a threat to public health and safety or cause a serious disturbance of the public peace and order, as well as domestic violence misdemeanours.
(3) A term of imprisonment shall be imposed in full days.

**Fine**

**Article 24**
(1) A fine may be prescribed within a specific range or in a fixed amount.
(2) A fine may be prescribed within the following ranges:
   1) For natural and responsible persons in an amount ranging from 30 euro to 2 000 euro;
   2) For entrepreneurs in an amount ranging from 150 euro to 6 000 euro;
   3) For legal entities in an amount ranging from 500 euro to 20 000 euro.
(3) For minor misdemeanours a fine in a fixed amount may be prescribed as follows:
   1) For natural and responsible persons in an amount up to 200 euro;
   2) For entrepreneurs in an amount up to 400 euro;
   3) For legal entities in an amount not exceeding 2 000 euro.
(4) Notwithstanding paragraph 2 of this Article, for misdemeanours in the area of domestic violence protection, health protection, environmental protection, consumer protection, protection of market competition, cultural assets, construction, public information, workplace safety, public revenue, customs, foreign trade and foreign exchange dealings, services and securities trade, a fine that may not exceed double the maximum amount set forth in paragraph 2 of this Article.
(5) For the most severe misdemeanours provided for in paragraph 4 of this Article a fine between 1-10% of the protected value injured as a result of the misdemeanour may be prescribed, and the special minimum and maximum percentage must be indicated.
(6) For the most severe misdemeanours in the area of preventing, limiting and undermining competition a fine may be prescribed in the range between 1-10% of the total annual income of the market participants, gained in the financial year preceding the year the misdemeanour was committed.
(7) For misdemeanours committed for gain, and as a result of which material gain was acquired, the offender may receive a heavier penalty, but no more than double the amount of the fine prescribed for that particular misdemeanour.

**Fine Payment Deadline**

**Article 25**
(1) In a Misdemeanour Decision the period of payment for a fine shall be specified, which may not be less than eight days nor longer than 60 days from the date the Misdemeanour Decision becomes final and enforceable, and in justified cases (depending on the amount of the fine and the material situation of the defendant), the court may order payment of the imposed fine in
instalments, but the instalments must be paid over a length of time that does not exceed six months.

(2) Notwithstanding paragraph 1 of this Article, in the cases provided for by this Law, immediate payment of an imposed fine may be set.

Community Service

Article 26

(1) Instead of a term of imprisonment or a fine, the offender, provided he consents, may be sentenced to a penalty of community service.

(2) Community service is all work for the benefit of society, which does not violate human dignity and is not performed with the aim of gaining profit.

(3) Community service may not be imposed for a term less than eight hours or longer than 80 hours, and it may not be performed for more than two hours per day, or more than 40 hours in one month.

(4) When imposing community service as the penalty, the court shall take into account the type and severity of the misdemeanour, as well as the character of the offender.

(5) If the offender fails to perform the imposed community service, this penalty shall be substituted by a term of imprisonment, and one day of imprisonment shall be imposed for every four hours of community service.

General Rules for Determining the Sanction to be Imposed

Article 27

(1) The court shall determine the level of the penalty to be imposed on the offender taking into account all mitigating and aggravating circumstances, and in particular the degree of severity of the offense and its consequences, the level of responsibility of the offender, his motives and the circumstances under which the misdemeanour was committed, the accused person’s history, personal circumstances and demeanour after committing the misdemeanour, his financial situation, as well as other circumstances related to the character of the offender.

(2) If the misdemeanour committed is a repeat offense, the following, in particular, shall be taken into account: whether the previous misdemeanour was the same type as the new misdemeanour committed, whether both misdemeanours were committed with the same motive and the time elapsed since the offender was last convicted and punished for a misdemeanour.

(3) When determining the penalty, a previously imposed penalty may not be taken into account as an aggravating circumstance if more than two years have elapsed from the date the Misdemeanour Decision takes effect as final and legally binding.

Commutation of Sentence

Article 28

When determining the particular penalty to be imposed, if it is established that the nature of the misdemeanour is not severe and that mitigating circumstances exist that indicate that the purpose of the punishment will be equally served by a lighter sentence, the imposed sentence may be commuted as follows:

A sentence below the minimum sentence authorized for the misdemeanour shall be imposed, but not a sentence below the level established by statute as the minimum sentence of that kind;

The imposed term of imprisonment shall be substituted with a fine.
Concurrence
Article 29
(1) Should an offender, by a single act or a number of acts, commit several misdemeanours, for which he is simultaneously tried before a court, the court shall first determine the sentences for each individual misdemeanour, and then impose a single aggregate sentence.
(2) The aggregate sentence shall be imposed in accordance with the following rules:
1) If a sentence of imprisonment has been determined as the penalty for all of the concurrent misdemeanours, an aggregate sentence of imprisonment that may not exceed 60 days shall be imposed;
2) If a fine has been determined as the penalty for all of the concurrent misdemeanours, an aggregate fine equal to the sum of all of the individually determined fines shall be imposed, but the aggregate fine may not exceed the maximum level of such penalties as provided by this Law;
3) If a sentence of imprisonment has been determined as the penalty for some of the concurrent misdemeanours, and a fine for the others, one term of imprisonment and one fine shall be imposed in accordance with items 1 and 2 of this paragraph;
4) If community service has been determined as the penalty for all of the concurrent misdemeanours, an aggregate sentence of community service that may not exceed 80 hours shall be imposed.

Continuing Offense
Article 30
(1) A continuing misdemeanour comprises several identical misdemeanours or misdemeanours of the same type committed in temporal continuity by the same offender, representing a whole due to existence of at least two of the following requirements: same type of misdemeanour, same damaged party, use of same situation or same permanent relationship, same place or premises of commission, or same intent of offender.
(2) Offences against a person may constitute a continuing misdemeanour only if perpetrated against the same person.
(3) If a continuing misdemeanour comprises both serious and less serious forms of the same offence, the continuing misdemeanour shall be taken as the most serious of the committed misdemeanours.

Deduction of Time Spent in Custody
Article 31
(1) The period of time during which an offender was deprived of his liberty and held in detention shall be set off against the imposed sentence of imprisonment, community service and fine.
(2) If detention was ordered against a person suspected of committing a criminal offense, and the criminal proceedings were closed by a final and legally binding decision dismissing the proceedings or acquitting the defendant or rejecting the petition, but the suspect is found guilty in misdemeanour proceedings for the same offense, the time spent in custody shall be deducted from his sentence.
(3) Deprivation of liberty and detention that exceeds eight hours, but is less than 20 hours, shall count as one day of imprisonment, four hours of community service or a 25 euro fine.
II WARNING MEASURES

Types of Warning Measures

Article 32
The warning measures that may be imposed in accordance with this law are an Admonition and a Suspended Sentence.

Purpose of Warning Measures

Article 33
The purpose of admonitions and suspended sentences, within the framework of the general purpose of misdemeanour sanctions, is to avoid application of penalties on offenders guilty of committing misdemeanour of a minor nature, when it is not necessary for protection from misdemeanours under law and when it can be expected that only a warning (admonition) or warning with threat of punishment (suspended sentence) will suffice to influence the offender to refrain from committing misdemeanours in the future.

Admonition

Article 34
(1) If there are circumstances that significantly diminish the responsibility of the offender, and that thereby it may be expected that even without being imposed a penalty, the offender will in the future avoid committing misdemeanours or in the event of an especially minor form of the misdemeanour, the court may, impose an admonition instead of a penalty.
(2) An admonition may also be imposed when prior to the issuance of the Misdemeanour Decision the offender fulfilled his designated obligations or removed or compensated the damage inflicted.

Suspended Sentence

Article 35
(1) When imposing a suspended sentence the court shall determine a sentence of imprisonment and at the same time order that the sentence not be enforced provided that during the period of time specified by the court, which may not be less than three months nor longer than one year (probation), the defendant does not commit another misdemeanour or provided that the defendant fulfils other conditions imposed by the court.
(2) In exceptional cases, when imposing a suspended sentence the court may also order a protective measure prohibiting the convicted person from practicing a certain profession, business activity or duty and at the same time order that the measure not be enforced during the period of time specified by the court, which may not be less than three months nor longer than one year (probation), provided the convicted person does not commit another misdemeanour or provided that the defendant satisfies other conditions imposed by the court.
(3) The court shall impose a suspended sentence when it assesses that the purpose of the punishment will be equally served without enforcing the penalty, especially taking into account the offender’s attitude towards the misdemeanour he committed or towards the damaged party and that the offender shall compensate the damage inflicted as a result of that misdemeanour.
Obligations of Persons Given a Suspended Sentence

Article 36
(1) In addition to imposing a suspended sentence, the court may also impose one or more of the following obligations on the offender:
1) Compensate the inflicted damage;
2) Restitute the gain he acquired by committing the misdemeanour;
3) Fulfil other obligations that are provided for by law, and that are appropriate in view of the committed misdemeanour.
(2) The time limit for fulfilling the obligations set out in paragraph 1 of this Article shall be determined by the court and shall be within the determined probation period.

Revocation of a Suspended Sentence

Article 37
(1) The court shall revoke a suspended sentence in the event that during the probation period the person convicted commits another misdemeanour of the same type and severity or fails to comply with any imposed conditions.
(2) In the event the convicted person commits another misdemeanour during the probation period, the court shall, upon evaluating all of the circumstances pertaining to the committed misdemeanour and the offender, and especially the severity of the misdemeanour and the motives with which it was committed, decide whether to revoke the suspended sentence or not.
(3) If a suspended sentence is revoked, the court shall, applying the provisions of Article 29 of this Law, impose a sentence and/or protective measure for both the previously committed misdemeanour and the new misdemeanour, and the sentence and/or protective measure that had been suspended shall be deemed as the already determined sentence.
(4) If a court does not revoke a suspended sentence, it may impose a penalty or suspended sentence for a newly perpetrated misdemeanour. If the court imposes a suspended sentence, it shall determine an aggregate sentence for the prior misdemeanour and the new misdemeanour, taking into account the previously set penalty, in accordance with the provisions of this Law on determining penalties for concurrent misdemeanours and shall set a new probation period.
(5) The court shall revoke a suspended sentence and order the enforcement of the imposed penalty if during the probation period the convicted person fails to fulfil the obligations he was set, but was capable of doing so. In the event that it is established that fulfilment of the obligations is not possible, the court may substitute such obligations with other obligations or relieve the convicted person of the obligations.
(6) A suspended sentence may not be revoked if more than one year has elapsed since the expiration of the probation period, regardless of the reasons for the revocation.

Suspended Sentence with Protective Supervision

Article 38
(1) A court may order that an offender that has been given a suspended sentence be placed under protective supervision for a fixed period of time during the probation period if, having considered his personality, earlier conduct, demeanour after committing the misdemeanour, and in particular his attitude towards the damaged party, and the circumstances surrounding the commission of the misdemeanour, it may be expected that protective supervision would contribute to achieving the full purpose of the suspended sentence.
(2) Protective supervision compromises measures of assistance, care, supervision and protection, provided by law.
(3) Protective supervision shall be set by a court in the decision in which it imposes a suspended sentence, and it shall determine the protective supervision measures, their duration and how they will be carried out.
(4) Protective supervision shall be carried out by experts of the administrative body responsible for the enforcement of criminal sanctions.
(5) Protective supervision may last for a fixed period of time during the probation period, but may be abolished earlier by a judicial decision if the reasons for imposing protective supervision cease to exist.

Special Obligations Accompanying Protective Supervision

Article 39
Protective supervision may include one or more of the following obligations:
To undergo treatment in an appropriate health care institution;
To refrain from consuming alcoholic beverages and intoxicating drugs;
To attend certain professional and other counselling centres or institutions and to comply with their instructions;
To refrain from frequenting certain places, hospitality establishments, sports events, if this could serve as opportunity or incentive to commit a misdemeanour again.

Revocation of a Suspended Sentence with Protective Supervision

Article 40
The provisions of Article 37 of this law shall apply to the revocation of suspended sentences with protective supervision.

[…]

Chapter XVII
INITIATING MISDEMEANOR PROCEEDINGS

Submitting a Petition

Article 143
Misdemeanour proceedings may be initiated on the basis of:
1) A Petition for Court Adjudication of the Misdemeanour Order, or
2) A Petition to Initiate Misdemeanour Proceedings.

Misdemeanour Order

Article 144
(1) An authorized body shall issue a Misdemeanour Order if it is determined in any of the following ways that a misdemeanour that is within its jurisdiction has been committed:
1) Direct observation of an authorized officer while conducting inspection, supervision or review, as well as while performing an inspection of the official records of a competent body;
2) On the basis of information obtained by means of supervision or measurement devices;
3) In the course inspecting documentation, premises and goods or through other legal means;
4) On the basis of the accused person’s admission that he committed the misdemeanour, given before an authorized body at the scene or at another court or administrative proceeding.

(2) A Misdemeanour Order shall be issued pursuant to the conditions set forth in paragraph 1 of this Article when a penalty is prescribed in a fixed amount. A Misdemeanour Order may also be issued pursuant to the conditions set forth in paragraph 1 of this Article when a fine is prescribed in a range or when a fine is determined using a mathematical formula.

(3) If the fine is prescribed in a range, the authorized body shall impose the minimum prescribed fine in the Misdemeanour Order.

(4) Apart from a penalty, only a protective measure prohibiting the offender from driving a motor vehicle for the shortest provided length of time and a protective measure ordering seizure of items, as well as penalty points, may be imposed in a Misdemeanour Order.

(5) If a person commits a number of concurrent misdemeanours, an authorized body may, by a Misdemeanour Order, impose an aggregate fine that is equal to the sum of all of the individual fines imposed in their minimum amounts, and if a protective measure was prescribed for one or more of the committed misdemeanours, it also may impose a protective measure ordering seizure of items or protective measure prohibiting the offender from driving a motor vehicle for the shortest provided length of time.

(6) If the authorised body, instead of issuing a Misdemeanour Order as provided in paragraph 2 of this Article, filed a Petition to Initiate Misdemeanour Proceedings for a misdemeanour punishable by a fixed fine, the court shall issue a decision rejecting the Petition.

Contents of a Misdemeanour Order

Article 145

(1) A Misdemeanour Order shall be issued in writing and shall contain the following information:

1) Title: Misdemeanour Order;

2) The name of the authorized body that issued the Order;

3) The name and position of the officer that issued the Order;

4) The identification number of the Misdemeanour Order assigned by the authorized body;

5) The date of issuance and date of delivery;

6) The name and surname of the accused natural person, his permanent or temporary residence address, place of employment and unique national identification number, and for foreign nationals: their passport or ID card number, and for responsible persons in a legal entity: the office they hold in the legal entity;

7) The name and headquarters of the accused legal entity, as well as its unique identification number;

8) A factual description of the act that constitutes a misdemeanour, as defined by law, as well as the time and place the misdemeanour was committed;

9) The applicable law in which the misdemeanour is defined;

10) The imposed sanction;

11) The amount of damage compensation and the lump-sum of the costs of issuing a Misdemeanour Order, if that amount can be established by a price list, and a processing fee for establishing a misdemeanour was committed using technical equipment or by conducting analyses and expert evaluations, if such fees are prescribed in a fixed amount;

12) Instructions on the method of payment of a fine, compensation and expenses, and the relevant bank account number, and a warning about the consequences of failure to pay a fine;
13) Signature and official seal of an officer of the authorized body.

(2) If the committed misdemeanour is a traffic offense, the Misdemeanour Order shall also contain:
1) The vehicle registration number and the vehicle license number;
2) The number of the driver’s license, if known;
3) The number of penalty points stipulated by law for such a misdemeanour.

(3) A Misdemeanour Order shall contain a notice that the accused has the right to file a Petition for Court Adjudication of the Misdemeanour Order within eight days from the date the Order was served on the accused, along with instructions specifying to which court the accused should submit the Petition.

(4) On the Misdemeanour Order a space is provided for the accused to place his signature and so confirm that he accepts responsibility, in accordance with Article 147 of this Law, as well as a space for the accused to place his signature if he wishes to request court adjudication, pursuant to Article 150 of this Law.

(5) The body authorised to issue misdemeanour orders shall establish the layout of its Misdemeanour Order form, which must contain the information specified in paragraphs 1-4 of this Article, and the layout must be pre-approved by the ministry responsible for judicial affairs.

(6) A Misdemeanour Order shall consist of the original and two copies. The original shall be retained by the authorized body in its records. The two copies shall be delivered to the accused.

Correcting a Misdemeanour Order

Article 146
The authorized body that issued the Misdemeanour Order may correct writing mistakes and any other obvious mistakes, ex-officio or at the proposal of a party to the proceedings.

Accepting Responsibility

Article 147
(1) The accused may accept responsibility for a misdemeanour by paying the fine and fulfilling all other obligations set forth in the Misdemeanour Order within the specified deadline, or by notifying the authorized body that he accepts the sanction set forth in the Misdemeanour Order.

(2) In the event the accused accepts responsibility pursuant to paragraph 1 of this Article, the Misdemeanour Order shall become final and enforceable.

Default Judgment

Article 148
(1) If a Misdemeanour Order is served on the accused in accordance with the provisions of this Law and the accused fails to request court adjudication of the issued misdemeanour order, it shall be deemed that the accused has accepted responsibility by default, and the Misdemeanour Order shall become final and enforceable.

(2) If a Misdemeanour Order is delivered in line with Article 131, paragraph 2 of this Law, the authorized body shall notify the owner of the motor vehicle by way of personal service that such a misdemeanour order shall become final and enforceable eight days from the date of receiving such notice, unless within that period of time the owner of the vehicle files a Petition for Court Adjudication.
Non-Residents of Montenegro

Article 149
(1) An accused person that does not have permanent nor temporary residence in Montenegro, and who is issued a Misdemeanour Order outside the working hours of a bank or post office, or if the misdemeanour was committed in an unsettled area, may be provided the option to pay the fine on-the-spot, in which case the authorized officer shall issue a receipt confirming payment and shall make the payment at a bank or post office the first following working day.
(2) If the accused fails to pay the fine, it shall be deemed that he has filed a Petition for Court Adjudication, and may immediately be brought before the competent court.
(3) If it is not possible to immediately bring the accused before a court, steps may be taken to assure his appearance, in accordance with Article 166 or Article 169 of this Law.

Procedure for Seeking Court Adjudication

Article 150
(1) The accused may submit a Petition for Court Adjudication of the Misdemeanour Order to the competent court no later than eight days from the date that he was served with the Order, in accordance with Article 145 paragraph 3 of this Law.
(2) Upon receiving a Petition for Court Adjudication, the court shall be obliged to immediately notify the authorised body that the accused has filed a Petition for Court Adjudication.
(3) When the accused submits a Petition for Court Adjudication, the sanctions imposed in the Misdemeanour Order shall be deleted from the Register of Fines.

Withdrawing a Petition for Court Adjudication

Article 151
(1) The accused may withdraw his Petition for Court Adjudication.
(2) In the case referred to in paragraph (1) of this Article, the court shall issue a decision pronouncing that the Misdemeanour Order is final and enforceable, and the imposed sanction and the costs award specified in the Misdemeanour Order shall be entered into the Register of Fines.
(3) In the decision provided for in paragraph (2) of this Article the accused may be ordered to pay for the costs of proceedings (legal costs) that were initiated as a result of his Petition for Court Adjudication.

Examining a Petition for Court Adjudication

Article 152
(1) The court shall reject a Petition for Court Adjudication if:
  1) The Petition was not filed within the deadline specified by law;
  2) The Petition was filed by an unauthorized person.
(2) If the Misdemeanour Order on the basis of which the Petition for Court Adjudication was filed, does not contain a factual description of the act that constitutes a misdemeanour as defined by law, the time and place the misdemeanour was committed, and other circumstances required to define the misdemeanour as precisely as possible, the court shall request the body that issued the Misdemeanour Order to amend it within eight days from the date of receipt. If the authorised body fails to rectify the omissions within the set time limit, the court shall declare the Misdemeanour Order null and void.
(3) On the day the court’s decision rejecting the Petition for Court Adjudication, for the reasons provided in paragraph 1 items 1 and 2 of this Article, becomes final and legally binding, the Misdemeanour Order in answer to which the Petition for Court Adjudication was filed shall become final and enforceable, and the sanction imposed in the Misdemeanour Order shall be entered by the court into the Register of Fines.

Filing a Petition to Initiate Misdemeanour Proceedings

Article 153

(1) In cases where it is not possible to issue a Misdemeanour Order, in accordance with Article 144 of this Law, the petitioner shall file a Petition to Initiate Misdemeanour Proceedings with the competent court, immediately upon learning of the misdemeanour and offender, and no later than within a period of 60 days.

(2) The petitioner shall submit the Petition to Initiate Misdemeanour Proceedings to the court in a sufficient amount of copies for the court and the accused.

Contents of a Petition to Initiate Misdemeanour Proceedings

Article 154

(1) The Petition to Initiate Misdemeanour Proceedings shall contain:

1) The official name or personal name and surname of the petitioner, and his address;

2) The name of the court the Petition is being submitted to;

3) The name and surname of the accused natural person, his permanent or temporary residence address, unique national identification number, place of employment, while for foreign nationals: their passport or ID card number, and for responsible persons, the position they hold or job that they perform, and if possible their telephone number;

4) The official name and headquarters of the accused legal entity, as well as its’ unique identification number;

5) Factual description of the act that constitute a misdemeanour as defined by law, the time and place of the commission of the misdemeanour and other circumstances necessary to define the misdemeanour as correctly as possible;

6) The applicable law governing the misdemeanour;

7) A proposal on which evidence should be presented, specifying the name and surname and address of witnesses, the files that need to be read and the items of evidence;

8) The signature and seal of the petitioner.

(2) If the Petition to Initiate Misdemeanour Proceedings is filed by a natural person as the damaged party, the Petition shall not need to contain the applicable law in which the misdemeanour is defined nor the unique national identification number of the accused.

(3) A natural person that is the damaged party may also file a Petition to Initiate Misdemeanour Proceedings orally before the court.

Examining the Conditions for Conducting Misdemeanour proceedings

Article 155

(1) When a court receives a Petition to Initiate Misdemeanour Proceedings, it shall examine whether it has jurisdiction and whether the conditions for conducting proceedings exist and shall take a decision on the further course of the proceedings.
(2) If the court establishes that it does not have subject-matter jurisdiction over the proceedings, it shall decline jurisdiction and refer the case to the competent body.
(3) If the Petition does not contain the information referred to in Article 154 of this Law, without which it is not possible to conduct proceedings, the petitioner will be requested to supplement it within a set period of time. In the event that the petitioner fails to rectify the omissions within the set time limit, it shall be considered that he has withdrawn his petition and the petition shall be dismissed.
(4) The time limit referred to in paragraph 3 of this Article may not be longer than eight days.

Rejecting the Petition
Article 156
(1) The court shall, when it finds that the conditions for initiating misdemeanour proceedings do not exist, render a decision rejecting the Petition to Initiate Misdemeanour Proceedings, if:
1) The Petition was not filed within the time limit set forth in Article 153 paragraph 1 of this Law;
2) The Petition was not filed by an authorised body or authorised person;
3) The act described in the Petition is not a misdemeanour;
4) The limitations period for initiating misdemeanour proceedings has expired;
5) Circumstances excluding the defendant’s liability for the misdemeanour exist;
6) Other reasons, provided by law, due to which proceedings may not be initiated, exist.
(2) The decision referred to in paragraph 1 of this Article shall be delivered to the petitioner, and the damaged party shall be notified of the possibility to pursue his claim through civil litigation.
(3) The petitioner that filed the Petition to Initiate Misdemeanour Proceedings shall have the right to file an appeal against the decision referred to in paragraph 1 of this Article within eight days following the delivery of the decision.

Withdrawal of Petition to Initiate Misdemeanour Proceedings by Petitioner
Article 157
The petitioner that filed a Petition to Initiate Misdemeanour Proceedings may withdraw the Petition at any time before a first instance decision is rendered.

Preparing for the Trial
Article 158
(1) If the court does not reject the Petition to Initiate Misdemeanour Proceedings or the Petition for Court Adjudication (hereinafter referred to as: the Petition), it shall issue an order setting the time and place of the trial and the persons that need to be summoned to the trial.
(2) The order shall specify the person against who the misdemeanour proceedings are instituted and the legal classification of the misdemeanour. If the Petition was filed against more than one person and for more than one misdemeanour, all of those persons and the legal classification of all of the misdemeanours shall be indicated in the order. The order shall not be served on the petitioner and the defendant.
(3) The order may not be appealed.

Summons to a Trial
Article 159
(1) The following shall be summoned to the trial: the accused and his defence counsel, the petitioner, the damaged party and his legal representatives and agents.
(2) If the accused is a legal entity, its’ representative shall be summoned to the trial.
(3) With regard to the content of the summons for the defendant, the provisions of Article 163 paragraph 2 of this Law shall apply.
(4) In the summons, the accused and the petitioner shall be warned of the consequences of failing to appear at the trial, as set forth in articles 183, 184 and 185 of this Law.
(5) If the presence of the defendant is not required to establish the factual situation, in the summons it shall be stated that in the event the defendant fails to appear at the trial, the decision shall be rendered without hearing the defendant.
(6) The summons for the defendant must be delivered so that between the date of service of the summons and the date of the trial, the accused is left with sufficient time, which may not be less than eight days, to prepare his defence. Upon the proposal of the defendant or upon the proposal of the petitioner and consent of the defendant, that time limit may be reduced.

Applicability of the Criminal Procedure Code

Article 160
The provisions of the Criminal procedure Code shall apply accordingly to the summoning of the persons referred to in Article 159 paragraphs 1 and 2 of this Law, unless otherwise is provided by this Law.

Measures for Ensuring the Appearance of Witnesses and Obtaining of Evidence

Article 161
(1) Defendants and petitioners are obliged to ensure the appearance of witnesses at a trial. When they are unable to ensure the appearance of a witness, they may request the court to issue a summons for the witness.
(2) Any party intending to submit a document into evidence must bring the document to the trial. If the document is not available to the party intending to submit it into evidence, the party may request the court to issue a subpoena for that evidence. Such a petition must be submitted to the court in a timely manner in order to ensure the prerequisites for holding a trial.
(3) The burden of proof that the defendant committed the misdemeanour lies with the petitioner.
(4) A trial shall not be postponed due to the failure of any party to provide a witness or documentary evidence, unless the court determines that such failure was justified.

EXCERPTS OF THE CRIMINAL PROCEDURE CODE

THE CRIMINAL PROCEDURE CODE
(Official Gazette of Montenegro, no. 57/09 and 49/10)
Part one
GENERAL PROVISIONS
Chapter I
BASIC RULES

Scope and Objective of the Code
Article 1
The present Code sets forth the rules with the objective to enable a fair conduct of the criminal proceedings and ensure that no innocent person be convicted and that a criminal sanction be imposed on a criminal offender under the conditions provided for in the Criminal Code and on the basis of legally conducted proceedings.

**Principle of Legality**

**Article 2**

(1) A criminal sanction may be imposed on the perpetrator only by the competent Court in the proceedings initiated and conducted in compliance with the present Code.

(2) Freedom and other rights of the accused person may be limited prior to the rendering of the final judgment, only under the conditions set forth in the present Code.

**Presumption of Innocence and in dubio pro reo**

**Article 3**

(1) A person shall be considered innocent of a crime until his/her guilt has been established by the final judgment.

(2) Public authorities, media, associations of citizens, public figures and other persons shall respect the rule referred to in paragraph 1 of the present Article and shall not violate other procedural rules, rights of the accused person and the injured party and the principle of independence of judiciary by their public statements regarding the criminal proceedings that is in progress.

(3) The court shall render a decision that is more favourable for the accused person if once all available evidence are provided and presented in the criminal proceedings, only a suspicion remains with respect to the existence of a significant feature of a criminal offence or as regards facts on which depends an application of a provision of the Criminal Code or the present Code.

**Rights of Suspects i.e. Accused Persons**

**Article 4**

(1) At the first hearing, the suspects shall be informed about the criminal offence they are charged with as well as the grounds for suspicion against them.

(2) Suspects shall be provided with an opportunity to make a statement regarding all the facts and evidence incriminating them and to present all facts and evidence in their favour.

(3) During the first hearing, the suspects and the accused parties shall be informed that they are not obliged to give any statements whatsoever nor answer the questions they are asked and that all statements they make may be used as evidence.

**Rights of Detained Persons**

**Article 5**

(1) Persons deprived of liberty by a competent public authority shall be immediately informed in their language or in a language they understand about the grounds for their apprehension and, at the same time, informed that they are not obliged to make a statement, that they have a right to a defence attorney of their own choice and to request that a person of their choosing be informed on their deprivation of liberty as well as a diplomatic consular representative of a state whose nationals they are or a representative of appropriate international organization if they are stateless persons or refugees.
(2) Persons deprived of liberty without a judgment shall be brought immediately before the competent State Prosecutor with the exception of cases provided for in the present Code.

**Ne bis in idem**

**Article 6**

(1) No person shall be tried again for a criminal offence s/he has already been convicted or acquitted of by a final judgment with the exception of cases provided for in the present Code.

(2) The prohibition referred to in paragraph 1 of this Article shall not prevent the repetition of the criminal procedure in line with this Code.

**Official Language in Criminal Proceedings**

**Article 7**

(1) In criminal proceedings, the official language shall be the Montenegrin language.

(2) In courts having jurisdiction over the territory in which members of minority nations and other minority ethnic communities (hereinafter: minorities) constitute a substantial part of inhabitants, their respective language shall be in the official use in criminal proceedings in accordance with law.

**Right to Use One’s Own Language in Criminal Proceedings**

**Article 8**

(1) The criminal proceedings shall be conducted in the Montenegrin language.

(2) Parties, witnesses and other persons participating in the proceedings shall have the right to use their own language or the language they understand in the proceedings. If proceedings are not conducted in a language those persons understand, interpretation of statements and translation of documents and other written evidence shall be provided.

(3) Persons referred to in paragraph 2 of this Article shall be instructed of their right to interpretation, and they may waive that right if they understand the language in which the proceedings are being conducted. A note shall be made in the record that the participants of the proceedings have been so instructed, and their statement thereto shall also be recorded.

(4) Interpretation shall be entrusted to an interpreter.

**Language Used for Presenting Submissions to Courts and for Remitting Submissions by Courts**

**Article 9**

(1) Complaints, appeals and other submissions shall be filed to the court in the Montenegrin language.

(2) Persons deprived of liberty may file submissions to the court in their language or in the language they understand.

(3) Court shall issue summonses, decisions and other writs in the Montenegrin language.

(4) If the language of a minority is also in the official use in the court, the court shall deliver writs in that language to persons belonging to the respective national minority if they have used that language in the course of the proceedings. Those persons may request that writs be delivered to them in the Montenegrin language.

(5) An accused person in detention, a person serving a sentence or a person against whom a security measure in a medical institution is being enforced, shall also receive a translation of the
writs referred to in paras. 1 and 3 of this Article in the language used by this person during the proceedings.

**Communication between Courts of Law in the Language That Is in Official Use in Courts**

**Article 10**
The correspondence and legal assistance between courts shall be carried out in the Montenegrin language. If a writ is composed in the language of a minority and it is sent to a court in which that language is not officially used, a translation into the Montenegrin language shall be attached.

**Prohibition of Use of Force and Extortion of a Confession**

**Article 11**
(1) It shall be forbidden to threaten or exert violence over a suspect, accused person or another person participating in the procedure, as well as to extort confession or another statement from such persons.
(2) No judgment shall be based on any confession or other statement obtained by extortion, torture or inhuman or degrading treatment.

**Right to Defense**

**Article 12**
(1) Accused persons shall have the right to defend themselves in person or with the professional assistance of a defence attorney of their own choice from the ranks of attorneys-at-law.
(2) Accused persons shall have the right to have a defence attorney present during their hearing.
(3) Prior to the first hearing the accused persons shall be instructed of their right to retain a defence attorney, to agree with the defence attorney on the manner of defence and told that a defence attorney may be present during their hearing. They shall be cautioned that everything they state may be used as evidence against them.
(4) If the accused persons do not retain a defence attorney by themselves, they shall be appointed an ex officio defence attorney by the court, when stipulated so by the present Code.
(5) Accused persons shall be ensured enough time and possibilities to prepare their defence.
(6) The suspects shall have the right to a defence attorney in accordance with the present Code.

**Right to Rehabilitation and Compensation of Damages**

**Article 13**
Persons who have been unlawfully or unjustifiably deprived of liberty of unjustifiably convicted shall have the right to rehabilitation, the right to compensation of damages from the state, as well as other rights as stipulated by law.

**Instruction on the Rights of Accused Persons or Other Participants in the Proceedings**

**Article 14**
The court, the State Prosecutor and other public authorities participating in the proceedings shall instruct the suspects i.e. accused persons or other participants in the proceedings, who are likely to omit to perform an action in the proceedings or fail to exercise their rights because of that, of the rights they are entitled to pursuant to the present Code as well as of the consequences of the failure to act.
Right to a Prompt Trial  
**Article 15**  
(1) The accused persons shall have the right to be brought before the court in the shortest possible time and to a prompt trial.  
(2) The court shall be obliged to conduct the proceedings without delays and to prevent all abuses of rights that are vested in participants in the proceedings.  
(3) The duration of detention and other forms of restrictions of freedom shall be reduced to the shortest necessary time.

Principle of Truth and Fairness  
**Article 16**  
(1) The court, State Prosecutor and other public authorities participating in the criminal proceedings shall truthfully and completely establish all facts relevant to render a lawful and fair decision, as well as examine and establish with equal attention facts that incriminate the accused person and the ones in his/her favour.  
(2) The court shall ensure equal terms to the parties and to the defence attorney as regards the offering, accessing and presenting of evidence.

Free Evaluation of Evidence and Legally Invalid Evidence  
**Article 17**  
(1) Courts and State Prosecutors shall appraise the existence or non-existence of facts on which to base their decisions at their discretion.  
(2) Judgments may not be founded on evidence that have been obtained by violating human rights and fundamental freedoms guaranteed by the Constitution or by ratified international treaties or on evidence obtained by violating the criminal proceedings provisions as well as other evidence obtained therefrom, nor may such evidence be used in the proceedings.

Accusatory Principle  
**Article 18**  
(1) Criminal proceedings shall be initiated and conducted in line with the indictment of an authorised prosecutor.  
(2) For criminal offences that are prosecuted *ex officio*, the authorised prosecutor shall be the State Prosecutor whereas for criminal offences prosecuted upon a private action, the authorised prosecutor shall be a private prosecutor.  
(3) If a State Prosecutor determines that there are no grounds for the institution or conduct of criminal proceedings, the injured party acting as a subsidiary prosecutor may assume his/her role, under the terms stipulated by the present Code.

Principle of Legality of Criminal Prosecution  
**Article 19**  
Unless otherwise prescribed by the present Code, the State Prosecutor shall initiate prosecution when there is reasonable suspicion that a certain person has committed a criminal offence that is prosecuted *ex officio*.

Adjudication by a Panel
Article 20
(1) In the criminal proceedings a panel shall adjudicate in courts.
(2) An individual judge shall adjudicate in the first instance court when prescribed so by the present Code.

Restrictions of Certain Rights Caused by the Initiation of a Criminal Proceedings
Article 21
When it is prescribed that the initiation of criminal proceedings entails the restriction of certain rights, such restrictions, unless otherwise provided for by law, shall commence when the indictment enters into force, and for criminal offences for which the principal penalty prescribed is a fine or imprisonment up to five years, those consequences shall commence as of the day the sentence is rendered, regardless of whether it has become final or not.

Definition of Terms
Article 22
Certain terms used in the present Code shall have the following meaning:
1) suspects are persons against whom the competent public authority has undertaken an action because there are grounds for suspicion that they had committed a criminal offence, but order for initiation of investigation has not yet been issued or a direct indictment has not been filed against them;
2) accused persons are persons against whom an order on the conduct of investigation, indictment, bill of indictment or private action was issued or person against whom a special procedure was initiated for the enforcement of security measures of mandatory psychiatric treatment and confinement in a medical institution and mandatory psychiatric treatment while at freedom; the term accused person may be used in the criminal proceedings as a general term for the accused, defendant and convicted person;
3) defendants are persons against whom the indictment has entered into force;
4) convicted persons are persons whose criminal liability for a particular criminal offence was established by a final verdict or a final ruling on punishment;
5) injured parties are persons whose personal or property right of some type was violated or endangered by a criminal offence;
6) prosecutors are State Prosecutors, private prosecutors and subsidiary prosecutors;
7) parties are the prosecutor and the accused person;
8) organized crime implies the existence of grounds for suspicion that a criminal offence punishable under law by an imprisonment sentence of four years or a more severe sentence is a result of the action of three or more persons joined into a criminal organization, i.e. criminal group, acting with the aim of committing serious criminal offences in order to obtain illegal proceeds or power, in case when at least three of the following conditions have been met:
a) that every member of the criminal organization, i.e. criminal group has had an assignment or a role defined in advance or obviously definable;
b) that actions of the criminal organization, i.e. criminal group have been planned for a longer period of time or for an unlimited period;
c) that activities of the criminal organization, i.e. group have been based on the implementation of certain rules of internal control and discipline of its members;
d) that activities of the criminal organization, i.e. criminal group have been planned and performed in international proportions;
e) that activities of the criminal organization, i.e. criminal group include the application of violence or intimidation or that there is readiness for their application;
f) that activities of the criminal organization, i.e. criminal group include economic or business structures;
f) that activities of the criminal organization, i.e. criminal group include the use of money laundering or unlawfully acquired gain; i) that there is an influence of the criminal organization, i.e. criminal group or its part upon the political authorities, media, legislative, executive or judiciary authorities or other important social or economic factors.

Chapter II
JURISDICTION OF COURTS

[...] 2. TERRITORIAL JURISDICTION
General Rules of Determining Territorial Jurisdiction
Article 25
(1) As a rule, the court within whose territory criminal offence was committed or attempted shall have the territorial jurisdiction.
(2) A private action may be filed with the court within the territory of which the accused person has a permanent or a temporary residence.
(3) If the criminal offence was committed or attempted within the territory of several courts or on the border of those territories, or if it is uncertain within which territory the offence has been committed or attempted, the court which on the indictment of the authorized prosecutor has first instituted the procedure shall have jurisdiction, whereas in preliminary investigation and investigation the competent court is the one that was the first to undertake an action on basis of the prosecutor's motion.

[...] 3. TERRITORIAL JURISDICTION in Cases When the Place of Commission of a Criminal Offence is Unknown
Article 28
(1) If the place of the commission of a criminal offence is unknown or if this place is not in the territory of Montenegro, the competent court shall be the one within whose territory the accused person has temporary or permanent residence.
(2) If the procedure is already pending before the court of the accused person’s temporary or permanent residence, when the place of the commission has been determined, this court shall retain its jurisdiction.
(3) If neither the place of the commission of the criminal offence nor the temporary or permanent residence of the accused person is known, or if both of them are outside the territory of Montenegro, the competent court shall be the one within whose territory the accused person is deprived of liberty or turned himself/herself in.
Territorial Jurisdiction in Cases of Criminal Offences Committed in Montenegro and Abroad

**Article 29**
If a person has committed a criminal offence both in Montenegro and abroad, the competent court shall be the one that has jurisdiction over the criminal offence committed in Montenegro.

**Set Territorial Jurisdiction (Forum ordinatum)**

**Article 30**
If under the provisions of the present Code it is not possible to ascertain which court has territorial jurisdiction, the Supreme Court of Montenegro (hereinafter: the Supreme Court) shall designate one of the competent courts as to subject matter jurisdiction to conduct the proceedings.

[...]

**Chapter VII**
**EVIDENTIARY ACTIONS**

[...]

**4. HEARING OF THE ACCUSED PERSON**

[...]

Confrontation

**Article 102**
(1) The accused person may be confronted with a witness or another accused person if their statements regarding relevant facts do not correspond.
(2) The confronted persons shall be placed one towards the other and shall be requested to repeat to each other their statements regarding each disputable circumstance and to argue whether their statements are true. The court shall enter in the record the course of confrontation as well as the final statements of the confronted persons.
(3) Confrontation may be recorded in an audio or audiovisual form, in which case a transcript of audio recording shall be made.

[...]

**5. WITNESS**

**Persons Who May Be Heard as Witnesses**

**Article 107**
(1) Persons who are likely to provide information regarding the criminal offence and the perpetrator and other relevant circumstances shall be summoned as witness.
(2) The injured party, subsidiary prosecutor and private prosecutor may be heard as witnesses.
(3) Every person summoned as witness shall answer the summons and, unless otherwise prescribed by this Code, shall testify as well.

**Persons Who May Not Be Heard as Witnesses**

**Article 108**
The following persons shall not be examined as witnesses:
1) persons who would by giving testimony violate the duty of keeping the data secret within the meaning of regulations prescribing data secrecy, until the competent authority releases them from that duty;
2) defense attorneys may not testify with regard to information accused persons have confided to them in their capacity as defense attorneys;
3) persons who would by giving testimony violate the duty of keeping a professional secret (religious confessors, attorneys-at-law, medical professionals and other health system employees, journalists, as well as other persons) unless they are relieved from this duty by a special regulation or statement of a person who benefits from the secret keeping.
4) minors who, taking into consideration their age and mental development, are not capable to comprehend the importance of the right that they are not obliged to testify.

**Persons Exempted from the Duty to Testify**

**Article 109**
(1) Unless otherwise prescribed by this Code the following persons shall be exempted from the duty to testify:
1) the accused persons’ spouses and their extra-marital partners;
2) accused persons’ direct blood relatives, collateral blood relatives up to the third degree as well as and their relatives by marriage up to the second degree;
3) accused persons’ adopted children or adoptive parents.
(2) Exemption from the duty to testify referred to in paragraph 1 of this Article shall not relate to persons that were invited to testify in the procedure for the criminal offence of neglecting and abusing a minor, domestic violence or violence in a family community and incest, when a minor person is the injured party.
(3) The court conducting the procedure shall instruct the persons referred to in paragraph 1 of this Article prior to their hearing or as soon as the court learns about their relation with the accused person that they are not obliged to testify. The instruction and the answer shall be entered in the record.
(4) If grounds exist for a person to refuse to testify with regard to one of the accused persons, that person shall be exempted from the duty to testify with regard to other accused persons as well if his/her testimony may not, by nature of the matter, limited only to other accused persons.

**Testimonies on Which Judgments May Not be Based**

**Article 110**
If a person who may not be heard as a witness within the meaning of Article 108 of the present Code or a person who is not obliged to testify in line with Article 109 of the present Code was heard as a witness but was not cautioned thereof or has not expressly waived that right, or if the caution and the waiver were not entered into the record or if a witness’ testimony was obtained by torture or in a manner referred to in Article 154 paragraph 4 of the present Code, the judgment may not be based on such witness testimony.

**Denial of Answer to Specific Questions**

**Article 111**
Unless otherwise prescribed by this Code, witnesses have the right not to answer particular questions if it is likely that they would thus expose themselves or persons referred to in Article 109, paragraph 1 of the present Code to serious disgrace or criminal prosecution, and the court shall inform the witness thereon.

**Summoning of Witnesses**

**Article 112**

(1) A witness shall be summoned by means of a written summons indicating the first name, surname and occupation of the person summoned, the time and place of appearance, the criminal case involved, a note that s/he is being summoned as a witness, and the instructions on the consequences of an unjustified failure to appear referred to in Article 119 of the present Code.

(2) The summoning of a minor under sixteen years of age as a witness shall be done through their parents or legal representatives, except where it is not possible due to a need to act urgently, or due to other circumstances.

(3) Witnesses who are in another country and witnesses who can not obey the summons due to their old age, illness or serious physical disabilities may be heard in their residence, and in exceptional cases by means of technical devices for the transmission of image or sound, so the parties can ask them questions even though they are not present in the same premises as the witness. For the needs of such a hearing, expert assistance referred to in Article 282, paragraph 8 of the present Code may be ordered.

(4) The summoning of witnesses may be done over the phone and other electronic communication devices, if the witness agrees to obey such a summon.

**Manner of Hearing of Witnesses and Cautions by the Court**

**Article 113**

(1) Witnesses shall be examined separately and in the absence of other witnesses. Witness shall give their testimony orally.

(2) Witness shall be previously warned that they are obliged to tell the truth and not to withhold anything, and also cautioned that giving false testimony constitutes a criminal offence. Witnesses shall be instructed of the right referred to in Article 111 of the present Code and such instruction shall be entered in the record.

(3) After the caution and warning referred to in paragraph 2 of this Article, witnesses shall be asked about their first name and surname, their father’s or mother’s name, occupation, place of residence, place and year of birth, and their relation to the accused and the injured party. Witnesses shall be admonished that they are bound to notify the court of changes of their address or residence.

(4) When a minor is heard, especially if a minor was injured by the criminal offence, special care shall be taken in order to ensure that the hearing would not have an adverse effect on the minor’s mental condition. When necessary, the minor shall be heard with assistance of a psychologist or another expert.

(5) Injured parties who are victims of a criminal offence against sexual liberty, as well as children being examined as witnesses, shall be entitled to testify in separate premises before a judge and a court reporter, whereas the Prosecutor, accused person and defense attorney shall be given the possibility to view the course of hearing from other premises and to put questions to the witness, after having been duly instructed by the court thereon.
The instruction shall be entered in the record.
(6) The court may decide that the provision of paragraph 5 of this Article be also applied to the testimony of the injured party who is the victim of discrimination.

**Hearing and Confrontation of Witnesses**

**Article 114**

(1) After general questions, witnesses shall be called upon to state everything known to them about the criminal case, whereupon questions shall be directed to them in order to check, complete or clarify the testimony. It shall be forbidden to deceive the witness or to ask leading questions during the hearing of witnesses.

(2) Witnesses shall always be asked how do they know the facts they are testifying about.

(3) Witnesses may be confronted if their statements do not match as regards important facts. Only two witnesses may be confronted simultaneously. Provisions referred to in Article 102, paragraphs 1 and 3 of the present Code shall be applied accordingly regarding the confrontation of witnesses.

(4) Injured parties heard in the capacity of witnesses shall be asked about their desires with respect to satisfaction of a property claim in the criminal proceedings.

**Identification of Persons or Objects**

**Article 115**

(1) If it is needed to establish whether witnesses recognize a certain person or object that they have previously described, that person shall be presented to them, together with other unknown persons whose basic physical characteristics are similar to the ones they have described, or that object, together with other objects of the same or similar kind. Afterwards, witnesses shall be asked to state whether they identify the person or object with certainty and if positive, to indicate the identified person or object.

(2) In the preliminary investigation and in the investigation, identification shall be conducted by the State Prosecutor who shall previously warn and caution witnesses in line with Article 113 paragraph 2 of the present Code.

(3) Identification shall be conducted so that the person who is the object of identification may not see the witness, nor may the witness see that person before identification commences.

(4) Record shall be composed on the course of identification and on the statements of witnesses and a joint photo taken of persons or objects being identified, and where appropriate, audio or audiovisual recording may be carried out.

**Hearing of Witness Through an Interpreter**

**Article 116**

If witnesses testify through an interpreter or if witnesses are deaf or mute, they shall testify pursuant to Article 106 of the present Code.

**Taking an Oath**

**Article 117**

(1) Witnesses may be required to take the oath before testifying.
(2) Before the main hearing, witnesses may take the oath only if concern exists that they will not be able to appear at the main hearing due to illness or other reasons. Reasons why the oath was taken then shall be entered into the record.

(3) The text of the oath is worded as follows: “I do swear to tell only the truth about everything I am asked before the court, and not to withhold anything which has come to my knowledge”.

(4) Witnesses shall take an oath orally by reading its text or by answering affirmatively after the contents of the oath has been read to him by the authority before which the proceedings are conducted. Witnesses that are mute and literate shall sign the text of the oath, and those deaf or mute who are illiterate shall be sworn through an interpreter.

(5) The rejection of the witness to take an oath and the grounds thereof shall be entered into the record. surname, their father’s or mother’s name, occupation, place of residence, place and year of birth, and their relation to the accused and the injured party. Witnesses shall be admonished that they are bound to notify the court of changes of their address or residence.

(4) When a minor is heard, especially if a minor was injured by the criminal offence, special care shall be taken in order to ensure that the hearing would not have an adverse effect on the minor’s mental condition. When necessary, the minor shall be heard with assistance of a psychologist or another expert.

(5) Injured parties who are victims of a criminal offence against sexual liberty, as well as children being examined as witnesses, shall be entitled to testify in separate premises before a judge and a court reporter, whereas the Prosecutor, accused person and defense attorney shall be given the possibility to view the course of hearing from other premises and to put questions to the witness, after having been duly instructed by the court thereon. The instruction shall be entered in the record.

(6) The court may decide that the provision of paragraph 5 of this Article be also applied to the testimony of the injured party who is the victim of discrimination.

**Persons Forbidden to Take an Oath**

**Article 118**
The following persons shall not take an oath:
1) who are not of age at the time of hearing;
2) for whom it has been proved or grounded suspicion exists that they have committed or participated in the commission of an offence for which they are being heard;
3) who due to their mental conditions are unable to comprehend the importance of the oath.

**Measures to Provide for Appearance of Witnesses and Procedural Penalties**

**Article 119**
(1) If duly summoned witnesses fail to appear and do not justify their absence, or if they leave without authorization or justifiable reason the place where they are to testify, the court may order their compulsory apprehension as well as impose a fine in an amount not exceeding €1,000.
(2) If witnesses appear and after being warned and cautioned in line with Article 113, paragraph 2 of the present Code, refuse to testify without a legal cause, they may be punished by a fine in an amount not exceeding €1,000, and if thereafter they still refuse to testify, they may be imprisoned. Imprisonment shall last until witnesses agree to testify or until their testimony
becomes irrelevant or until the completion of the criminal procedure, but not longer than two months.

(3) If witnesses offend the court and other participants in the procedure or threaten them, the court shall warn them and may impose a fine in an amount not exceeding €1,000.

(4) In the preliminary investigation and investigation, the fines referred to paragraphs 1, 2 and 3 of this Article shall be imposed by the court at the motion of the State Prosecutor.

(5) The panel referred to in Article 24, paragraph 7 of the present Code shall decide on an appeal against the ruling ordering a fine or imprisonment. An appeal against a ruling on imprisonment shall not stay the enforcement.

Protection of Witnesses from Intimidation

Article 120

(1) If reasonable concern exists that by giving a statement or answering certain questions witnesses would put in danger their, their spouse’s, close relative’s or a close person's life, health, physical integrity, freedom or property of great value, witnesses may withhold from giving the data referred to in Article 113, paragraph 3 of the present Code, answering certain questions or giving the statement altogether until their protection is secured.

If it finds that the refusal to give a statement is manifestly illfounded, the authority conducting the proceedings shall caution witnesses that fines specified in Article 119 of the present Code may be imposed on them.

(2) Witness protection shall consist of special ways of participating and hearing witnesses in the criminal procedure.

(3) Protection of witnesses and other persons referred to in paragraph 1 of this Article may be secured beyond the criminal procedure as well, in line with the law regulating witness protection.

(4) The court shall inform the witness on the rights referred to in paragraphs 1, 2 and 3 of this Article.

Special Ways of Participating and Hearing Protected Witnesses

Article 121

(1) Special ways of participating and hearing witnesses in the criminal procedure are: hearing of witnesses under pseudonym, hearing with assistance of technical devices (protective wall, voice simulators, devices for transmission of image and sound) and alike.

(2) If special way of hearing of witnesses in the procedure consists only of withholding data referred to in Article 113, paragraph 3 of the present Code, the hearing shall be done under pseudonym, while in other part of the procedure, the hearing shall be done in accordance with general provisions of the present Code on the hearing of witnesses.

(3) If special ways of participating and hearing witnesses in the procedure consists of withholding data referred to in Article 113, paragraph 3 of the present Code as well as of hiding the face of the witness, hearing shall be done through technical devices for transmission of image and sound. The specialist referred to in Article 282, paragraph 8 of the present Code shall operate a technical device. During the hearing, face and voice of the witness shall be changed. During the hearing, witnesses shall be in the room other than the one where the investigating judge and other persons present at the hearing are. The investigating judge shall ban all the questions which could lead to revealing the identity of witnesses.
(4) After the hearing has been completed, witnesses shall sign the record using pseudonym only in the presence of the investigative judge and court reporter.
(5) Persons who in whatever capacity, learn the details about the witness referred to in paragraphs 2 and 3 of this Article shall keep them secret.

Deciding on Special Ways of Participating and Hearing Witnesses and Protection of Data

Article 122
(1) The ruling on the special manner of participation and hearing of the protected witness in investigation shall be issued by the investigative judge at the motion of witnesses, the accused person, the defence counsel or the State Prosecutor, whereas at the main hearing it shall be issued by the Panel. The motion shall contain a statement of reasons.
(2) The investigating judge shall, prior to issuing the ruling, ascertain as to whether the testimony of the witness is of such a relevance to be given the status of a protected witness. For the purpose of ascertaining these facts, the investigating judge may fix a hearing for the State Prosecutor and the witness to appear in court.
(3) Details of the witness who is to participate in a special way in the procedure shall be sealed in a special cover and kept by the investigative judge. A note shall be put on the cover saying "Protected Witness – Secret". The cover envelope may be opened only by the panel adjudicating at the main hearing and the second instance court in the appellate procedure, but the opening thereof shall be entered into the record together with the names of the members of the panel who came to the knowledge of its contents. After this the cover shall be sealed again and returned to the investigative judge.

Probative Value of the Protected Witness’s Statement

Article 123
(1) Provisions of Articles 120, 121 and 122 of the present Code shall be applied to the hearing of protected witness at the main hearing as well.
(2) A judgment may not be based solely on the statement given by the witness in the manner set forth in Articles 120, 121 and 122 of the present Code.

Protection of the Injured Party while Giving a Statement

Article 124
Provisions of Articles 120 to 123 of the present Code shall be applied accordingly to participation and hearing of the injured party in the criminal proceedings as well.

Cooperative Witnesses

Article 125
(1) The State Prosecutor may put a motion to the court to examine as a witness a member of the criminal organization, i.e. criminal group who consents to do so (hereinafter: cooperative witness) against whom criminal charges have been brought or criminal proceedings have been instituted for an organized crime offence referred to in Article 22 paragraph 8 of the present Code if it is certain that:
- their statement and evidence provided to the court will significantly contribute in proving the criminal offence in question and culpability of perpetrators or assist in revealing, proving and preventing other criminal offences of the criminal organization or criminal group and
- the significance of their statement as to proving these criminal offences and culpability of other perpetrators prevails over the harmful consequences of the criminal offence they have been charged with.

(2) The motion referred to in paragraph 1 of this Article may be put by the State Prosecutor by the completion of the main hearing, and such a motion shall contain the facts and data on the basis of which the court shall issue a ruling on establishment of the status of a cooperative witness.

(3) Cooperative witness may not be a person for whom reasonable doubt exists that s/he is an organizer or a leader of a criminal organization i.e. criminal group.

Admonishing Cooperative Witnesses

Article 126

(1) Before submitting the motion referred to in Article 125 paragraph 1 of the present Code, the State Prosecutor shall warn and admonish the witness proposed for cooperative witness regarding the obligations referred to in Article 113, paragraph 2 of the present Code. The cooperative witness may not invoke exemption from the duty to testify referred to in Article 109 of the present Code and the obligation not to answer to certain questions referred to in Article 111 of the present Code.

(2) The State Prosecutor shall enter into a record the admonition and caution referred to in Article 113 paragraph 2 of the present Code, answers of the person proposed to be a cooperative witness and his/her statement that s/he would report everything known to him/her and that s/he would not withhold anything.

The record shall be signed by that person. If the person proposed to be a cooperative witness does not speak the Montenegrin language, translation of the record shall be provided into his/her language, and s/he shall then sign the record. The record shall be enclosed with the motion referred to in Article 125, paragraph 1 of the present Code.

(3) If the State Prosecutor finds that grounds exist that an accused person in detention be proposed as cooperative witness, the court will enable the State Prosecutor to establish a contact with the accused person, in order to perform the actions referred to in paragraphs 1 and 2 of this Article.

Deciding on the Proposal of the State Prosecutor

Article 127

(1) The panel referred to in Article 24, paragraph 7 of the present Code shall decide on the motion of the State Prosecutor referred to in Article 125 of the present Code during investigation and until the beginning of the main hearing, and at the main hearing - the panel before which the main hearing is held.

(2) The State Prosecutor, person proposed to be a cooperative witness and his/her defense attorney shall be invited to attend the session of the panel to decide whether prerequisites are met referred to in Article 125 of the present Code. The session shall be held behind closed doors.

Statements made at this session may not be used in the criminal proceedings against the person proposed to be a cooperative witness as evidence for declaring that person guilty.

(3) The State Prosecutor may file an appeal against the ruling of the panel referred to in paragraph 1 of this Article by which the motion of the State Prosecutor has been rejected, within
48 hours from the receipt thereof. A superior court shall render a decision on the appeal within three days from receipt of the appeal and files from the first instance court.

(4) If the panel has granted the motion of the State Prosecutor, it shall order that records and official annotations regarding the previous statements made by the cooperative witness in the capacity of a suspect and accused person be separated from the files and they may not be used as evidence in the criminal proceedings, except in the cases referred to in Article 130 of the present Code.

(5) If the accused person is detained, and the panel decides pursuant to paragraph 4 of this Article, it shall simultaneously issue a ruling on termination of detention.

**Ruling on Acknowledgment of Cooperative Witness Status**

**Article 128**

(1) If after deliberation held pursuant to Article 127 of the present Code it is established that prerequisites are met referred to in Article 125, paragraph 1 of the present Code, the panel shall issue a ruling by which the suspect or the accused is acknowledged as a cooperative witness.

(2) If the panel is deciding on the motion for acknowledging the cooperative witness against whom a criminal charge has been submitted or investigation initiated, the panel shall, before determining whether the conditions referred to in paragraph 1 of this Article have been meet, establish the existence of the conditions set forth by Article 22 item 8 of the present Code.

(3) The ruling shall state the following: that criminal proceedings shall not be instituted or continued against the cooperative witness; description of the act that constitutes the elements of the definition of the criminal offence and the statutory title of the criminal offence to which the prohibition of institution or continuation of criminal proceedings applies, the nature and contents of cooperation to be provided by the cooperative witness and conditions under which the ruling may be annulled.

(4) The ruling referred to in paragraph 1 of this Article shall be delivered to the State Prosecutor, cooperative witness and his/her defense attorney.

**Impossibility of Criminal Prosecution**

**Article 129**

(1) Cooperative witness who has made a statement before the court pursuant to the provisions of Article 126, paragraphs 1 and 2 of the present Code may not be prosecuted for the criminal offence of organized crime for which the proceedings are being conducted.

(2) When the court states in its ruling that has been entered into record at the main hearing that the cooperative witness has made a statement within the meaning of paragraph 1 of this Article, the State Prosecutor shall dismiss the criminal charge or refrain from prosecution of the cooperative witness at the latest until the completion of the main hearing being conducted against other members of the criminal organization, i.e. criminal group and the court shall render a decision by which the charges against the cooperative witness are rejected.

(3) In the case referred to in paragraph 2 of this Article the provisions of Article 59 of the present Code shall not be applied.

**Annulment of the Ruling**

**Article 130**

(1) If cooperative witnesses fail to make a statement pursuant to Article 126, paragraphs 1 and 2 of the present Code or if they commit a new criminal offence of organized crime before the final completion of the proceedings, the State Prosecutor shall propose that the ruling referred to in Article 128, paragraph 1 of the present Code be annulled and shall continue the prosecution or institute criminal proceedings for both offences.

(2) If during the proceedings a previous organized crime criminal offence committed by the cooperative witness is revealed, the State Prosecutor shall proceed in accordance with the provisions of Article 125 of the present Code. Afterwards, the State Prosecutor may propose that the ruling referred to in Article 128, paragraph 1 of the present Code be annulled and continue prosecution, i.e. institute criminal proceedings for that offence and the one that was previously committed.

(3) If during the proceedings a previous criminal offence committed by the cooperative witness is revealed and it does not constitute organized crime offence, the State Prosecutor shall proceed in line with the general rules of the present Code.

**Protection of Cooperative Witness**

**Article 131**

(1) Unless the panel, upon a proposal by the State Prosecutor and with the consent of the cooperative witness, decides otherwise, examination of the cooperative witness shall be held behind closed doors.

(2) Prior to rendering the decision referred to in paragraph 1 of this Article, the Chair of the Panel shall, in the presence of the defense attorney, inform cooperative witnesses of the State Prosecutor’s proposal and of their right to be examined behind closed doors. When cooperative witnesses make a statement concurring to be heard in the presence of public, that statement shall be entered into the record.

(3) The State Prosecutor may propose that the cooperative witnesses, their spouses, close relatives or close persons be provided special protection under Article 120 of the present Code.

**Probative Significance of the Statements of Cooperative Witnesses**

**Article 132**

The court may not find a person guilty solely on the grounds of evidence obtained by the testimony of a cooperative witness.

[...]

**7. FORENSIC EXAMINATION**

**Ordering Forensic Examination**

**Article 136**

Forensic examination shall be ordered when, with a view to determine or assess a relevant fact, it is necessary to obtain findings and the opinion of a person who possesses necessary expertise.

**Order for Forensic Examination**

**Article 137**

(1) Forensic examination shall be ordered by a written order of the authority conducting the procedure and it shall contain the following: the task and scope of forensic examination, deadline for submitting the findings in written form and designation of the person to carry out the forensic
examination that is enrolled in the Register of Court Experts (hereinafter: the Register). The order shall be delivered to the parties as well.

(2) If a specialized institution exists for a certain type of forensic examination, or the forensic examination may be performed by a public authority, such forensic examinations, particularly complex ones, shall as a rule be assigned to such an institution, i.e. authority. The institution or the authority shall appoint one or more experts specialized in the appropriate field who shall deliver forensic examination.

(3) When the authority conducting the procedure appoints an expert witness, this authority shall, as a rule, appoint one expert witness, and if the forensic examination is a complex one – two or more expert witnesses.

(4) In cases of certain forensic examinations, when no expert witnesses have been appointed by the court or all expert witnesses for a particular field are prevented from conducting the forensic examination within proper deadline, the forensic examination may be conducted by a person having permanent or temporary residence in another state or a person who is not enrolled in the Register.

Duty of Expert Witnesses and Procedural Penalties

Article 138
(1) Expert witnesses shall obey the summons and present their findings in written form and opinion within a term determined in the order. Upon a motion of an expert witness the term determined in the order may be prolonged if justifiable reasons exist.

(2) If duly summoned expert witnesses fail to appear and do not justify their absence, or if they refuse to perform forensic examination or offend the authority conducting the proceedings or other participants in the proceedings or if they fail to present their findings and opinion within the term determined in the order, they may be fined in an amount not exceeding €1,000 while the specialized institution or another legal entity may be fined in an amount not exceeding €5,000. In the case of an unjustifiable absence the expert witness may be brought by force.

(3) In the preliminary investigation and investigation, the penalties referred to in paragraph 2 of this Article shall be imposed by the court at the proposal of the State Prosecutor.

(4) The panel referred to in Article 24, paragraph 7 of the present Code shall decide on the appeal against the ruling ordering a fine.

Persons Who May Not be Appointed as Expert Witnesses

Article 139
(1) Persons who may not testify as witnesses in line with Article 108 of the present Code or persons exempted from the duty to testify within the meaning of Article 109 of the present Code may not be appointed an expert witness, neither may a person against whom the criminal offence was committed. If such a person is appointed, the court’s decision may not be based on his/her findings or opinion.

(2) Persons who are employed by the injured party or the accused may not be appointed an expert witness, or if the injured party or the accused are employed by the expert witness or if the expert witness is together with them or with some of them employed by other employer.

(3) As a rule, a person heard as a witness shall not be appointed an expert witness.
(4) When an interlocutory appeal is allowed against the ruling rejecting the petition for the recusation of an expert witness within the meaning of Article 41, paragraph 4 of the present Code, this appeal shall stay the giving of the forensic examination if there is no risk of delay.

**Procedure of Forensic Examination**

**Article 140**

1. Before the commencement of the forensic examination, experts shall be asked to thoroughly examine the object of their examination, to indicate accurately everything they notice and discover and to present their opinion without bias and in accordance with the rules of the science or skills. They shall be especially cautioned that giving a false expert witness opinion testimony constitutes a criminal offence.

2. Expert witnesses may be required to take the oath before giving their testimony. Before giving an expert witness opinion testimony, experts enrolled in the Register shall only be warned about the oath they have already taken.

3. The text of the oath is worded as follows: "I do swear to perform the examination conscientiously and impartially, according to my best knowledge and to present my findings and opinion precisely and completely".

4. The authority conducting the procedure shall make sure that through forensic examination all the relevant facts are determined and made clear, and for that purpose shows to expert witnesses the object to be examined, asks them questions and where appropriate, requires clarifications on the given findings and opinion.

5. Expert witnesses may receive explanations and may be permitted to inspect the files as well. Expert witnesses may propose that some evidence be presented or objects and information be obtained which are of relevance for giving findings and opinions. If present at the crime scene investigation, reconstruction or other investigative action, expert witnesses may propose the clarification of certain circumstances or that person who is testifying be asked certain questions.

**Examination of Objects of Forensic Examination**

**Article 141**

1. Expert witnesses shall examine the objects of the forensic examination in the presence of the authority conducting the procedure as well as the court reporter, unless lengthy examinations are necessary for the forensic examination or if the examinations are carried out in a specialized institution or public authority, or if this is required by moral considerations.

2. If it is necessary for the purposes of performing forensic examination to carry out analysis of some substance, if possible, only part of this substance shall be made available to the expert witness while the rest shall be secured in a necessary quantity in case further analyses are needed.

**Entering Findings and Opinions into the Record**

**Article 142**

The findings and opinion of the expert witness shall be immediately entered into the record.

**Forensic Examination by a Specialized Institution or Public Authority**

**Article 143**
(1) If the forensic examination is assigned to a specialized institution or public authority, the authority conducting the procedure shall be admonished that persons who are not specialized in the appropriate field or persons referred to in Articles 139 and 148 of the present Code that may be recused from forensic examination or within the meaning of Article 43 of the present Code may not participate in performing forensic examination and shall be subsequently warned about the consequences of giving false findings and opinions as well.

(2) The materials necessary for forensic examination shall be made available to the specialized institution or public authority and where necessary it shall be further proceeded pursuant to the provisions of Article 140, paragraph 5 of the present Code.

(3) The specialized institution or public authority shall deliver the written expert findings and opinion signed by the persons who made the forensic examination.

(4) The parties may request from the head of specialized institution or public authority to give them the names of the experts who will provide the forensic examination.

(5) The provisions of Article 140, paragraphs 1 to 4 of the present Code shall not apply when performance of forensic examination is assigned to a specialized institution or public authority. The authority conducting the procedure may request explanations regarding the presented expert findings and opinion from the specialized institution or public authority.

Record of Forensic Examination and the Right of Its Inspection

Article 144

(1) The record on the forensic examination or the written expert findings and opinion shall state who performed the examination as well as the occupation, educational background and expertise of the expert witness.

(2) When the forensic examination is performed in the absence of the parties, they shall be notified that forensic examination was performed and that they may inspect the record on the forensic examination and the written expert findings and opinion.

Repeated Forensic Examination

Article 145

If several expert witnesses are appointed to carry out the examination, and data in their findings do no correspond on essential points, or if their findings are ambiguous, incomplete or contradictory internally or with the investigated circumstances, and if these anomalies cannot be removed by a re-examination of the experts, a repeated forensic examination shall be conducted by other expert witnesses.

Additional Forensic Examination

Article 146

If the opinion of the expert witness is contradictory or inconsistent, or if grounded suspicion arises that the opinion is inaccurate, and these deficiencies or suspicion may not be removed by a re-examination of the expert witness, the opinion of other expert witnesses shall be requested or a new forensic examination shall be conducted by other expert witnesses.

Examination, Autopsy and Exhumation of a Corpse

Article 147
(1) Examination of a corpse and autopsy shall be performed whenever there is suspicion related to a death case, or if it is evident that death was caused by a criminal offence or that is related to the commission of a criminal offence. If the corpse has already been buried, an exhumation shall be ordered for the purpose of its examination and autopsy.

(2) While performing an autopsy, necessary measures shall be taken in order to establish the identity of the corpse. The external and internal physical characteristics of the corpse shall be described in detail for that purpose.

(3) When required, the following scientific and specialized methods of identification shall be used: taking fingerprints from corpses and comparing them, analyzing DNA samples and comparing found DNA profile with the DNA profile of a missing person or other person, blood relatives of the person presumed to be the subject of identification, and, where appropriate, carrying out other analyses and applying other scientific and specialized methods for the purpose of identifying a corpse.

(4) Taking biological samples for the purposes of DNA analyses in the criminal proceedings, packing of biological material, keeping, processing, keeping samples and results obtained through DNA analyses shall be conducted in the manner prescribed by a special law.

**Forensic Examination Not Assigned to an Institution**

**Article 148**

(1) When forensic examination is not assigned to a specialized institution, examination and autopsy of a corpse shall be carried out by one physician and if necessary, by two or more physicians who, as a rule, should be specialized in forensic medicine. The State Prosecutor in the preliminary investigation and investigation, i.e. the Chair of the Panel after an indictment has been brought shall order and direct forensic examination and shall enter the findings and opinion of the expert witness into the record.

(2) A physician who treated the deceased person may not be appointed as an expert witness. The physician who treated the deceased person may testify as a witness at the autopsy in order to clarify the course and circumstances of the disease.

**Contents of the Expert Witness’ Opinion and Duties of Expert Witnesses During Examination and Autopsy of a Corpse**

**Article 149**

(1) In their expert opinion witness testimony, the expert witnesses shall specifically indicate the immediate cause of death, what brought it about, and when the death occurred.

(2) If an injury is found on the corpse, it shall be determined whether it was inflicted by another person and if so, by what instrument, in which way, how long before the death occurred, as well as whether such an injury was the cause of death. If several injuries are found on the corpse, it shall be established whether each particular injury was inflicted by the same instrument and which of them caused the death and if there is more than one lethal injury, which particular injury or which injuries in combination were the cause of death.

(3) In the case referred to in paragraph 2 of this Article it shall be specifically determined whether death was caused by the very sort and general nature of the injury or due to the peculiarity or the specific condition of the organism of the injured person or due to accidental circumstances or circumstances under which the injury was inflicted. In addition, it shall be established whether assistance provided in time would have prevented death.
(4) The expert witness shall scrutinize the biological material that was found (blood, spittle, sperm, urine etc.), to describe it and keep it for a biological forensic examination, if one is ordered.

**Examination and Autopsy of a Fetus and a Newborn Infant**

**Article 150**  
(1) When performing examination and autopsy of a fetus, its age in particular shall be established as well as his capability of independent existence outside the uterus and the cause of death.  
(2) In an examination and autopsy of the corpse of a newborn infant a specific determination shall be made as to whether the infant was born alive or stillborn, were it was capable to live, how long the infant lived, and the time and cause of death.

**Toxicological Examination**

**Article 151**  
(1) If there is a suspicion of poisoning, the suspicious substances found in the corpse or elsewhere shall be sent for forensic examination to a specialized institution that performs toxicological tests.  
(2) When examining suspicious substances, the expert witness shall especially ascertain the type, the quantity and the effects of the poison discovered, and if the substances examined were taken from the corpse, the quantity of poison used shall, if possible, also be established.

**Forensic Examination of Bodily Injuries**

**Article 152**  
(1) Forensic examination of bodily injuries shall in principle be based on an examination of the injured party and if this is neither possible nor necessary it shall be based on medical records or other information available in the files.  
(2) After providing an accurate description of the injuries, the expert witness shall give his/her expert opinion particularly on the type and severity of each injury and their overall effect regarding their nature or particular circumstances of the case, what effect these injuries usually have and what effect they had in this specific case, by what instrument they were inflicted and in which way.  
(3) In the course of performing forensic examination, the expert witness shall proceed pursuant to a provision of Article 149, paragraph 4 of the present Code.

**Psychiatric Examination**

**Article 153**  
(1) If suspicion arises that the accused person’s mental capacity is excluded or diminished due to mental illness, temporary mental disorder, mental deficiency or other serious mental disorder, a psychiatric examination shall be ordered.  
(2) If, in the opinion of experts, a longer observation is needed, the accused person shall be committed for observation to a psychiatric institution. The investigating judge or the panel shall render a ruling thereon. The observation may be prolonged for more than two months only upon a substantiated motion from the head of the psychiatric institution and with a previously obtained opinion of the expert witness, but it may not exceed the term of six months under no circumstances.
(3) Accused persons and their defense attorneys may appeal the ruling referred to in paragraph 2 of this Article within 24 hours following the receipt of the ruling by the accused, i.e. defense attorney. The panel referred to in Article 24, paragraph 7 of the present Code shall decide on the appeal within 48 hours, and if the challenged ruling was rendered by that panel, or the panel at the main hearing, the panel of the immediately superior court shall render a ruling on the appeal. An appeal shall not stay the enforcement of the ruling.

(4) If expert witnesses establish that the accused person’s mental condition is disordered, they shall determine the nature, type, degree and duration of the mental disorder and give their opinion on the effect such a mental condition had and still has on the accused person’s cognition and behavior and whether and to what degree the mental disorder existed at the time the criminal offence was committed.

(5) If an accused person who is in detention is sent to a psychiatric institution, the investigating judge or the Chair of the Panel shall notify this institution of the grounds for detention in order to undertake the measures necessary for securing the purpose of the detention.

(6) The time spent in a psychiatric institution shall be included in the term of detention or credited against the accused person’s imprisonment sentence, should a sentence be imposed.

**Physical Examination and Other Procedures**

**Article 154**

(1) Physical examination of the suspect or accused person shall be carried out without their consent if it is necessary to determine facts relevant to the criminal procedure. Physical examination of other persons may be carried out without their consent only if it is necessary to determine whether there is a certain trace or consequence of a criminal offence on their body.

(2) Taking blood samples and other medical procedures performed according to the rules of medical science in order to analyze and determine other relevant facts for the criminal proceedings may be carried out even without the consent of the person under examination provided that no detrimental consequence for his/her health ensue therefrom.

(3) Taking saliva samples for the purpose of carrying out DNA analyses shall be allowed where it is necessary in order to identify persons or in order to make a comparison with other biological traces and other DNA profiles and it shall not require the consent of the person involved nor shall this action be regarded as posing a health risk.

(4) If the suspect or accused person opposes actions referred to in paragraphs 1 and 2 of this Article, they may be undertaken only upon the order of the court having jurisdiction.

(5) Applying any medical intervention on the suspect, accused person or witness or giving them such medication that may influence their consciousness and will when giving their statement shall be permitted.

**Expert Witness Audit of Business Books**

**Article 155**

(1) When it is necessary to perform forensic examination on business books, the authority conducting the procedure shall indicate to the expert witnesses the direction and the scope of the expert audit as well as the facts and circumstances to be established.
(2) If an expert audit of the business books of an enterprise, other legal entity or an entrepreneur requires that they first put their book-keeping in order, than the expenses incurred in such operation shall be borne by the owner of the business books.
(3) The authority conducting the procedure shall render a ruling on putting the book-keeping in order on the ground of a substantiated written report from the expert witnesses appointed to give forensic examination on business books. The ruling shall also state the amount of money that the enterprise, other legal entity or the entrepreneur shall deposit to the court as an advance for the cost of putting its books in order. An appeal shall not be allowed against this ruling.
(4) After the book-keeping has been put in order, the authority conducting the criminal procedure shall render a ruling, based on the report of the expert witness, determining the amount of expenses for putting the book-keeping in order and ordering that this amount be borne by the enterprise, another legal entity or the entrepreneur whose book-keeping was put in order. An appeal may be filed against that ruling regarding the grounds for the decision on compensation of expenses and regarding the amount of the expenses. The first instance court panel referred to in Article 24, paragraph 7 of the present Code shall decide on the appeal.
(5) If the expenses and the fee were not paid in advance, they shall be paid to the authority that paid them in advance to the expert witnesses.
(6) Before forensic examination referred to in paragraph 1 of the present Article has been carried out, an inventory of the business books and other business documentation relating to the business books shall be made in the presence of the State Prosecutor or an authorized police officer.

8. Inspection of Photographs, Listening to Audio

Recordings and Inspection of Audiovisual Recordings
Article 156
(1) Photographs or audio, or audiovisual recordings of evidentiary activities conducted in accordance with the present Code may be used as evidence and serve as grounds for making a judgment.
(3) Photographs or audio, i.e. audiovisual recordings which do not fall under photographs or audio, i.e. audiovisual recordings referred to in paragraph 1 of the present Article may be used as evidence in criminal proceedings if they have been authenticated and if possibility of photo installation or video installation and other forms of falsification of photographs and recordings has been excluded and if they have been made with an implicit or express consent of the suspects or accused persons when their image or their voice are on the photograph or the recording.
(3) Photographs or audio, i.e. audiovisual recordings referred to in paragraph 2 of this Article which have been made without the content of the suspect or the accused persons and which bear their image or voice, may be used as evidence in criminal proceedings provided that the photograph, audio or audiovisual recording bears simultaneously an image or voice of another person who has contented, either implicitly or expressly, to taking of the photograph or making of the audio or audiovisual recording.
(4) Photographs or audio, i.e. audiovisual recordings made without the tacit or express consent of the suspects or accused persons but which contain their image or voice may be used as evidence in criminal proceedings provided that photographs or audio, i.e. audiovisual recordings have been taken as a result of general security measures
- applied in public places: streets, squares, parking places, school yards and yards of institutions and other similar public places, or in public facilities and premises, public authority buildings, institutions, hospitals, schools, airports, bus and train stations, sports stadiums and halls and other similar premises and open spaces connected to them, as well as in shops, supermarkets, banks, business buildings and other similar facilities with regular security surveillance or
- undertaken by a person occupying dwellings or other premises or by another person acting in accordance with the order of the person who occupying dwellings or other premises, which also relates to yards and other similar open spaces.
(5) If photographs or audio, i.e. audiovisual recordings shows only certain objects or events or persons that are not suspects or accused, the photograph, or audio, i.e. audiovisual recording may be used as evidence in the criminal proceedings if they were not created by committing a criminal offence.
(6) When photographs or audio, i.e. audiovisual recordings have been taken in accordance with paragraphs 1 to 5 of the present Article, a part of such photograph or record extracted by special technical means, as well as a photograph made from a frame in a video recording may be used as evidence in criminal proceedings.
(7) When photographs or audio, i.e. audiovisual recordings have been taken in accordance with paragraphs 1 to 5 of the present Article, a drawing or draft made on the basis of the photograph or video recording may be used as evidence in criminal proceedings provided that they were made for the purpose of clarifying certain details of the photograph or recording and that the photograph, or the recording are a part of evidence.
(8) Audio recordings used as evidence in the criminal proceedings shall be transcribed and entered into the criminal case files.

Chapter VIII MEASURES FOR ENSURING THE PRESENCE OF THE ACCUSED PERSON AND FOR A PEACEFUL CONDUCTING OF THE CRIMINAL PROCEDURE

1. COMMON PROVISIONS

Types of Measures and General Rules of Their Enforcement

Article 163
(1) The following measures for providing the presence of an accused person and peaceful conducting of the criminal procedure may be carried out: summons, apprehension, measures of supervision, bail and detention.
(2) The competent court shall observe the conditions stipulated for enforcement of certain measures, taking into account not to enforce a more severe measure if the same effect may be achieved by a less severe measure.
(3) The measures referred to in paragraph 1 of this Article shall be repealed ex officio after the reasons for their enforcement cease to exist, or under an appeal, i.e. they shall be replaced with a less severe measure when the conditions for it are created.
(4) Provisions of Articles 164 and 165 and Article 166, paragraph 2, item 6 of the present Code shall be applied to the suspect as well.

2. SUMMONS
Service, Contents and Delivery of Summons

Article 164

(1) The presence of the suspect in the criminal proceedings shall be ensured through the summons. The authority conducting the criminal proceedings shall have the summons served to the accused person.

(2) The accused person shall be summoned by means of serving a sealed written summons containing: the title and address of the summoning authority, the first name and surname of the accused person, the statutory title of the criminal offence s/he is charged with, the place, date and hour of appearance of the accused, note that the addressee is being summoned in the capacity of an accused person and a warning that in the case of his/her failure to appear s/he shall be brought in by force, the official seal and the first name and surname of the State Prosecutor or judge who is serving the summons.

(3) The summoning of accused persons may be done over the phone and other electronic communication devices, if they agree to obey such a summon.

(4) When summoned for the first time, accused persons shall be instructed in the summons of their right to retain a defense attorney and of the right to have the defense attorney present at their hearing.

(5) Witnesses shall notify the court immediately of changes of their address and on the intention to change residence. Accused person shall be instructed thereon at their first hearing or when the bill of indictment or a private action is served, and shall be warned of the consequences prescribed by this Code.

(6) If accused persons are unable to appear due to illness or other impediment that cannot be removed, they shall be heard at the place they are or transportation shall be provided to the courthouse or any other place where the procedure is to be conducted.

3. APPREHENSION

Warrant for Apprehension

Article 165

(1) The court or State Prosecutor may order the accused person to be apprehended if the duly summoned accused person has failed to appear without justification, or if the summons could not have been orderly serviced and the circumstances obviously indicate that the accused person is evading the service of summons or if an ruling of detention has been issued.

(2) The police authorities shall execute a warrant for apprehension.

(3) A warrant for apprehension shall be issued in written form. A warrant should contain: name and surname of the accused that is to be apprehended, place and year of birth, statutory title of the criminal offence s/he is charged with, the provision of the Criminal Code prescribing that offence stated, grounds for ordering the apprehension, an official stamp and a signature of the judge or State Prosecutor ordering the apprehension.

(4) The person entrusted with the execution of the warrant shall serve the warrant to the accused person and shall ask the accused person to accompany him/her. If the accused persons refuse to comply they shall be apprehended by force.

(5) The warrant for apprehension issued against military personnel, members of the police authorities and penitentiary staff shall be executed by their headquarters or institution.
4. SURVEILLANCE MEASURES

Types of Measures

Article 166

(1) If circumstances exist that indicate that the accused person might flee, hide, go to an unknown place or abroad, or disrupt conducting of the criminal procedure, the court may, by virtue of an office or upon motion of prosecutor or injured party, impose one or more measures of supervision by a ruling containing a statement of reasons.

(2) Measures of supervision are:

1) prohibition to leave one’s dwelling;
2) prohibition to leave place of residence;
3) prohibition to visit particular places or areas;
4) duty to occasionally report to a certain public authority;
5) prohibition of access to or meeting with certain persons;
6) provisional seizure of a travel document;
7) provisional seizure of a driving licence.

(3) Implementation of supervision measures referred to in paragraph 2, items 1 to 5 of the present Article may be controlled by electronic surveillance. Electronic surveillance control shall be prescribed by a special regulation of the Government of Montenegro (hereinafter: the Government).

(4) Measures of supervision may not entail the restriction of the accused persons' right to live in their dwelling, to meet freely with members of their family and close relatives, except when the procedure is conducted for a criminal offence committed to the detriment of a family member or close relatives, as well as to perform their professional activity, except when the procedure is conducted for a criminal offence committed with relation to the performance of that activity.

(5) Measures of supervision may not restrict the right of the accused persons to contact their defense attorney freely.

(6) In the ruling ordering the measures referred to in paragraph 2 of this Article, the accused persons shall be cautioned that detention may be ordered against them in case of failure to comply with the measure ordered.

(7) In the course of the investigation the measures referred to in paragraph 2 of this Article shall be ordered and abolished by the investigative judge, and after the indictment has been brought by the Chair of the Panel within 24 hours following the submission of the motion referred to in paragraph 1 of this Article. If the measure was not proposed by the State Prosecutor, and the procedure is conducted for the criminal offence prosecuted by virtue of office, the court shall, before rendering the ruling by which a measure is ordered or abolished, seek out for the opinion of the State Prosecutor. The court shall proceed in the same manner when it establishes that a measure proposed by the State Prosecutor should be abolished.

(8) The measures referred to in paragraph 2 of this Article may last as long as they are necessary, and at the longest until the judgment becomes final. The investigative judge or the Chair of the Panel shall examine every two months whether the applied measure is necessary.

(9) Parties may file an appeal against a ruling ordering, prolonging or abolishing measures referred to in paragraph 2 of this Article and the State Prosecutor may file an appeal against the ruling rejecting his/her motion for enforcement of the measure, as well. The panel referred to in
Article 24, paragraph 7 of the present Code shall decide on the appeal within a term of three days from the day the appeal has been filed. An appeal shall not stay the enforcement of the ruling.

Ruling Ordering a Measure of Supervision

Article 167

(1) In the ruling on prohibition to leave one’s dwelling, the court shall order that the accused persons may not leave their dwelling and the premises having a functional link with the dwelling in question, i.e. that they may leave their dwelling only under the supervision of a certain person. By way of exception, the ruling may order that the accused person may leave the apartment for a certain period if it is necessary for the purpose of his/her treatment or if imposed so by special circumstances due to which grave consequences for the life, health or property could occur.

(2) In the ruling on prohibition to leave a place of residence, the court shall designate the place at which accused persons have to reside while the measure is in force, as well as the boundaries they may not leave.

(3) In the ruling imposing the measure of prohibition to visit particular places or areas, the court shall designate the places or areas, as well as the distance from them that the accused person has to stay away from.

(4) In the ruling imposing a measure of obligation to occasionally report to a certain public authority, the court shall designate a person in an official capacity to whom the accused person has to report, a term within which they have to report and the way records of the accused persons’ reporting shall be kept.

(5) In the ruling imposing a measure of prohibition of access to and meeting with certain people, the court shall designate a minimum distance at which the accused person has to stay from a certain person.

(6) The ruling imposing a measure of provisional seizure of a travel document shall contain personal details, authority that issued the document as well as the date and number of the document.

(7) In the ruling imposing a measure of provisional seizure of a driving licence personal details, authority that issued the licence, the number and the date of issuing and the category shall be indicated.

Enforcement of Measures of Supervision

Article 168

(1) A ruling imposing a measure of supervision shall be delivered to the authority which is enforcing the measure.

(2) Measure of prohibition to leave one’s dwelling, prohibition to leave the place of residence, prohibition of visiting a certain place or area, prohibition of access to or meeting a certain person, provisional seizure of a travel document, and provisional seizure of a driving licence shall be enforced by the police authorities.

(3) The police authority or another public authority to which the accused person has to report shall attend to the enforcement of the measure of obligation to report periodically to a certain public authority.

Inspection of Measures of Supervision and Obligation to Report

Article 169

(1) The court may order the inspection to be carried out over measures of supervision at any time and request a report from the authority in charge of its enforcement, which is obliged to submit the report to the court without delay.
(2) If accused persons fail to fulfill the obligations ordered by the imposed measure, the authority enforcing the measure shall inform the court thereon, and the court may impose additional measure of supervision or order detention on that basis.

5. BAIL
Reasons for Ordering Bail
Article 170
(1) Accused persons who shall be detained or have already been detained only for a flight risk or on the grounds referred to in Article 175, paragraph 1, item 5 of the present Code, may be allowed to remain at liberty or may be released if they personally or someone else on their behalf furnish a surety that they would not flee before the conclusion of the criminal procedure and the accused persons themselves pledge that they would not conceal themselves and they would not leave their residence without permission.
(2) Bail may be ordered with a measure of supervision referred to in Article 166 paragraph 2 of the present Code, in order to ensure compliance with that measure.

Ordering Bail and Its Contents
Article 171
(1) Bail shall always be expressed as an amount of money that is set on the basis of the seriousness of the criminal offence, personal and family circumstances of the accused person, and the financial situation of the person posting bail.
(2) Bail shall consist of depositions of cash, securities, valuables or other movables of more considerable value that can be easily cashed and kept, or of placing a mortgage for the amount of bail on real estate of the person posting bail.
(3) A person posting bail shall submit evidence on their financial position and ownership of the property posted as bail.
(4) If the accused flees, a ruling shall be issued ordering that the amount posted as bail be credited to a special budget allotment for the work of courts.

Vacating the Bail and Ordering Detention Instead
Article 172
(1) Notwithstanding the bail posted, detention shall be ordered if duly summoned accused persons fail to appear and fail to justify their absence, or if following a decision that they remain at liberty, some other legal ground for detention occurs against them.
(2) Accused persons for whom bail was posted on the grounds for detention referred to in Article 175, paragraph 1, item 5 of the present Code shall be detained if they fail to appear at the main hearing being duly summoned for the first time and do not justify their absence.
(3) In cases referred to in paras. 1 and 2 of this Article, bail shall be vacated. Deposited cash, valuables, securities or other movables shall be returned and the mortgage shall be removed. The same procedure shall be followed after the criminal procedure has been terminated by a final ruling discontinuing the procedure or by a final judgment.
(4) If judgment imposed a sentence of imprisonment, bail shall be vacated when the convicted persons begin to serve their sentence.

Competence for Ordering Bail
Article 173
(1) The investigative judge shall render the ruling establishing bail before and in the course of investigation. After the indictment has been brought the ruling establishing bail shall be rendered by the Chair of the Panel, and during the main hearing by the panel.
(2) If the procedure is conducted upon the indictment of the State Prosecutor, the ruling establishing bail and the ruling vacating bail shall be rendered after the opinion of the State Prosecutor has been obtained.

6. DETENTION

Exceptional Reasons for Ordering Detention and Urgency of Proceedings in Cases of Detention
Article 174
(1) Detention may be ordered only under the conditions set forth in this Code and only if the same purpose cannot be achieved by another measure and it is necessary for a peaceful conduct of procedure.
(2) All authorities taking part in the criminal procedure and authorities providing them with legal assistance shall proceed with exceptional urgency if the accused person is in detention.
(3) Throughout the proceedings, detention shall be terminated as soon as the grounds for which it was ordered cease to exist.

Reasons for Ordering Detention
Article 175
(1) When reasonable suspicion exists that a certain person had committed a criminal offence, detention may be ordered against that person, if:
1) the persons hide or their identity cannot be established, or if other circumstances exist indicating a risk of flight;
2) circumstances exist that indicate that they would destroy, hide, modify or fabricate evidence or traces of a criminal offence or indicate that they would hinder the procedure by influencing witnesses, accomplices or accessories by virtue of concealment;
3) circumstances exist that indicate that the criminal offense would be repeated or attempted criminal offence completed or that they would commit the criminal offence they threaten to commit;
4) in the case of the criminal offence punishable by imprisonment of ten years or a more severe punishment and especially grave due to the manner of commission and consequences and exceptional circumstances exist indicating that liberation would lead to a serious threat to the preservation of public order and peace;
5) duly summoned defendants obviously evade appearing at the main hearing.
(2) In the case referred to in paragraph 1, item 1 of this Article, detention ordered only because it was not possible to establish the identity of the person shall last until this identity is established.
In the case referred to in paragraph 1, item 2 of this Article, detention shall be terminated as soon
as evidence because of which detention was ordered are secured. Detention ordered pursuant to paragraph 1, item 5 of this Article may last until the publication of the judgment.

**Ordering Detention, Contents of the Ruling on Detention and Right of Appeal against the Ruling**

**Article 176**

1. Detention shall be ordered upon the motion of the authorized prosecutor by a ruling issued by the competent court, after a previous hearing of the accused person.
2. The ruling ordering detention shall contain: first name and the surname, year and place of birth of the persons against whom detention is ordered, criminal offence they are charged with, the legal grounds for detention, the duration of detention, the time the person was deprived of liberty, instructions on the right to appeal, the statement of reasons as well as a statement of the grounds for ordering detention, the official seal and the signature of the judge ordering detention.
3. The ruling ordering detention shall be served on persons to whom it relates immediately after it is rendered. The day and the time the ruling was received shall be indicated in the files. Detained persons shall acknowledge the receipt of the ruling with their signature.
4. Detainees and their defense attorneys may file an appeal against the ruling ordering detention to the panel referred to in Article 24, paragraph 7 of the present Code within a term of 24 hours from the moment of the delivery of the ruling. The appeal, the ruling on detention and other files shall be submitted to the panel immediately. An appeal shall not stay the enforcement of the ruling.
5. The State Prosecutor may lodge an appeal to the Panel referred to in Article 24, paragraph 7 of the present Code against the ruling rejecting the motion of the State Prosecutor to order detention to the accused person, within 24 hours as of the moment of serving the ruling. An appeal shall not stay the enforcement of the ruling.
6. In cases referred to in paras. 4 and 5 of this Article, the Panel deciding on the appeal shall render a decision within 48 hours.

**Ordering Detention and Duration of Detention During Investigation**

**Article 177**

1. On basis of the ruling of the investigating judge, the accused person may be kept in detention at the longest one month from the day of deprivation of liberty. After this term has expired, the accused person may be detained only on the basis of a ruling extending detention.
2. Detention may be extended on basis of the ruling of the panel referred to in Article 24, paragraph 7 of the present Code for no longer than two months and at the motion of the State Prosecutor containing a statement of reasons. An appeal against the ruling of the Panel shall be allowed but it shall not stay the enforcement of the ruling.
3. If the procedure is conducted for a criminal offence punishable by imprisonment for a term of more than five years, the panel of the Supreme Court may, upon a substantiated motion of the State Prosecutor, if important reasons exist, extend the detention for no longer than another three months.
4. The accused person shall be released if the indictment has not been brought until the expiry of the terms referred to in paragraphs 2 and 3 of the present Code.

**Termination of Detention**
Article 178
(1) In the course of investigation, the investigating judge may terminate the detention at the motion of the State Prosecutor or of the accused persons, i.e. their defense attorney. An appeal to the ruling on the release from detention shall not stay the enforcement of the ruling.
(2) Before the adoption of the decision on the proposal of the accused person or defense attorney for the termination of detention, the investigative judge shall ask the opinion of the State Prosecutor.

Ordering and Supervising Detention after the Indictment Was Brought
Article 179
(1) After the indictment has been submitted to the court and up until the completion of the main hearing, detention may be ordered or terminated only by the ruling rendered by the panel, provided that the opinion of the State Prosecutor is obtained if the proceedings are conducted upon his/her charges. Detention may last at the longest for three years from the issuing of indictment until the rendering of a first instance decision.
(2) Upon a motion of the parties or by virtue of office, the panel shall review whether the grounds for detention still exist and it shall issue a ruling extending or terminating detention, upon expiration every 30 days before the indictment has become final, and every two months from the moment the indictment becomes final.
(3) An appeal on the ruling referred to in paragraphs 1 and 2 of this Article shall not stay the execution of the ruling and the court shall render a decision thereon within three days.
(4) An appeal shall not be allowed against the ruling of the panel referred to in paragraph 1 of this Article by which the motion to order or terminate detention is rejected.

Obligation to Inform on Deprivation of Liberty
Article 180
(1) Immediately after a person has been deprived of liberty and within a term of 24 hours at the latest, police authority, the State Prosecutor or the court shall inform the family of the detained persons or their extra-marital partner thereon, unless the detained persons expressly object thereto.
(2) A competent authority for social care shall be informed about the deprivation of liberty if necessary to take measures for the care of children and other family members to whom the person deprived of liberty is a guardian.

[...]
CRIMINAL CHARGE
Obligation to File Charge for Criminal Offence
Article 254
(1) Persons acting in an official capacity and responsible persons in state authorities, local governance authorities, public companies and institutions shall file charge for criminal offences, subject to prosecution by virtue of office, of which they have been informed or which they have learned while performing their office.
(2) The duty from paragraph 1 of this Article shall also be incumbent upon all natural and legal persons who are granted certain public powers pursuant to law, or are professionally involved in the protection and security provision to persons and property or in the health care of persons, as well as in jobs of minors care and education, if they learn about a criminal offence while performing or in connection with their profession.
(3) Persons filing a criminal charge from paragraph 1 of this Article shall indicate evidence to the best of their knowledge and take measures to preserve traces of the criminal offence, the items upon which or by means of which the criminal offence has been committed, items resulting from the commission of criminal offence as well as other evidence.

Reporting Criminal Offences by Citizens
Article 255
(1) Everyone shall report a criminal offence which is prosecuted by virtue of office and is obliged to report a criminal offence the commission of which has caused detriment to a minor.
(2) When the court establishes in the course of criminal proceedings that reasonable suspicion exists that a person has failed to perform the duty referred to in paragraph 1 of this Article and that such omission results in a reasonable suspicion as to the commission of the criminal offence of neglecting and abuse of a minor, the court shall notify the competent State Prosecutor thereof.

Filing Criminal Charge
Article 256
(1) Criminal charge shall be filed with the competent State Prosecutor whether in writing or orally.
(2) If the charge is filed orally, the informant shall be cautioned as to the consequences of false information. Oral charge shall be entered in a record, and where the information is filed over the phone or other means of electronic communication, an official annotation shall be made thereabout.
(3) The charge filed with a court, the police authority or a State Prosecutor lacking jurisdiction, they shall receive the information and immediately forward it to the State Prosecutor having the jurisdiction.

**Competences and Actions of Police in Preliminary Investigation**

**Article 257**

(1) Where there are grounds for suspicion that a criminal offence which is subject to prosecution by virtue of office has been committed, the police shall inform the competent State Prosecutor and take necessary measures as a self-initiative or upon a petition by a State Prosecutor, with a view to discovering the perpetrator, preventing the perpetrator or accomplice from fleeing or hiding, discovering and securing traces of the criminal offence and items which may serve as evidence, and to gathering all information which could be useful for conducting the criminal proceedings successfully.

(2) In order to fulfill the duties referred to in paragraph 1 of this Article, the police authorities may seek information from citizens, apply polygraph testing, conduct voice analysis, perform antiterrorist raid, restrict movement to certain persons in a certain area for a relevant period, publicly offer a reward with the view of collecting information, request from the entity delivering telecommunication services to establish identity of telecommunication addresses that have been connected at a certain moment, carry out a necessary inspection of the means of transportation, passengers and luggage; undertake necessary measures related to the establishment of the identity of persons and the sameness of items, take a DNA sample for analysis, issue a wanted notice for a person or warrant for seizure of items which are subject to a search, inspect, in the presence of the authorized person, facilities and premises of state authorities, companies, other legal persons and entrepreneurs, have insight in their documentation and seize it where needed, and take other necessary measures and actions in compliance with this Code.

Records or an official annotation shall be made on the facts and circumstances established in the course of individual actions, which may be of importance for the criminal proceedings, as well as on discovered or seized items.

The police may also make audio or audiovisual recordings of the execution of certain actions from this paragraph, in which case such recordings shall be enclosed with the record or the official annotation thereon.

(3) When conducting a crime scene investigation for the criminal
offence against traffic safety for which there are grounds for suspicion that it has caused severe consequences or has been committed with the intent, the police authorities may temporarily, and for to the time not exceeding three days, provisionally seize the driving license of the suspect.

(4) A person against whom some of the actions or measures referred to in paragraphs 2 and 3 of this Article have been undertaken shall be entitled to file a complaint with the competent State Prosecutor.

Holding at the Crime Scene and Other Actions

Article 258

(1) An authorized police official shall have the right to send persons found at the crime scene to the State Prosecutor or to hold them at the crime scene until the State Prosecutor’s arrival if these persons may provide facts important for the criminal proceedings and if it is likely that their interrogation at a later stage might be impossible or might entail considerable delays or other difficulties. Such persons shall not be held at the crime scene for more than six hours.

(2) Where necessary for establishing identity or in other cases of interest for successful conduct of the proceedings, the police may take photos of the suspect and his/her fingerprints, and take other actions necessary to establish the identity of the suspect, the abovementioned being subject to a prior approval of the State Prosecutor.

(3) If necessary to establish the identity of the person whose fingerprints have been left on certain items, the police may take the fingerprints of persons likely to have touched those items.

(4) Any person against whom some of the actions referred to in this Article have been taken shall have the right to file a complaint with the competent State Prosecutor or an immediately superior police authority.

Gathering Information from Citizens

Article 259

(1) In order to gather information about a criminal offence or a perpetrator, the police may summon citizens. The reason for the summoning must be specified in the summons. A person who fails to appear as summoned may be brought in by force only where cautioned thereof in the summons.

(2) Gathering information from the person may last as long as necessary to get the information needed, but not more than six hours.

(3) Information may not be gathered from citizens by using force, or by means of deception or exhaustion, and the police must
respect the personality and dignity of each citizen. If a citizen declines to give information he may not be prevented from leaving in which case the six hour rule referred to in paragraph 2 of this Article shall not be applicable.
(4) If a summoned citizen is accompanied to the police premises by an attorney, the police shall allow the presence of the attorney while gathering information from the citizen.
(5) An official annotation or record of the information provided to the police shall be read to the informant thereof. This person may raise objections which shall be entered in the official annotation or record by the police. A copy of the official annotation or record on the information provided shall be issued to the citizen upon request.
(6) A citizen may be resummoned as to gathering information on the circumstances of another criminal offence or perpetrator, whereas for the purpose of gathering information related to the same criminal offence may be brought in again only with permission of the State Prosecutor.
(7) While acting in accordance with paragraphs 1 to 6 of this Article, the police may not interrogate citizens in the capacity of the accused, witness or expert.

**Gathering Information from Detainees**

**Article 260**

(1) Upon an approval by the investigative judge or the Chair of the Panel, the State Prosecutor, and, in exceptional cases, the police, when so authorized by the State Prosecutor, may gather information from persons held in detention, if that is required for the discovery or clarification of other criminal offences and perpetrators.
(2) The gathering of information specified in paragraph 1 of this Article shall take place in the prison where the defendant is detained, at the time ordered by the investigative judge or the Chair of the Panel and in his/her presence or in the presence of a judge designated by him/her. If so requested by the detainee, the defense attorney may be present in the course of gathering the information.
(3) Gathering of information shall be postponed until the arrival of the defense attorney, but not longer than four hours, and if the defense attorney does not appear in that time the information may be gathered in his/her absence.

**Examination of Suspect in Preliminary Investigation**

**Article 261**

(1) If in the course of gathering information the police assesses that a summoned citizen may be deemed a suspect, they are bound
to immediately notify thereon the State Prosecutor who shall request the police to bring the suspect before him/her if s/he finds necessary to examine him/her prior to issuing an order of investigation.

(2) The suspect shall be notified on the criminal offence he is charged with and the grounds for suspicion, that s/he is not obliged to make statements or answer any questions, that everything s/he says can be used as evidence against him in criminal proceedings, and on his/her right to retain a defense attorney who shall be present in the course of his/her interrogation.

(3) The suspect shall be allowed to make contact with his/her defense attorney by phone or other means of electronic communication either directly or through his/her family members or a third person whose identity must be revealed, and the State Prosecutor may assist the suspect to find a defense attorney.

(4) If in the case of mandatory defense from Article 69 paragraph 1 of the present Code the suspect fails to retain a defense attorney by himself/herself or the defense attorney fails to appear within four hours from being contacted by the suspect in the sense of paragraph 3 of this Article, the State Prosecutor shall, by virtue of office, appoint a legal aid defense attorney from the Bar Chamber’s list of defense attorneys at his/her own discretion, and shall examine the suspect without any delay.

(5) Exceptionally, upon the approval by the State Prosecutor, and with consent of the suspect and in the presence of the defense attorney, the police may examine a suspect. If the suspect fails to retain a defense attorney, the State Prosecutor shall, by virtue of office, appoint the defense attorney from the Bar Chamber’s list, and the police shall examine him/her without any delay.

(6) A defense attorney appointed by virtue of office within the meaning of paragraphs 4 and 5 of this Article shall remain in the proceedings as long as there are conditions for mandatory defense, or until the defendant selects a defense attorney by himself/herself.

(7) The interrogation of a suspect by the State Prosecutor or police shall be subject to the provisions of the present Code which govern the interrogation of the defendant.

(8) A record shall be kept on the interrogation of a suspect. The record shall be read to the suspect and signed by the suspect, and any objections by the suspect shall be entered therein. The record of the interrogation of the suspect shall not be separated from the file and may be used as evidence in the criminal proceedings.

(9) Should the State Prosecutor assess, after the interrogation of the suspect, that there is a reasonable suspicion that the suspect
had committed the criminal offence from the charges, the State Prosecutor shall issue an order of investigation.

(10) Upon issuing the order from paragraph 9 of this Article, the State Prosecutor may, if having assessed the conditions referred to in Article 267 paragraph 4 of the present Code to be met, issue a ruling on holding the suspect in custody, in which case the State Prosecutor shall propose to the investigative judge to order detention. The investigative judge shall act in compliance with Article 268 of the present Code.

**Examination of Witnesses in Preliminary Investigation**

**Article 262**

(1) Should, in the course of preliminary investigation, the State Prosecutor find needed that a summoned citizen be heard in the capacity of a witness, the interrogation shall be performed by the State Prosecutor in compliance with Article 113 of the present Code and prior to issuing an order of investigation.

(2) While the action from paragraph 1 of this Article being taken, the suspect and the defense attorney shall be allowed to attend the interrogation, unless there is a risk of delay or this is impossible for other important reasons, where they may put questions to the witness and make objections.

(3) The interrogation of a citizen in the capacity of a witness shall begin before the expiry of the time limit referred to in Article 259 paragraph 2 of the present Code, but such time limit may be extended with the citizen’s consent thereto.

(4) A record shall be kept of the interrogation of a witness which shall be signed by the witness. The course of the interrogation may be recorded by an audio or audiovisual recording device. The record on the interrogation of witness shall not be separated from the file and may be used as evidence in the criminal proceedings.

**Provisional Seizure of Items, Crime Scene Investigation and Expert Witness Evaluation**

**Article 263**

(1) If there is a risk of delay, the police may provisionally seize items pursuant to Article 85 paragraph 9 of the present Code and carry out a search of dwelling and persons under conditions from Article 84 of the present Code even before the investigation has been launched.

(2) The police shall immediately return the provisionally seized items to the owner or holder if none criminal proceedings are instituted or if they fail to file a criminal charge with the State Prosecutor within three months.

(3) If the State Prosecutor is unable to come immediately to the
scene, the police may carry out a crime scene investigation by themselves and order necessary expert witness evaluations which allow no delay, except for autopsy and exhumation. If the State Prosecutor arrives to the crime scene while crime scene investigation is underway, s/he may take over the execution of those actions.

(4) The police or the investigative judge shall notify the State Prosecutor on the actions referred to in paragraphs 1 to 3 of this Article without any delay.

**Deprivation of Liberty and Holding by the Police**

**Article 264**

(1) Authorized police officers may deprive a person of liberty if any of the grounds for detention from Article 175 of the present Code exists, but they shall inform the State Prosecutor thereon without delay, draw up an official annotation that has to contain the time and the place of the deprivation of liberty and to bring that person before the State Prosecutor without delay. On the occasion of the liberty deprived person’s appearance before the State Prosecutor, an authorized police officer shall submit the official annotation to the State Prosecutor and the State Prosecutor shall also enter in the record the deposition of the liberty-deprived person as to the time and place of his/her deprivation of liberty.

(2) The person deprived of liberty shall be advised on the rights referred to in Article 5 of the present Code.

(3) If a person deprived of liberty is not escorted before the State Prosecutor within 12 hours from the deprivation of liberty, the police shall release the person.

(4) A person deprived of liberty in compliance with paragraph 1 of this Article may not be deprived of liberty again for the same criminal offence.

**Deprivation of Liberty of a Person Caught in the Act of Committing Criminal Offence**

**Article 265**

Anyone may deprive of liberty a person caught in the act of committing a criminal offence which is prosecuted by virtue of office. The person deprived of liberty shall immediately be brought to the State Prosecutor or police, and if this is not possible, one of the abovementioned authorities shall immediately be informed thereon. The police shall proceed pursuant to Article 264 of the present Code.

**Proceeding by the State Prosecutor upon Bringing a Person**
**Deprived of Liberty**

**Article 266**

(1) The State Prosecutor shall immediately advise a person deprived of liberty on his/her right to retain a defense attorney, and enable him/her to inform a defense attorney on his/her deprivation of liberty by phone or other means of electronic communication, either directly or through his/her family members or a third party whose identity must be relieved to the State Prosecutor, and shall where necessary assist him/her in retaining a defense attorney.

(2) If the person referred to in paragraph 1 of this Article fails to ensure the presence of a defense attorney within 12 hours from the moment this was made available to him/her within the meaning of paragraph 1 of this Article, or if s/he declares waiver of the right to defense attorney, the State Prosecutor shall examine him/her with no delay, and not later within the next 12 hours.

(3) If in a case of mandatory defense from Article 69 paragraph 1 of the present Code the person from paragraph 1 of this Article fails to retain a defense attorney within 12 hours from the moment he/she was advised on that right, or declares the waiver of retaining a defense attorney, s/he shall be appointed a defense attorney by virtue of office and shall be examined without any delay.

(4) The State Prosecutor shall release the person from paragraph 1 of this Article immediately after the interrogation unless the State Prosecutor assesses there are reasons for the person’s detention.

**Holding by the State Prosecutor**

**Article 267**

(1) Exceptionally, the suspect deprived of liberty may be held by the State Prosecutor, not longer than 48 hours from the moment of his/her deprivation of liberty, if the State Prosecutor finds that there is any of the reasons from Article 175 paragraph 1 of the present Code.

(2) A person held and his/her defense attorney shall be issued and served a decision on holding immediately or within two hours the latest. The decision shall specify the offence which the suspect has been charged of, the grounds of suspicion, the reason of holding, date and hour of the suspect’s deprivation of liberty, and the moment from which the holding starts running.

(3) The decision on holding may be subject to appeal by the suspect and defense attorney, the appeal being immediately submitted to an investigative judge together with the case file. The investigative judge shall decide on the appeal within four hours from the appeal’s receipt. The appeal shall not withhold the execution of the decision.
A suspect shall have a defense attorney as soon as the decision on holding is issued, in which case, accordingly, the provisions of Article 261 of the present Code shall be applicable.

**Ordering Detention in Preliminary Investigation**

**Article 268**

(1) Where the State Prosecutor issues a decision on holding a suspect, and finds that there are still reasons for ordering detention, the State Prosecutor shall file a motion to the investigative judge for detention of the suspect.

(2) The motion referred to in paragraph 1 of this Article shall be delivered to the investigative judge before the expiration of the holding time limit. Within that time limit the person held must be brought before the investigative judge.

(3) The investigative judge shall, in the presence of the State Prosecutor, interrogate the person referred to in paragraph 1 of this Article regarding all the circumstances of significance for the rendering of the decision ordering detention. After interrogation, without delay and at the latest within 24 hours as of the moment that person was brought before him/her, the investigative judge shall order detention or reject the motion ordering detention.

(4) The person referred to in paragraph 1 of this Article shall have the right to have his/her defense attorney present during his/her interrogation by the judge. As regards the exercise of this right, provisions of Article 266, paras. 2 and 3 of the present Code shall be applied.

(5) If the State Prosecutor did not bring and deliver to the court the order on conducting investigation in the course of holding a suspect, and does not perform this within 48 hours as of the moment of ordering detention, the investigative judge shall release the detainee.

(6) Where a liberty-deprived person is brought to the State Prosecutor, that person, his/her defense attorney, family member, or partner in a customary marriage may request that the State Prosecutor allow a medical examination of the detainee. The decision on appointing a medical doctor who will perform the medical checks and the record on the detainee’s hearing shall be enclosed in criminal case file by the State Prosecutor.

**Ensuring Evidence by Court**

**Article 269**

(1) If there is a risk that a person will not be available to court during the main hearing due to an older age, illness or other important reasons the State Prosecutor shall file a motion to the investigative judge to hear such person as witness in compliance with Article 114 of the present Code.
(2) If the investigative judge rejects the motion from paragraph 1 of this Article the Panel referred to in Article 24 paragraph 7 of the present Code shall render a decision on the matter.

**Filing of Criminal Charge by Police**

**Article 270**

(1) On the basis of information gathered, the police shall draft a criminal charge and file it with the State Prosecutor, shall notify the State Prosecutor on the measures taken in the preliminary investigation and specify evidence learned of in the course of gathering of information. The items, sketches, photographs, audio and visual recordings, reports obtained, documents on the measures and actions taken, records, official annotations, depositions, and other materials which may be useful for a successful conduct of criminal proceedings shall be attached to the criminal charge.

(2) Should the police learn of new facts, evidence or traces of a criminal offence after having filed a criminal charge, the police shall gather necessary information and to deliver a report thereon to the State Prosecutor as an amendment to the criminal charge.

**Dismissals of and Amendments to Criminal Charges**

**Article 271**

(1) The State Prosecutor shall, by a reasoned decision, dismiss a criminal charge if it arises from the charge that the act in question does not constitute a criminal offence or a criminal offence prosecuted by virtue of office, if the statutory limitation has come to effect, or if the offence is subject to amnesty or pardon, or if there are other circumstances disqualifying the prosecution.

(2) Within eight days, the State Prosecutor shall deliver the act on the dismissal of a criminal charge to the informant, as well as to the injured party, compliant to Article 59 of the present Code.

(3) If, based on the contents of the criminal charge, the State Prosecutor is unable to establish whether the allegations in the charge are probable, or if the facts from the charge are insufficient to issue either an order of investigation or decision on the dismissal of charge, and particularly if the offender is unknown, the State Prosecutor shall, either personally or through other authorities, gather necessary information. For that purpose the State Prosecutor may summon the informant, the person subject to criminal charge, and other persons whom s/he assesses able to provide information relevant to deciding on the charge. If the State Prosecutor is unable to do it by himself/herself, s/he shall request the police authorities to obtain necessary information and take other measures in order to discover the criminal offence and its perpetrator, in compliance with Articles 257, 258 and 259 of...
the present Code.

(4) Aimed at clarification of specific issues subject to an expert opinion, arising on the occasion of deciding on a criminal charge, the State Prosecutor may ask for relevant explanations from professionals in the field.

(5) The State Prosecutor may at any time require information from the police regarding the measures taken. The police shall respond to the State Prosecutor without any delay.

(6) If, even after the undertaking of the actions from paragraphs 3, 4 and 5 of this Article, there are some of the circumstances from paragraph 1 of this Article or if there is no reasonable suspicion that a suspect has committed a criminal offence which is prosecuted by virtue of office, the State Prosecutor shall dismiss the charge.

(7) When gathering or giving information, the State Prosecutor and other state authorities, companies and other legal persons shall act with due caution, ensuring that no harm be inflicted on the honor and reputation of the person who is subject to the information.

### Laying off Criminal Prosecution

#### Article 272

(1) The State Prosecutor may decide to postpone criminal prosecution for criminal offences punishable by a fine or imprisonment for a term up to five years, when s/he establishes that it is not functional to conduct criminal proceedings having in mind the nature of a criminal offence and the circumstances of its commission, the offender’s past and personal attributes, if the suspect accepts to fulfill one or several of the following obligations:

1) to eliminate a detrimental consequence or to compensate the damage caused by the criminal offence,
2) to fulfill obligations as to the payables for material support or other liabilities determined by a final judgment;
3) to pay a certain amount of money for the benefit of a humanitarian organization, fund or public institution;
4) to carry out some community service or humanitarian work,

(2) The suspect shall fulfill the accepted obligation within six months the latest.

(3) The obligations referred to in paragraph 1 of this Article shall be imposed upon the suspect by a decision of the State Prosecutor. The decision shall be served on the suspect, injured party, if any, or the beneficiary humanitarian organization or public institution.

(4) Before issuing the decision referred to in paragraph 3 of this Article, the State Prosecutor may, assisted by specially trained persons – mediators, carry out the procedure of mediation between
the injured party and the suspect, the process being subject to the provisions of the law regulating the rules of mediation procedure for the obligations referred to in paragraph 1 items 1 and 2 of this Article, or obtain the consent of the injured party for the measures referred to in paragraph 1 items 3 and 4 of this Article.

(5) A more detailed manner of fulfilling obligations referred to in paragraph 1, items 1 to 4 of this Article, the contents of the decision referred to in paragraph 3 of this Article as well as a more detailed manner of implementing actions in the application of provisions of this Article shall be prescribed by the ministry competent for the affairs of the judiciary.

(6) If the suspect executes the obligation referred to in paragraph 1 of this Article, within the time limit referred to in paragraph 2 of this Article, the State Prosecutor shall dismiss the criminal charges. In this case, the provisions of Article 59 of the present Code shall not be applicable, of which the State Prosecutor shall advise the injured party before obtaining the consent referred to in paragraph 4 of this Article.

**Dismissal of Criminal Charge for Fairness**

**Article 273**

In the cases of criminal offences punishable by a fine or prison sentence of up to 3 years, the State Prosecutor may dismiss a criminal charge if the suspect, expressing his/her true regret, has prevented a damage from occurring or has already compensated for the entire damage, and the State Prosecutor has established that imposing a criminal sanction would not be in line with fairness. In such case, the provisions of Article 59 of the present Code shall not be applicable.

**B. PRE-MAIN HEARING PROCEEDINGS**

**Chapter XVIII**

**INVESTIGATION**

**Purpose of Investigation**

**Article 274**

(1) An investigation shall be conducted based on an order of investigation and against a specific person when there is a reasonable suspicion that the person has committed a criminal offence.

(2) In the course of an investigation, such evidence and information shall be gathered as are necessary for the State Prosecutor in rendering a decision as to whether to bring an indictment or discontinue the investigation, and evidence for which there is a risk they may not be available for repetition at the main hearing or
whose presentation may involve some difficulties, as well as other evidence which may be of use for the proceedings and which presentation is functional considering the circumstances of a case.

**Order of Investigation**

**Article 275**

1. A State Prosecutor shall order the launch of an investigation where s/he finds that the allegations in a criminal charge and its enclosures indicate reasonable grounds to believe that a suspect has committed the criminal offence charged with.
2. Before issuing the order referred to in paragraph 1 of this Article, the State Prosecutor shall examine the suspect unless the suspect has already been examined in the preliminary investigation in accordance with Article 261 of the present Code or if there is a risk of postponement. If special circumstances so require or if repeated interrogation of the suspect is required in order to gather evidence for the defense, the State Prosecutor may again examine the suspect already examined in the preliminary investigation, prior to ordering an investigation.
3. The order of investigation shall contain: the personal data of the suspect, a description of the offence which result in its legal attributes, the statutory title of the criminal offence, and evidence as grounds for the reasonable suspicion.
4. In the order of investigation, the State Prosecutor may suggest to the judge to impose on the defendant one or several measures referred to in Article 166 paragraph 2 of the present Code or to order detention of the defendant who is held or deprived of liberty.
5. Order on the conduct of investigation shall be delivered to the accused person and his/her defense counsel.

**Competence in Conducting Investigation**

**Article 276**

1. The State Prosecutor shall conduct the investigation.
2. If so requested by the parties, certain actions of the evidence gathering process in the investigation may, under the rules of the present Code, be undertaken by an investigative judge, provided that special circumstances obviously indicate that it will not be possible to repeat such actions at the main hearing or that the presentation of evidence at the main hearing would be impossible or significantly more difficult.
3. If the investigative judge does not concur with the request referred to in paragraph 2 of this Article, the decision thereon shall be made by the Panel referred to in Article 24 paragraph 6, within 24 hours.
4. An investigation may be conducted by one State Prosecutor’s Office for the territory of several Prosecutor’s Offices (the investigative center), in compliance with law.
<table>
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<th>Entering Performance of Actions in Evidence Gathering Process</th>
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<tr>
<td>Article 277</td>
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<tr>
<td>(1) The State Prosecutor may entrust performance of certain actions in the evidence gathering process to the State Prosecutor with territorial jurisdiction as to the performance of such actions, or to a single prosecutor vested with competences in conducting investigations for the territory of several prosecutors.</td>
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<tr>
<td>(2) Upon request or approval of the State Prosecutor the police shall take photographs of the defendant, take his fingerprints or saliva sample for DNA analysis if needed for the purposes of criminal proceedings.</td>
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<td>(3) The State Prosecutor entrusted with the performance of certain evidence gathering actions shall, where needed, carry out other evidence gathering actions connected to or arising from those entrusted with the State Prosecutor.</td>
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<tr>
<td>(4) If the State Prosecutor entrusted with performance of certain evidence gathering actions is not competent in performing thereof, s/he shall forward the case to the competent State Prosecutor and notify thereabout the State Prosecutor who entrusted him with the case.</td>
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<tr>
<th>Actions of Evidence Gathering Process Exclusively Ordered by Investigative Judge</th>
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<tr>
<td>Article 278</td>
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<tr>
<td>(1) The order for a search of dwelling, other premises and persons, as well as the order for provisional seizure of objects shall be issued by the investigative judge upon a motion of the State Prosecutor.</td>
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<tr>
<td>(2) At the request of the State Prosecutor the investigative judge shall issue an order for a corpse exhumation.</td>
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<tr>
<td>(3) If the investigative judge does not approve the motion referred to in paragraph 1 of this Article or the request referred to in paragraph 2 of this Article, the decision thereon shall be made by the Panel referred to in Article 24 paragraph 7 of the present Code within 24 hours.</td>
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<th>Ordering Detention in Investigation</th>
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<tr>
<td>Article 279</td>
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<tr>
<td>(1) Upon filing a motion for detention of a defendant pursuant to Article 275 paragraph 4 of the present Code, after being satisfied that other measures referred to in Article 163 paragraph 1 of the present Code cannot ensure the presence of the defendant or create conditions for an unimpeded conduct of the criminal proceedings, the State Prosecutor shall issue a decision on a temporary holding</td>
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of the defendant in accordance with Article 267 of the present Code if the State Prosecutor has not ordered the holding of the suspect prior to issuing an order of launching investigation.

(2) Within the duration of holding, the investigative judge shall examine the accused person and decide whether to impose detention or dismissal the motion for having the defendant detained.

(3) In the case referred to in paragraph 2 of this Article, if the investigative judge fails to issue a ruling ordering detention before the expiry of the holding time limit, the accused person shall be released without delay.

Scope of Investigation

Article 280

(1) An investigation shall only be conducted with respect to the criminal offence and against the accused person who is subject to the order on launching the investigation.

(2) If in the course of the investigation it becomes evident that it should be expanded to another criminal offence or another person, the State Prosecutor shall issue an order to that effect, subject to the provisions from Article 275 of the present Code.

Motions for Evidence Gathering Actions Filed by the Accused Person, Defense Attorney, Injured Party, and Proxy of the Party Injured in Investigation

Article 281

(1) In the course of an investigation, the accused person, defense attorney, injured party, and proxy of the injured party may file motions to the State Prosecutor for certain actions to be taken.

(2) The accused person, defense attorney, injured party, and proxy of the injured party may file motions referred to in paragraph 1 of this Article also to the State Prosecutor entrusted with the performance of certain evidence gathering actions. If the State Prosecutor disagrees with the motion, s/he shall notify the person who has filed the motion thereon, and this person may repeat filing the motion with the State Prosecutor referred to in paragraph 1 of this Article.

Openness of Investigation

Article 282

(1) An injured party, proxy of the injured party and defense attorney may attend the interrogation of the accused person.

(2) The injured party, proxy of the injured party, accused person and defense attorney may attend the crime scene investigation, reconstruction and hearing of an expert witness.

(3) The injured party, proxy of the injured party and defense
attorney may be present at the search of dwelling.

(4) The accused person, defense attorney, injured party, and proxy of the injured party may be present at witness hearings.

(5) The State Prosecutor shall notify in a convenient manner the defense attorney, the injured party, proxy of the injured party, and the accused person of the time and place of taking evidence gathering actions they are entitled to attend, unless there is a risk of delay. If the accused person retains a defense attorney, the State Prosecutor shall, as a rule, notify only the defense attorney. If the accused person is in detention and the evidence-related action is to be performed outside the court seat, the State Prosecutor shall decide whether the presence of the accused person is needed.

(6) The evidence gathering action may be carried out even in the absence of a duly notified person who fails to appear.

(7) Persons attending the evidence gathering actions may suggest that the State Prosecutor poses certain questions to the accused person, witness or expert witness for the purpose of clarification, and, upon the permission of the State Prosecutor, may pose questions personally. These persons are entitled to request that their objections as to carrying out certain actions be entered in the records and may propose that certain evidence be examined.

(8) In order to clarify certain technical or other expert issues which arise in relation to the evidence gathered or at the interrogation of the accused person or in the course of undertaking other evidence related actions, the State Prosecutor may require that an expert in the relevant field give necessary explanations in regard to those issues. If the parties are present while the explanation is being conveyed, they may request that the expert provide a more detailed explanation. Where necessary, the State Prosecutor may require a specialized institution to provide an explanation.

(9) The provisions of paragraphs 1 through 8 of this Article shall also be applied if the evidence-related action is undertaken before the order of investigation is rendered.

**Obligation to Assist in Investigation**

**Article 283**

If, in conducting the investigation, the State Prosecutor or the investigative judge requires police assistance (crime-investigation and technical assistance, etc) or from other state authorities, they shall provide this assistance upon his/her request. When it is estimated that an evidence-related action may not be delayed, the assistance from a company or other legal person may be requested.

**Obligation of Keeping a Secret Arising from Investigation**

**Article 284**
Should it be in the interests of criminal proceedings, keeping information as secret, public order, moral or protection of personal or family life of the injured party or the accused person, the person acting in an official capacity who is undertaking an evidence gathering action shall order the persons who are being examined or who are present while the abovementioned actions are being carried out, or who inspect the files of the investigation, to keep as secret certain facts or information they have learned in the course of proceedings and shall advise them that any disclosure of a secret constitutes a criminal offence. This order shall be entered into the record on evidence-related action or shall be noted in the inspected files, along with the signature of the person cautioned.

**Maintaining Order during Investigation**

**Article 285**

(1) During the course of the evidence gathering process, the State Prosecutor or investigative judge shall maintain order and protect participants in the proceedings from insults, threats and any other form of assault.

(2) A fine not exceeding €1,000 may be imposed on a participant in the proceedings or other person who, during the evidence gathering process and after given caution, has been disturbing order, giving the participants of the proceedings offenses, or endangering their safety; The investigative judge shall impose the abovementioned fine at his/her own discretion or upon a motion by the State Prosecutor. If the presence of such person is not necessary, the person may be removed from the place where the evidence gathering action is being carried out.

(3) The accused person may not be fined but s/he may be taken away from the place where the evidence gathering action is being carried out.

(4) If the State Prosecutor disturbs the order, the investigative judge shall proceed pursuant to the provision from Article 321 paragraph 5 of the present Code.

**Recess of Investigation**

**Article 286**

(1) The State Prosecutor shall recess an investigation by an order in the following cases:

(1) if the accused person develops a temporary mental illness or temporary mental disorder;

(2) if the habitual residence of the accused person is unknown;

(3) if the accused person has fled or is otherwise out of reach of the state authorities.
(2) Prior to recessing the investigation from paragraph 1 of this Article, all the obtainable evidence on the criminal offence and the guilt of the accused person shall be gathered.

(3) The State Prosecutor shall continue the investigation as soon as obstacles which resulted in the recess cease to exist.

**Indictment by Subsidiary Prosecutor**

**Article 287**

(1) Where an injured party assumes prosecution in compliance with Article 59 of the present Code, s/he may a direct indictment.

(2) If the injured party finds necessary to perform certain evidentiary actions prior to bringing the direct indictment, the injured party may file a motion to the investigative judge to take such actions.

(3) If the investigative judge sustains the motion from paragraph 2 of this Article, s/he shall take necessary evidentiary actions without delay and notify the injured party thereof.

(4) If the investigative judge fails to sustain the motion from paragraph 2 of this Article, s/he shall require that the matter be decided by the Panel from Article 24 paragraph 7 of the present Code, which is obliged to issue a decision thereon within three days.

(5) The decision of the Panel referred to in paragraph 4 of this Article may not be subject to appeal.

**Bringing Direct Indictment**

**Article 288**

The State Prosecutor shall not conduct an investigation if the gathered information referring to a criminal offence and the previously examined accused person provide sufficient grounds for bringing a direct indictment.

**Obtaining Information on the Accused Person**

**Article 289**

(1) Before the investigation is concluded, the State Prosecutor shall

obtain information on the accused person referred to in Article 100 paragraph 1 of the present Code if the information are missing or need a check, as well as information on the accused person’s previous convictions and, if s/he has still been serving a sentence or another sanction which is connected to deprivation of liberty – the information on his/her behavior while serving the sentence or other sanction. If necessary, the State Prosecutor shall obtain information on the accused person’s past, his living conditions as well as on other circumstances concerning his personality where needed. The State Prosecutor may order medical or psychological examinations of the accused person when this is needed in order
to supplement information on the defendant’s personality.
(2) Where applicable to impose a cumulative sentence comprising the sentences from previous judgments as well, the State Prosecutor shall request certified copies of the final judgments.

Completion of the Investigation

Article 290
(1) The State Prosecutor shall conclude the investigation when s/he finds that the case has been sufficiently clarified and shall make an official annotation thereof.
(2) After the conclusion of the investigation, the State Prosecutor shall, within fifteen days, bring an indictment or discontinue the investigation.
(3) If the investigation has not been completed within six months, the State Prosecutor shall notify thereof the immediately superior prosecutor as to the reasons for not completing the investigation. The immediately superior State Prosecutor shall take such measures as may be necessary to complete the investigation.
(4) The State Prosecutor shall order an investigation to cease if, during its course or after its completion, s/he finds that:
1) the act the accused person is charged with is not a criminal offense or a criminal offense prosecuted by virtue of office;
2) the act has been granted amnesty, pardon or statute of limitations;
3) there are other obstacles that preclude prosecution;
4) there is no evidence which would back a reasonable suspicion that the accused person has committed a criminal offense.
(5) Within eight days, the order from paragraph 4 of this Article shall be served on the injured party together with an instruction of his/her being entitled to initiate criminal prosecution by bringing a direct indictment within eight days from the date when s/he was served the order.

[...]

Chapter XX
AGREEMENT ON THE ADMISSION OF GUILT
Plea Bargaining

Article 300
(1) In the case of criminal proceedings for a criminal offence or concurrence of criminal offences for which a prison sentence of up to 10 years is envisaged, the State Prosecutor or the accused person and his/her defense attorney may propose that an agreement on the admission of guilt be concluded.
(2) When the proposal referred to in paragraph 1 of this Article has been made, the parties and the defense attorney may negotiate
the conditions of admitting guilt for the criminal offence or criminal offences with which the accused person is charged.

(3) The agreement on the admission of guilt shall be made in writing and must be signed by the parties and the defense attorney, and can be submitted not later than the first hearing for the main hearing before the first instance court.

(4) If an indictment has not been brought yet, the agreement on the admission of guilt shall be submitted to the Chair of the Panel referred to in Article 24 paragraph 7 of the present Code and after the indictment has been brought, it shall be submitted to the Chair of the Panel.

Subject-matter of the Agreement on the Admission of Guilt

Article 301

(1) By way of an agreement on the admission of guilt, the accused person fully confesses to the criminal offence or concurrence of criminal offences s/he is charged with, whereas the accused person and the State Prosecutor agree on the following:

1) on the penalty and other criminal sanctions which will be imposed on the accused person in accordance with the provisions of the Criminal Code;
2) on the costs of the criminal proceedings and claims under property law;
3) on denouncing the right of appeal by the parties and defense attorney against the decision of the court made on the basis of the agreement on the admission of guilt when the court has fully accepted the agreement.

(2) Agreement on the admission of guilt shall also contain an obligation of the accused person to return the property gain acquired by the commission of the criminal offense as well as objects that have to be forfeited under the Criminal Code within a certain time limit.

(3) The accused person may undertake by means of the agreement on the admission of guilt to perform the obligations referred to in Article 272 paragraph 1 of the present Code, provided that the nature of the obligations is such that it allows the accused person to perform or start performing them before the submission of an agreement on the admission of guilt.

Deliberation on the Agreement on the Admission of Guilt

Article 302

(1) The court shall decide by a ruling whether an agreement on the admission of guilt should be rejected, dismissed or accepted.

(2) If an agreement on the admission of guilt has been submitted
before an indictment has been brought, the Chair of the Panel referred to in Article 24 paragraph 6 of the present Code shall decide on it. In such a case, a special clause of the agreement shall contain all the information listed in Article 292 of the present Code.

(3) If an agreement has been submitted after the indictment has been brought, the Chair of the first instance panel shall decide on it.

(4) The Chair of the Panel shall reject an agreement on the admission of guilt submitted after the expiry of the term specified in Article 300 paragraph 3 of the present Code. The decision on rejection shall not be appealable.

(5) The court shall decide on the agreement on the admission of guilt without delay at a hearing attended by the State Prosecutor, accused person and his/her defense attorney, while the injured party and his/her proxy shall be informed of the hearing.

(6) Provisions of Art. 313 to 316 of the present Code shall apply on the holding of a hearing referred to in paragraph 5 of this Article.

(7) The court shall dismiss an agreement on the admission of guilt by way of ruling if the duly summoned accused person does not appear at the hearing. The ruling dismissing the agreement on the admission of guilt cannot be appealed.

(8) The court shall accept an agreement on the admission of guilt and render a decision which is in line with the contents of the agreement, if it establishes the following:

1) that the accused person confessed to the criminal offence or offences s/he is charged with voluntarily and consciously, that the confession is in line with the evidence contained in the case files and that there is no possibility that the confession was made as a consequence of an error;

2) that the agreement was concluded in accordance with Article 300 paragraph 1 item 1 of the present Code;

3) that the accused person understands the consequences of the agreement, and particularly that s/he waives the right to a trial and that s/he may not file an appeal against the decision of the court rendered on the basis of the agreement;

4) that the agreement does not violate the rights of the injured party.

5) that the agreement is in line with the interests of fairness and the sanction serves the purpose for which criminal sanctions are imposed.

(9) If one or more conditions referred to in paragraph 8 of this Article have not been met, the court shall dismiss the agreement on the admission of guilt by a ruling, and the admission of guilt
contained in the agreement cannot be used as evidence in criminal proceedings. The agreement and all supporting files shall be destroyed by the Chair of the Panel, of which records shall be made.

(10) The court shall enter into the record the decision accepting, rejecting or dismissing the agreement on the admission of guilt. The decision accepting the agreement on the admission of guilt may be appealed by the injured party, whereas the decision dismissing the agreement may be appealed by the State Prosecutor and by the accused person.

(11) The Panel referred to in Article 24 paragraph 7 of the present Code shall decide on the appeal referred to in paragraph 10 of the present Article, not including the judge who rendered the decision referred to in paragraph 10 of this Article.

[...]

Chapter XXII
THE MAIN HEARING
1. PUBLIC NATURE OF THE MAIN HEARING

General Public

Article 313
(1) The main hearing shall be open to the public.
(2) Only adults may attend the main hearing.
(3) Persons attending the main hearing shall not carry arms or dangerous tools, except the guards of the accused person who may be armed.

Exclusion of Public

Article 314
From the opening of the session to the conclusion of the main hearing, the Panel may at any time, by virtue of an office or on the motion of the parties but always after hearing their statements, exclude the public from the entire main hearing or any part of it, if that is necessary for keeping information secret, protecting public order, preserving morality, protecting the interests of a minor or protecting the personal or family life of the accused person or the injured party.

Limited Exclusion of Public

Article 315
(1) Exclusion of the public shall not relate to parties, the injured party, their representatives and the defense attorney.
(2) The Panel may grant permission that certain officials and scholars, and upon the request of the defendant, his/her spouse or close relatives or his/her extra-marital partner, attend the main
(3) The Chair of the Panel shall admonish the persons attending a main hearing in camera that they shall keep secret information learned at the main hearing, and that failure to do so constitutes a criminal offence.

Ruling on the Exclusion of Public

Article 316
(1) The Panel shall decide on the exclusion of the public by a ruling which shall be substantiated and publicly pronounced.
(2) The ruling on the exclusion of the public may be contested only in the appeal against the judgment.

Chapter XXX
PROCEEDINGS FOR REHABILITATION, FOR TERMINATION OF LEGAL CONSEQUENCES OF CONVICTION AND SECURITY MEASURES

Rendering a Ruling on Legal Rehabilitation by Virtue of an Office

Article 491
(1) When, under the Criminal Code, rehabilitation occurs by the lapse of a certain period of time and provided that the convicted person within that period does not commit a new criminal offence the authority in charge of keeping criminal records shall by virtue of an office render a ruling on rehabilitation, except for the case of imposing a suspended sentence.
(2) Before rendering a ruling on rehabilitation, the necessary inquiries shall be conducted and, in particular, data shall be obtained on whether the criminal proceedings are pending against the convicted person for any new criminal offence committed before the completion of the rehabilitation proceedings.

Rendering a Ruling on Legal Rehabilitation at the Request of the Convicted Person

Article 492
(1) If the competent authority does not render a ruling on rehabilitation, the convicted person may request that a determination be made that the rehabilitation has occurred by force of Criminal Code.
(2) If the competent authority fails to comply with the request of the convicted person within a term of thirty days from the day of receipt of the request, the convicted person may request that the
(3) The court shall decide on the request of the convicted person after receiving the opinion of the State Prosecutor.

Rehabilitation of a Person on whom a Suspended Sentence is Imposed

Article 493

If the suspended sentence is not revoked even one year after the lapse of the probation period, the court which tried the case at first instance shall render a ruling on the rehabilitation. This ruling shall be served on the convicted person, the State Prosecutor and the authority in charge of keeping the criminal records.

Rehabilitation on the Basis of a Judgment

Article 494

(1) The proceedings for the judicial rehabilitation shall be instituted upon a petition of the convicted person.

(2) The petition shall be submitted to the court that tried the case at first instance.

(3) The judge assigned to the case shall inquire whether the term prescribed by law has elapsed, and thereafter he shall conduct the necessary inquiries to determine the facts indicated by the petitioner and obtain evidence on all circumstances important for the decision.

(4) The court may request records on behavior of the convicted person from the police authority in whose region s/he has resided after serving the sentence, and may request such a records from the administration of the institution in which the convicted person has served the sentence.

(5) After the inquiries referred to in paragraph 3 of this Article have been made, and after having heard the State Prosecutor, the judge shall submit the files with a substantiated motion to the Panel of the court which tried the case at first instance.

(6) The petitioner and the State Prosecutor may appeal against the decision of the court on the rehabilitation rendered upon the petition.

(7) If the court rejects the petition because the convicted person does not deserve the rehabilitation due to his behavior, the convicted person may again submit a petition after one year from the day the ruling on the rejection of the petition becomes final.

Prohibition of Disclosing the Data on Rehabilitation and Discontinuance of Legal Consequences of Conviction

Article 495

A certification issued to the citizens upon the criminal record must not state the rehabilitation and the discontinued legal consequences.
Discontinuance of Security Measures

Article 496
(1) A petition for discontinuance of the security measure of prohibiting the engagement in a profession, activity or duty or the security measure of prohibiting the operation of a motor vehicle or a petition for discontinuance of the legal consequence of conviction regarding the acquirement of certain rights shall be submitted to the court which tried the case at first instance.
(2) The judge assigned to the case shall inquire whether the term prescribed by law has expired, and thereafter he shall conduct the necessary inquiries to determine the facts indicated by the petitioner and obtain evidence on all circumstances important for the decision.
(3) The court may request a record on behavior of the convicted person from the police authority in whose region he has resided after the principal sentence is served, remitted or purged by the statute of limitations, and may request such a record from the administration of the institution in which the convicted person has served the sentence.
(4) After conducting the inquiries referred to in paragraph 2 of this Article and after obtaining the opinion of the State Prosecutor, the judge shall submit the files with a substantiated motion to the Panel of the court which tried the case at first instance.

New Petition for Discontinuance of Security Measures

Article 497
When the court rejects the petition for discontinuance of the security measures or the legal consequences of conviction, a new petition may be submitted only after one year from the day the ruling on the rejection of the previous petition becomes final.

8. EXCERPTS OF THE LAW ON PUBLIC PEACE AND ORDER (as of 27 December 2011)

[...]

II. MISDEMEANOUR OFFENSES
Article 5
A person who acts in an improper or reckless manner (fights, yells, etc.) and in this way causes agitation or objection of the citizens, shall be punished for this misdemeanour offense with a fine ranging from EUR 50 to EUR 300, or with imprisonment sentence of up to 15 days.

Article 6
A person who disturbs citizens in a public place or endangers their safety (throws or breaks bottles, glasses or other objects) shall be punished for misdemeanour with a fine ranging from EUR 100 to EUR 400, or with imprisonment sentence of up to 30 days.

Article 7
A person who insults other person or acts in a n arrogant manner in a public space shall be punished for misdemeanour with a fine ranging from EUR 100 to EUR 400, or with imprisonment sentence of up to 30 days.
A person who seriously offends other person or acts in a particularly brutal, obscene or insulting manner in some other way, shall be punished for misdemeanour with a fine ranging from EUR 250 to EUR 1,000, or with imprisonment sentence of up to 60 days.

Article 8
A person who causes the feeling of peril in another person by threatening to attack life or body of that person or a person close to him or her, shall be punished for misdemeanour with a fine ranging from EUR 250 to EUR 1,500, or with imprisonment sentence of up to 60 days.

[...]

Article 10
A person exciting in a public space or challenging another person to engage in a fight, shall be punished for misdemeanour with a fine ranging from EUR 150 to EUR 1,000, or with imprisonment sentence of up to 30 days.
A person who physically assaults another person or fights in a public space, shall be punished for misdemeanour with a fine ranging from EUR 350 to EUR 1,000, or with imprisonment sentence of up to 60 days.

[...]

Article 12
A person who fails to act in accordance with the instruction of the authorized police officer regarding prohibition of movement, access or stay in a specific place or in relation to discharge of other duties under the responsibility thereof, in the situation of risk for the public peace and order, shall be punished for misdemeanour with a fine ranging from EUR 200 to EUR 2,000, or with imprisonment sentence of up to 30 days.

Article 13
A person who uses, without a permit, firearms of explosives in a public space, thus disturbing peace or security of the citizens, shall be punished for misdemeanour with a fine ranging from EUR 150 to EUR 1,500, or with imprisonment sentence of up to 60 days.

[...]

**Article 19**

A person who insults another person in a public space by speech, inscription, sign or in some other manner, on the basis of national, racial or religious affiliation, ethnic background or some other personal characteristics, shall be punished for misdemeanour with a fine ranging from EUR 250 to EUR 1,500, or with imprisonment sentence of up to 60 days.

[...]

**Article 27**

A person who engages in prostitution in a public space or takes action that encourages prostitution, shall be punished for misdemeanour with a fine ranging from EUR 200 to EUR 1,000, or with imprisonment sentence of up to 30 days.

**Article 28**

Legal person who rents or leases premises for prostitution purposes or mediates in some other manner in the commission of prostitution, shall be punished with a fine ranging from EUR 500 to EUR 5,000.

An entrepreneur committing an offense referred to in Para. 1 of this Article shall be punished with a fine ranging from EUR 300 to EUR 2,000.

A responsible person in the legal entity who commits a misdemeanour offense referred to in Para. 1 of this Article shall be punished with a fine ranging from EUR 300 to EUR 2,000.

Physical person who commits a misdemeanour offense referred to in Para. 1 of this Article shall be punished with a fine ranging from EUR 300 to EUR 1,500, or with imprisonment sentence of up to 30 days.

[...]

**Article 31**

A person who organizes begging or encourages or forces another person to beg, shall be punished for misdemeanour with a fine ranging from EUR 500 to EUR 1,500, or with imprisonment sentence of up to 60 days.

[...]

**Article 37**

Parent, adopted parent, foster parent or guardian who instigates or uses force to encourage a child to commit misdemeanour offenses stipulated by this law, shall be punished for misdemeanour with a fine ranging from EUR 200 to EUR 1,000, or with imprisonment sentence of up to 60 days.
III. PROTECTIVE MEASURES

Article 38
In case of misdemeanour offenses referred to in Articles 13, 15, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 of this law, besides the actual punishment, the court shall pronounce seizure of objects used or intended for or created through the commission of the misdemeanour offense.
In case of misdemeanour offense referred to in Article 18 of this law, besides the actual sanction, it is possible to pronounce a protective measure of seizure of items used or intended for use in the commission of the misdemeanour offense or created through the commission of the misdemeanour offense.
A person who committed a misdemeanour offense referred to in this Law due to addiction to alcohol or narcotics or other psycho-active substances, and there is a danger of regression, may also be pronounced a protective measure of compulsory treatment for alcohol or drug addicts. Protective measures in accordance with Paragraphs 1, 2 and 3 of this Article may be pronounced if the sanction for the misdemeanour offense is not pronounced.

Article 39
In case of misdemeanour offense referred to in Articles 25, 28 and 30 of this Law, it is possible to pronounce a protective measure of prohibition of discharge of profession, business activity or duty for the period of up to six months.
If a physical person who was pronounced protective measure referred to in paragraph 1 of this Article acts contrary to the prohibition, s/he shall be punished for a misdemeanour offense with imprisonment sentence of up to 30 days.

[...]

9. EXCERPTS OF THE LAW ON LOCAL SELF-GOVERNMENT (as of 2010)

LAW ON LOCAL SELF-GOVERNMENT

[...]

III AFFAIRS OF THE LOCAL SELF-GOVERNMENT
Type of Affairs
Article 28
(1) The Municipality shall perform affairs of the local self-government that are of direct and common interest to the local population.
(2) The Municipality shall also perform affairs that are transferred to it by law or entrusted by means of a Government’s regulation.

1. Own Affairs
Article 29
(1) Municipal own affairs shall be defined by the law and Municipal Statute.
(2) The Municipality shall specify the affairs referred to in paragraph 1 of this Article by means of its own regulations and it shall provide conditions for their implementation.

Article 30
The Municipality may also perform other affairs of interest for the local population that do not fall within jurisdiction of State authorities or other bodies and organizations.

Article 31
The Municipality, in accordance with the law and other regulations, shall adopt:
1) Development plans and programmes;
2) Plans and programmes for each administration sector;
3) Spatial-urban and other plans;
4) Budget and final financial statement;
5) Perennial investment plan;
6) Other act, in accordance with its jurisdiction.

- (Law 88/2009) -

Article 32
The Municipality, in accordance with the law and other regulation, shall:
1) Regulate and provide performance and development of communal affairs, maintenance of communal buildings and communal order;
2) Regulate and provide performance of construction, reconstruction, maintenance and protection of local and non-categorized roads, and streets in settlements;
3) Regulate and provide transport of passengers in line urban and suburban traffic, taxi transport and transport for own needs;
4) Regulate and provide traffic on its territory;
5) Regulate and provide conditions for construction and use of buildings, and conditions for construction and posting auxiliary and prefabricated temporary buildings;
6) Regulate and provide putting the construction land in the purpose, in accordance with local planning documents and utility equipment of construction land;
7) Regulate and provide conditions for entrepreneurial development;
8) Regulate, provide and take care of local goods of common interest;
9) Provide conditions and take care of the environmental protection and its parts (air quality, protection against noise, solid waste management, etc.);
10) Regulate and provide conditions for management of water, water land and water buildings which have local importance; take care of their protection and use; issue water acts and keep prescribed registers; determine eroding areas, anti-eroding measures and carry protection against erosions and torrents; regulate and provide other affairs related to the sector of management, use and protection of water and water supply;
11) Regulate relations in the residential sector and take care of providing conditions for the maintenance of residential buildings;
12) Regulate, provide and take care of the cultural development and protection of the cultural heritage;
13) Regulate, provide and take care of the tourist development, and development of services which contribute to the development of tourism;
14) Provide conditions for the development and improvement of sports for children, youth and citizens, and development of inter-municipal sports cooperation;
15) Provide condition for the use of agricultural land and take care of its protection;
16) In accordance with the possibilities, participate in the provision of conditions and improvement of sectors of: health protection, education, social and children protection, employment and other sectors of interest for the local population, and carry out rights and duties of a founder of institutions established within these sectors, in accordance with law;
17) In accordance with the possibilities, regulate and provide resolving housing issues for persons with social needs status and persons with disabilities, and support humanitarian and non-governmental organizations working within these sectors;
18) Regulate and provide conditions for the informing of the local population;
19) Regulate and provide conditions for development of librarianship and other activities of interest for the local population;
20) Resolve on rights from sectors of veterans and disabilities protection, and keep the register of beneficiaries;
21) Regulate and provide conditions for protection and rescue of the local population from natural disasters, fires, explosions, damages, and other accidental and extraordinary events;
22) Organize and implement measures for protection of citizens against infectious diseases;
23) Provide conditions for the development of agricultural production (fruit, vegetable and olive growing, etc.) and conduct other affairs within this sector;
24) Provide conditions for the consumers protection;
25) Regulate method and conditions of keeping of pets, method of treating the abandoned animals, provide conditions for taking care of them and implement measures of the control of their propagation;
26) Determine working hours of certain affairs and areas for conducting of certain affairs;
27) Regulate and provide conditions for the organization of public fairs of the local importance;
28) Regulate method of organizing of public works of the local importance.

- (Law 88/2009) -

Article 33
The Municipality shall also perform the following affairs within its own jurisdiction:
1) Manage, dispose and protect its property and conduct certain ownership authorizations on the state property, in accordance with law;
2) Regulate, introduce and determine level of its own revenues, in accordance with law;
3) Organize and conduct affairs related to the determination, collection and control of its own revenues;
4) Decide on rights and duties of citizens in affairs within its own jurisdiction;
5) Determine the public interest for the expropriation of real estates to meet local needs, in accordance with law;
6) Keep the electoral roll and other registers, in accordance with law;
7) Exercise inspection supervision and provide communal order, in accordance with law;
8) Organize and exercise the provision of legal aid to citizens;
9) Determine public tributes and awards;
10) Perform other affairs in accordance with the needs and interests of the local population.

- (Law 88/2009) -

**Article 34**
For the purpose of performing affairs of direct interest for the local population, the Municipality shall establish:
1) Local administration bodies;
2) Public services.

- (Law 88/2009) -

**Article 35**
The Municipality may establish public services referred to in Article 34, paragraph 1, point 2 of the Law if performance of such affairs is an indispensable requirement for life and work of the local population, and if the needs of citizens in such fields may not be addressed in a high-quality and economical manner by means of private initiative or by any other manner.

**Article 36**
The Municipality shall exercise methods and conditions for performing its own affairs in accordance with possibilities, interests and needs of the local population.

**Article 37**
When the Government estimates that performance of affairs of municipal own jurisdiction is of common interest for two or more municipalities, it may demand that the municipalities perform jointly such affairs or it may determine that such performance is of public interest and provide conditions for its implementation.

2. Transferred and Entrusted Affairs

**Article 38**
(1) Certain affairs that fall under the jurisdiction of State Administration may be transferred to the Municipality by means of law, if that ensures their more efficient and economic performance.
(2) Performance of certain affairs that fall within the jurisdiction of State Administration may be entrusted to the Municipality by means of a Government regulation.
(3) A law shall determine conditions in terms of which such affairs may be transferred, or entrusted to the Municipality.

**Article 39**
The Municipality shall perform transferred affairs in the fields of education, primary health care, social and child welfare, employment and in other fields of activity of the interest to the local population, in accordance with the special law.

[…]

**X RELATIONS OF LOCAL SELF-GOVERNMENT BODIES AND NON-GOVERNMENTAL ORGANISATIONS**
Article 116
(1) For the purpose of promoting an open and democratic society, local self-government authority shall cooperate with non-governmental organizations.
(2) Cooperation from paragraph 1 of this Article shall be realized through, namely:
1) Providing information on all issues that are important for the non-governmental sector;
2) Consultation of the non-governmental sector with respect to development programs of the local self-government and drafts of general acts to be passed by the Assembly;
3) Enabling participation in working groups on drafting normative acts or preparation of projects and programs;
4) Organizing joint public hearings, round tables, seminars, etc.;
5) Financing projects presented by the non-governmental organizations that are of interest for the local population, under the conditions and procedures prescribed by a general act of the Municipality;
6) Providing working conditions for non-governmental organizations, in accordance with possibilities of the local self-government;
7) Other means as set forth in the Municipal Statute.

XI RELATIONS AND CO-OPERATION BETWEEN LOCAL SELF – GOVERNMENT AUTHORITIES AND PUBLIC SERVICES FOUNDED BY THE STATE

Relations with Public Services

Article 117
(1) Local self-government authorities shall co-operate with public services and other legal entities founded by the State, participate in preparing and implementing development plans and programs and make proposals, suggestions and opinions concerning the carrying out activities on the territory of the Municipality.
(2) Organizations from paragraph 1 of this Article shall be under obligation to provide local self-government authorities, at their request, with the reports on implementation of plans and programs within activities carried out on their territory.

Article 118
(1) If co-operation does not achieved in a manner as provided for in this law, the competent authorities of the local self-government may notify the Government and require for adequate measures to be taken.
(2) The Government shall inform the competent authority of the local self-government within 30 days from the date the notification was received about the measures that have been taken.

XII RELATIONS BETWEEN LOCAL SELF-GOVERNMENT AUTHORITIES AND STATE BODIES

Article 119
Relations between local self-government authorities and state bodies shall be based on mutual co-operation and supervision of state bodies over the legality of performance of the local self-government authorities.
Article 120
While performing affairs and tasks of the local self-government related to definition and exercise of rights, freedoms and duties of citizens, the competent state bodies shall supervise the legality of the performance of local self-government authorities and they shall have rights and duties prescribed by the law.

Co-operation between Local Self-Government Authorities and State Bodies

Article 121
When performing affairs that fall within the scope of its jurisdiction, the local self-government shall:
1) Make initiatives to state bodies to regulate relations that are important for the local self-government and to undertake measures that are important for solving problems within the scope of rights and duties of the local self-government;
2) Propose the state bodies to undertake actions concerning the development of the local self-government;
3) Ask for an opinion from the competent state bodies on implementation of the laws of direct importance for the development and exercise of the local self-government and for the performance of the local self-government authorities;
4) Participate in preparation of laws and other acts which content is of an interest for the exercise and development of the local self-government.

Article 122
When co-operating with the local self-government authorities, the State bodies shall:
1) Inform the local self-government authorities, on their own initiative or by request, on measures they undertake or intend to undertake for the implementation of the laws and other regulations related to the protection of legality, phenomena that violate them and measures for their elimination, exercise of the rights of citizens to local self-government, as well as on other issues of direct interest for the exercise of the local self-government and the performance of its bodies;
2) Provide technical assistance to the local self-government authorities related to execution of their affairs;
3) Request reports, data and information related to the affairs that fall under the scope of rights and duties of the local self-government, as well as other issues important for the functioning of State bodies;
4) Perform other tasks, in accordance with a law.

Article 122a
(1) While preparing laws and general acts, State administration bodies shall be under obligation to deliver drafts, or bills of laws and other acts which prescribe the status, rights and duties of the local self-government to the Municipality for giving opinion on it.
(2) Deadline for giving opinion shall be no less than 15 days from a day of delivering the act from Paragraph 1 of this Article.
- (Law 88/2009) -
Article 123
(1) When it is requested by State bodies, local self-government authorities shall be under obligation to submit data and information that are important for the exercise of the State bodies’ functions.
(2) State bodies and local self-government authorities may not prescribe fees for mutually rendered services and exchange of official data that are necessary for their functioning.

Relations between Local Self-Government Authorities and the Government

Article 124
(1) The Government shall be entitled, pending a decision of the Constitutional Court, to suspend from execution a regulation or general act of the Assembly or the Mayor if it estimates that such regulation or general act is not in accordance with the Constitution or it restricts freedoms, rights and duties of citizens as prescribed by the Constitution or laws.
(2) When the Government suspends a regulation or general act from execution, it shall initiate proceedings before the Constitutional Court, without delay and within eight days at the latest.
(3) If the Government does not initiate proceedings within the deadline from paragraph 2 of this Article, the regulation or general act shall be implemented.

Article 125
(1) When an Assembly fails to hold its sessions during a period longer than six months, to enforce decisions of the competent courts or to execute its legal duties, the Government shall issue a warning that the Assembly should ensure the functioning, or execute its legal duties within a determined deadline.
(2) If the Assembly does not ensure its functioning, or perform its legal duties within the deadline from paragraph 1 of this Article, the Government shall dissolve the Assembly, at the proposal of the Ministry responsible for the local self-government.
(3) In the case of dissolution, a Board of Creditors nominated by the Government shall be in charge of the functioning of the Assembly, until the newly elected Assembly is constituted.

Law on Non-Contentious Proceedings

10. EXCERPTS OF THE LAW ON NON-CONTENTIOUS PROCEEDINGS (as of 2006)

- (Law 88/2009) -

Article 126
(1) In the case of dissolution of the Assembly, the Mayor shall call for elections within 15 days from the date the dissolution.
(2) If Mayor fails to call for the elections within the deadline from Paragraph 1 of this Article, the Government shall call for the elections.

Law on Non-Contentious Proceedings

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PART ONE
GENERAL PROVISIONS

Article 1

This law determines the rules of non-contentious proceedings under which courts shall proceed and decide in personal, family, property, and other legal matters that are, under the law, to be decided in a non-contentious proceeding.

The provisions of this Law shall also apply to other legal matters from the jurisdiction of courts for which the law does not expressly specify that they shall be handled in non-contentious proceedings, if they do not relate to the protection of a violated or threatened right, nor due to the nature of the legal matter or the capacity of a party to the proceedings the provisions of the Law on Civil Procedure (Official Gazette of the Republic of Montenegro 22/04 and 28/05), which governs the civil procedure (hereinafter: the Civil Procedure Law) may be applied.

Article 2

The general provisions of this Law shall be adhered to in all matters that are not governed differently by special proceedings set forth herein, as well as in other non-contentious matters for which rules of proceedings are not set forth in any specific law.

The provisions of the Civil Procedure Law shall apply mutatis mutandis to the non-contentious proceedings, unless otherwise provided for by this or other law.

Article 3

The non-contentious proceedings shall be instituted by a petition of a natural or legal person, as well as by a petition of an authority specified in this or other law.

By way of an exception, the non-contentious proceedings shall be instituted by the court ex officio in the cases and under the conditions specified in this or other law.

If the proceedings have not been instituted by the authority authorised under the law to institute the proceedings, the court shall, without delay, notify the authorised authority that the proceedings have been instituted upon the petition of an authorised person, and shall set the time limit to notify its participation in the proceedings. The court shall halt the proceedings until the expiry of such time limit if this is necessary for the protection of parties or for the protection of the public interest.

Article 4
Participant in the non-contentious proceedings shall mean a person that has instituted the proceedings, the person whose rights or legal interests are decided in the proceedings, as well as the authority which participates in the proceedings pursuant to an authorisation by law to institute the proceedings, regardless of whether it has instituted the proceedings or entered the proceedings at a later date.

By way of an exception, the court may recognise the capacity of a participant in the proceedings, with legal effect in a specific matter, to those forms of association which do not have legal personality, and which are not specified in special regulations as possible participants in the non-contentious proceedings if they meet the conditions referred to in Art. 76 para. 3 of the Civil Procedure Law, and if the subject matter of the non-contentious case directly refers to them.

Petitioner for the purposes of this law shall mean the person or the authority upon whose petition the proceedings have been instituted. Respondent shall mean the person in relation to whom the right or the legal interest of the petitioner is exercised.

**Article 5**

In the non-contentious proceedings, the court shall, ex officio, take particular care and undertake measures to protect the rights and legal interests of minors who are without parental care, and of other persons who are incapable of taking care to protect their own rights and legal interests.

Where the rights and legal interests of minors and other persons enjoying special protection are decided in the proceedings, the court shall notify the guardianship authority on the institution of the proceedings, summon it to the hearings and serve it applications of the participants and decisions against which legal remedy is allowed, regardless of whether the guardianship authority is participating in the proceedings.

When it deems it necessary, the court shall invite the guardianship authority to participate in the proceedings and set a time limit by which it may notify its participation. Until this time limit expires, the court shall halt the proceedings, but the guardianship authority may use its right to participate in the proceedings even after the lapse of such time limit.

**Article 6**

The guardianship authority participating in the proceedings, even when not authorised to institute the proceedings under a specific law, shall be authorised to institute all actions in the proceedings for the purposes of protecting the rights and legal interests of minors and other persons enjoying special protection, in particular, to present facts that the participants have not stated, to propose adduction of evidence and to file for legal remedy.

**Article 7**

By way of an exception, the court may allow the participant without legal capacity to institute other actions in the proceedings in addition to the actions for which he is authorised under the
law, for the purposes of exercising his rights and legal interests, if the court believes that he is capable of understanding the meaning and legal consequences of such actions.

Article 8

In non-contentious matters relating to the personal and family status of participants (status-related matters), as well as in other non-contentious matters relating to the rights and legal interests which the participants may not dispose of, in the proceedings before the court they may not waive their claims, grant the claim of the respondent, nor reach a court settlement.

In the proceedings referred to in para. 1 above, the court may also establish facts that the participants have not disclosed, as well as the facts that are not at issue between the parties if they are important for rendering a decision.

The court shall allow the participants to express their opinion regarding the facts referred to in para. 2 above.

Article 9

The proceedings deciding on status-related matters shall be closed to the public, with the exception of declaring a missing person deceased and in proving deaths.

Article 10

The court shall decide on the claims of participants based on the oral hearing only in the cases provided for by this or other laws, or when it assesses that holding a hearing is necessary to clarify or establish decisive facts or when it deems that holding a hearing is meaningful for other reasons.

The failure of certain participants to appear in the hearing, if duly summoned, shall not prevent the judge from proceeding further, unless the law provides otherwise in specific cases.

Participants in the proceedings may be heard even in the absence of other participants.

Article 11

The petition to institute non-contentious proceedings may be withdrawn until the first instance decision is rendered. A petition filed by several persons shall be withdrawn by means of their joint statement, unless otherwise provided for by this or other law.

The petition may be withdrawn not later than until the proceedings are concluded with an enforceable ruling, if this does not violate the rights of other participants whom the decision concerns, or if other participants agree to it.
In case the petition is withdrawn after the first instance decision is rendered, the first instance court shall set aside the decision and discontinue the proceeding.

The petition shall be deemed withdrawn when the petitioner fails to appear at a hearing or to respond to the court summons for questioning, if duly summoned, and in the absence of any generally known circumstances that prevented him from appearing in court. Justified reasons for failure to appear may be accepted by the court even without hearing the opinion of other participants up to the moment the court notifies them of the withdrawal of petition.

In the cases referred to in paras 1 and 4 above, other participants that are authorised under the law to institute the proceedings may apply for the proceedings to continue. The application for the continuance of the proceedings may be filed within eight days of receiving the notice of petition withdrawal.

**Article 12**

In status-related matters, the court of competent territorial jurisdiction shall be the court in whose territory the person in whose interest the proceedings are conducted has permanent residence, and if he does not have a permanent residence, then the court in whose territory such person has temporary residence, unless otherwise provided for by this or other law.

In other non-contentious matters the court with territorial jurisdiction shall be the court in whose territory the petitioner has a permanent or temporary residence or seat, unless otherwise provided for by this or other law.

Where a non-contentious matter refers to real property, the court with exclusive jurisdiction shall be the court in whose territory the real property is located, and if the real property is located in the territory of several courts, each of these courts shall have jurisdiction.

**Article 13**

In the non-contentious proceedings the court may, ex officio, declare itself as lacking territorial jurisdiction not later than at the first hearing, and if the hearing is not held, until the first action is instituted by a participant upon the court summons.

If in the course of the proceedings the circumstances that are the basis of the court’s territorial jurisdiction change, the court conducting the proceedings may refer the case to the court of competent territorial jurisdiction under the changed circumstances, if it is obvious that before such court the proceedings will be easier to conduct, or if it is in the interest of the persons enjoying special protection.

Where the case is referred to another court in the interest of the person enjoying special protection, prior to the case referral, the judge shall invite the guardianship authority, if it takes part in the proceeding, to provide its opinion on the appropriateness of the referral. If the guardianship authority does not provide its opinion within the set time limit, the court shall
proceed according to the circumstances of the case, taking care of the interests of the person enjoying special protection.

**Article 14**

Should it determine the proceeding is to be conducting following the rules of civil procedure, the court shall discontinue the non-contentious proceeding by a special decision. Once the decision has become final, the proceeding shall be continued under the rules of a civil procedure before the court of competent jurisdiction.

**Article 15**

A single judge shall decide in the first instance non-contentious proceedings.

Certain actions in the proceedings may be undertaken by a judges’ assistant if provided for by this or other law.

**Article 16**

Records shall be made of actions taken in non-contentious proceeding, signed by the officials taking part in the official actions and the participants to the proceeding present.

In case of statements of lesser importance by the participants to the proceedings and the information procured by the court, a note in the case file may be inserted.

**Article 17**

In the non-contentious proceedings, decisions are rendered in the form of rulings.

Any ruling shall be appealable by a special appeal, unless otherwise provided for by this or other law.

A ruling against which a special appeal is allowed and the ruling of a second instance court shall contain a statement of reasons.

**Article 18**

The appeal against the ruling rendered in the first instance may be filed within 15 days from the date of serving the ruling, unless otherwise provided for by this or other law.

**Article 19**

The appeal shall stay the execution of the ruling, unless otherwise provided for by this or other law, or unless otherwise decided by the court.
Due to reasons of importance, the court may decide that an appeal shall not stay the execution of the ruling.

Where the need exists to protect the rights of minors or other persons enjoying special protection, the court may, ex officio, for the purposes of protecting the rights of other participants upon their petition, order that cash security be deposited. Where special circumstances of the case require so, the security may be determined in another form.

**Article 20**

The first instance court may itself, on account of appeal, reverse or set aside its previous ruling if this does not violate the rights of other participants based on such ruling.

If the first instance court does not reverse or set aside its ruling, it shall forward the appeal together with the case file to the second instance court for deliberation regardless of whether the appeal was lodged within the time limit specified by the law.

The second instance court may, for reasons of importance, also decide on the lapsed appeal, if it does not violate the rights of other persons based on such ruling.

**Article 21**

Where the court decision depends on the preliminary issue as to whether a certain right or a legal relationship exists, and such issue has not been decided by court or another competent authority (preliminary issue), the court may resolve the issue itself unless otherwise provided for by this or other law.

The court’s decision under para. 1 above shall have legal effect only in the non-contentious proceedings in which such issue has been resolved.

**Article 22**

If the facts of importance for resolving the preliminary issue are disputed between the participants, the court will instruct them to file a civil action or launch a procedure before an administrative authority to resolve the disputed right or legal relationship.

The court shall refer to the civil action or procedure before an administrative authority the participant whose right is deemed to be less plausible, unless otherwise provided for by this or other law.

**Article 23**

If the participant who is referred to a civil action or a procedure before another competent authority, files a civil action or launches a procedure before another competent authority within a
specified time limit, which may not exceed 15 days, the non-contentious proceedings shall be halted until the enforceable ruling is rendered in such proceedings.

If none of the participants files a civil action or launches a procedure before another competent authority until the expiry of the deadline referred to in para. 1 above, the court shall conclude the proceedings regardless of the claims in relation to which the participant was referred to a civil action or a procedure before another competent authority.

Article 24

Where the court ruling changes a personal or family status of the participant or his rights and duties, the legal consequences of the ruling shall ensue when it becomes enforceable.

The court may decide that the legal consequences of the ruling shall ensue prior to enforceability, if this is necessary to protect minors or other persons enjoying special protection.

The final ruling changing the personal or family status of participants shall be notified without delay to the authority responsible for maintaining civil registers for such person

Article 25

The enforceability of the ruling rendered in non-contentious proceedings shall not preclude the participants from enforcing their claim on which a ruling was rendered in a civil action or a procedure before another competent authority, when such right is recognized under this or other law.

Article 26

In the proceedings where status-related matters are decided, a review shall be allowed against the enforceable ruling of the second instance court unless otherwise provided for by this or other law.

In the proceedings where property law matters are decided a review shall be allowed under the conditions under which a review is allowed in property law matters under the Civil Procedure Law, unless otherwise provided for by this or other law.

Article 27

Upon the petition to repeat the proceedings, the court shall follow the preliminary procedure as in the case of a lapsed appeal if conditions referred to in Art 20 hereunder are met.

The petition to repeat the proceedings may not be filed against an enforceable ruling if under this or other law the participant is recognized the right to pursue the claim resolved by the ruling in a civil action or a procedure before another competent authority.

Article 28
The costs of proceedings in status-related matters shall be freely awarded by the court, taking account of the circumstances of the case and the outcome of the proceedings.

When a guardianship authority is a participant to the proceedings, it shall be entitled to cost compensation under the provisions of the Civil Procedure Law, but not the right to an award.

The costs that should be borne by the guardianship authority as an advance payment shall be paid out from the courts budget.

The participants shall bear the costs arising from the participation of the guardianship authority, provided that the court may decide otherwise.

In non-contentious matters relating to property rights of participants, unless otherwise provided by law, participants shall bear the costs equally, but if there is a significant difference with regard to their share in the property right decided on, the court shall determine according to the proportion of such share, what share of costs each of the participants will bear.

In the non-contentious matters referred to in para. 4 above, the court may decide that the participant in whose interest the proceedings are conducted or the participant who gave rise to the institution of the proceedings exclusively due to his behaviour shall bear all the costs.

**PART TWO**
**SPECIAL PROCEEDINGS**

**I. PERSONAL STATUS**

**CHAPTER ONE**
Legal Capacity Removal and Restoration

**Article 29**

In the proceedings for the removal and restoration of legal capacity, the court examines whether a person of full age, taking into account the level of his capacity for normal judgment, is capable of taking care of his own rights and interests and decides on complete or partial removal of legal capacity, or on full or partial restoration of legal capacity when the reasons for removal or limitation of legal capacity cease to exist.

The proceedings under para. 1 above shall be urgent and must be completed within 30 days from receiving the petition to that effect.

**Article 30**
The proceedings for the removal and restoration of legal capacity shall be initiated upon the petition of the:
1) guardianship authority;
2) spouse, common-law spouse, child or parent of the person who fulfils the legal requirements for the removal or limitation of legal capacity;
3) grandparent, sibling or grandchild if they live with such person in the same family unit;
4) the same person whose legal capacity is to be removed or restored, if he is capable of understanding the meaning and legal consequences of this petition.

Article 31

The court within whose territory the person whose legal capacity is being removed or restored has permanent or temporary residence shall have the jurisdiction to conduct the proceedings.

Article 32

The petition must contain the facts on which it is based, as well as evidence that confirm or render such facts likely.

If the guardianship authority has not instituted the proceedings, the petition must also contain the information from which the authorisation to institute proceedings arises.

Article 33

If the person in relation to whom the proceedings for the removal or restoration of legal capacity have been instituted has real property, the court shall, without delay, notify the authority maintaining real property register to impose an encumbrance to that effect.

The local authority responsible for maintaining civil registers where the person whose legal capacity is being removed or restored is registered shall also be notified of the proceedings being instigated in order to record the conducting of the proceedings.

Article 34

In such proceedings, the court shall decide on the basis of hearing.

The petitioner, the guardian of the person whose legal capacity is being removed or restored, his temporary representative and the guardianship authority shall be summoned for the hearing.

The person whose legal capacity is being removed or restored shall be summoned to the hearing unless this person, as deemed by the court, is incapable to comprehend the significance and legal consequences of his participation in the proceedings.

Article 35
The court shall directly question the person in relation to whom the proceedings are conducted, and if such person is admitted in a healthcare institution, he will be questioned as a rule, in such an institution, where the hearing will be held.

The court may abandon the questioning of the person in relation to whom the proceedings are conducted only if this may be harmful to his health or if the hearing is not possible at all, considering the mental or physical condition of such person.

**Article 36**

The court shall question the guardian or temporary representative, the petitioner and other persons who can provide the required information on the life and behaviour of the person in relation to whom the proceedings are conducted and on other important circumstances.

**Article 37**

The person in relation to whom the proceeding for removal of legal capacity is conducted must be examined by no less than two medical doctors of required expertise as expert witnesses, who will provide their findings and opinion on his mental state and the capacity to make judgments.

The expert examination shall be performed in the presence of a judge, except when it is performed in a healthcare institution.

**Article 38**

The court may determine by a ruling that the person in relation to whom the proceedings are conducted, shall be temporarily, but for no longer than three months, placed in an appropriate healthcare institution if, in the opinion of the medical doctor, this is necessary to determine his mental state, unless that may have an adverse impact on his health.

If the institution referred to in para. 1 above is located outside the territory of the court before which the proceedings are conducted, this court shall carry out the necessary actions through the court within whose territory the institution is located.

**Article 39**

The ruling on the placement into the health care institution may be appealed by the person in relation to whom the proceedings are conducted and his guardian or temporary representative within three days of service of the ruling transcript.

The person in relation to whom the proceedings are conducted may lodge an appeal regardless of his mental state.
The appeal shall not stay the execution of the ruling, unless the court decides otherwise for justified reasons.

The court shall, without delay, forward the appeal with the case file to the second instance court, which shall decide within three days of the receipt of the appeal.

**Article 40**

Where the court finds that the conditions are met for removal of legal capacity, it shall completely or partially remove legal capacity of the person in relation to whom the proceedings are conducted.

The person whose legal capacity has been removed may lodge an appeal against the pertinent ruling regardless of his mental state.

**Article 41**

The court may suspend rendering the ruling on partial removal of legal capacity due to abuse of alcohol or other intoxicating substances if it may reasonably be expected that the person in relation to whom the proceedings are conducted will refrain from the abuse of alcohol or other intoxicating substances.

The court may suspend rendering the ruling referred to in para. 1 above if such person is, on own initiative or at the court’s proposal, admitted for treatment in a specified healthcare institution.

The rendering of the ruling referred to in paras. 1 and 2 above shall be suspended for a period of six to 12 months.

The ruling on suspension shall be revoked if the person terminates the treatment or is discharged from the healthcare institution for disorderly behaviour.

**Article 42**

When the reasons for which the person has had his legal capacity removed cease to exist, the court shall, ex officio, at the motion of the person concerned, as well as upon the motion of the guardianship authority and the persons referred to in Art 30 hereunder, render a ruling on the full or partial restoration of legal capacity.

**Article 43**

The enforceable ruling on removal or restoration of legal capacity shall be notified by the court to the authority responsible for maintaining civil register for the purposes of entering it into the
register of births, to the authority maintaining real property register if the person concerned has real property, as well as to the guardianship authority.

CHAPTER TWO
Involuntary Committal to Psychiatric Institution

Article 44

In these proceedings the court decides on involuntary committal of a mentally ill person in the appropriate psychiatric institution when, due to the nature of the illness, it is necessary that such person’s freedom of movement or communication with the outside world be restricted, and on his release when the reasons that caused the involuntary admission cease to exist.

The proceeding referred to under para. 1 above shall be completed no later than within 8 days.

Article 45

When committing a mentally ill person into a psychiatric institution, the right to his dignity, physical and mental integrity with respect for his personality, privacy, moral and other beliefs shall be ensured.

Article 46

When a psychiatric institution admits a mentally ill person for treatment without his consent or court ruling, it shall within 48 hours notify the court in whose territory the institution is located.

The psychiatric institution’s notification shall contain the psychiatrist’s decision on involuntary admission with the required accompanying documents under the Law on the Protection and Exercise of Rights of Mentally Ill Persons (Official Gazette of the Republic of Montenegro 32/05).

Article 47

The notification referred to in Art 46 hereunder shall not be filed if the mentally ill person was admitted to a psychiatric institution based on the ruling passed in the proceeding for removal of legal capacity or in the criminal or misdemeanor proceeding.

Article 48

The proceedings shall be conducted ex officio, as soon as the court receives the notification from the psychiatric institution or in another manner becomes aware that a person has been involuntarily admitted to a psychiatric institution.

Article 49
When the court decides that a mentally ill person is to be admitted in a psychiatric institution, it shall set the time for involuntary admission which may not exceed 30 days, counting from the day when the psychiatrist made the decision on involuntary admission.

The court shall notify the guardianship authority of its ruling.

The psychiatric institution is obliged to periodically report to the court on the health status of the admitted person.

**Article 50**

The person committed to a psychiatric institution is obliged to be subjected to the required treatment, but any treatment that might pose threat to his life or health or could change his personality requires his consent or the consent of his representative.

During the admission to a psychiatric institution, the mentally ill person should be enabled to maintain contacts with the outside world, i.e. to receive visits, make correspondence and use telephone.

**Article 51**

If the psychiatric institution assesses that the mentally ill person should further remain in treatment upon the expiry of the time limit specified in the court ruling, it shall lodge a motion with the court to that effect seven days prior to the expiry of the period of involuntary committal set by the court.

The duration of the extended admission may not be longer than three months, and any subsequent extension not longer than six months.

**Article 52**

The court may also decide that the mentally ill person be discharged from the psychiatric institution prior to the expiry of the time period specified for involuntary admission if it establishes that the health status of the admitted person has improved to such a degree that the reasons for his further committal have ceased to exist.

**Article 53**

The ruling for involuntary admission to and discharge from a psychiatric institution may be appealed against by the psychiatric institution to which the mentally ill person was admitted, the admitted person, the guardian or temporary representative and the guardianship authority within three days from receiving the ruling.
The appeal shall not stay the execution of the ruling, unless the court decides otherwise for justified reasons.

The first instance court shall, without delay, refer the appeal with the case file to the second instance court which is obliged to render the ruling within eight days from receiving the appeal.

The time limit for deciding in the repeated procedure upon the second instance court’s ruling setting aside the first instance ruling shall not exceed eight days.

[...]

II. FAMILY RELATIONS

CHAPTER FOUR
Extension and Termination of Extended Parental Right

Article 71

The court decides on the extension and termination of extended parental right beyond the child’s age of majority, when the reasons for it exist as specified by the law.

The proceedings for the extension and termination of extended parental right shall be completed within 15 days from the petition.

In the proceedings, the child shall be represented by a special guardian appointed by the court or a guardianship authority.

Article 72

The proceeding for the extension and termination of extended parental right shall be instituted upon the petition of the parent or adoptive parent or the guardianship authority.

Article 73

The court shall determine ex officio the mental and physical status of the child that is of relevance for his capacity to take care of his own person, rights and interests.

The decision on the petition for the extension and termination of extended parental right shall be rendered on the basis of oral hearing to which shall be summoned: the guardianship authority, child, child’s guardian and parents, adoptive parent, regardless of whether they have instituted the proceedings. The questioning of parents shall be mandatory in such proceedings, and the guardianship authority shall provide an opinion on the appropriateness of the extension of parental rights.
The mental state and the capacity of the child shall be determined in the manner specified in Art 37 hereunder.

**Article 74**

The provisions on the removal and restoration of the legal capacity hereunder shall be applied mutatis mutandis in the proceedings for the extension and termination of extended parental rights, unless otherwise provided for by this or other law.

**CHAPTER FIVE**

**Removal and Restoration of Parental Rights**

**Article 75**

The court shall decide on removal and restoration of parental rights when there are reasons for that provided for by the law.

**Article 76**

The proceeding for removal and restoration of parental rights shall be instituted upon the petition of the other parent or the guardianship authority, and the proceeding for restoration of parental rights shall also be instituted upon the petition of the parent whose right has been removed.

The proceeding for removal and restoration of parental rights shall be completed within 15 days from receiving the petition.

**Article 77**

If the proceeding was not instituted by the guardianship authority, the court shall notify it without delay of the proceeding being instituted and shall invite it to take part in the proceeding.

The court or the guardianship authority may appoint a special guardian to represent the child in the proceeding even when another parent is living and exercises parental rights if they deem it necessary to protect the child’s interests.

**Article 78**

In this proceeding, the court shall ex officio establish the facts relevant for making the decision, and the guardianship authority is obliged to assist the court in obtaining the evidence needed, as well as present their opinion on the appropriateness of granting the petition to remove or restore parental rights.

The decision upon the petition to remove or restore parental rights shall be rendered based on the hearing to which the guardianship authority, child’s parents and his guardian, if appointed, shall be summoned. The child may be summoned if more than ten years old and if the court deems it
relevant. The hearing of the parents shall be mandatory, and the child shall be heard only if necessary to establish the decisive facts and when it is not harmful for the child’s mental health.

The appeal does not stay the execution unless the court decides otherwise in the given case.

CHAPTER SIX
Permission to Conclude Marriage

Article 79

In these proceedings the court decides on the permission for marriage between certain persons between whom, due to legally prescribed conditions, a valid marriage may be concluded only on the basis of court permission.

Article 80

The proceedings shall be instituted by a petition of the person who does not meet the legal condition for concluding a valid marriage, and when neither person meets the prescribed condition, the proceedings shall be instituted by their joint petition.

The court in whose territory the petitioner has permanent or temporary residence shall be the court of competent territorial jurisdiction to proceed upon the petition, and the court in whose territory one of the petitioners has permanent or temporary residence shall be the court of competent territorial jurisdiction to proceed upon the joint petition.

Article 81

The petition shall contain personal information on the persons who wish to conclude marriage, the facts upon which the petition is based, and proof of such facts. If the petitioner is a minor, the petition must contain the information about his parents.

Article 82

Where a petition has been filed by a minor, the court shall investigate in an appropriate manner all the circumstances of relevance for determining whether there exists free will and wish of the minor to conclude marriage, as well as if the minor has achieved physical and mental maturity necessary for exercising marital rights and duties.

The court shall obtain the opinion of a healthcare institution, establish appropriate cooperation with the guardianship authority, question the petitioner, his parents or guardian, the person whom the minor wishes to marry, and may adduce other evidence and obtain other information, as needed. If it deems it important for establishing decisive facts, the court will adduce all or some evidence in the hearing. A parent whose parental rights have been terminated shall not be
questioned, and the court shall at its own discretion decide whether to question the parent who does not exercise his parental rights for no justified reason. The court shall, as a rule, hear the minor without the presence of other participants.

The court shall examine personal qualities, financial standing, and other relevant circumstances relating to the person whom the minor wishes to marry.

Upon the joint petition of persons of full age related by affinity, or adoptive parent and adopted child, the court shall examine in an appropriate manner the justifiability of the petition, taking due consideration of the achievement of the purposes of marriage and of the protection of family. Where the joint petition has been filed by the adoptive parent and adopted child, the court shall obtain a prior opinion of the guardianship authority.

**Article 83**

The court ruling permitting conclusion of marriage shall be delivered to the petitioner, the person the petitioner wishes to conclude marriage with, the parents or guardians of the petitioner and the competent guardianship authority.

The ruling rejecting the petition to permit concluding marriage shall be delivered to the petitioner.

**Article 84**

The ruling allowing the conclusion of marriage may be appealed by all participants to the proceeding under Art 83 para. 1 hereunder.

The ruling dismissing the petition to permit a minor to conclude marriage may be appealed only by the minor.

The persons who have been allowed to conclude marriage may not do so before the ruling granting such permission has become enforceable.

**Article 85**

The joint petition for the permission to conclude marriage may be withdrawn by the petitioner until the ruling becomes enforceable.

The petition shall also be deemed withdrawn when one of the petitioners abandons the petition.

**Article 86**

The application to review the final ruling of the second instance court shall not be allowed.

CHAPTER SEVEN
Declare a Child Legitimate

**Article 87**

In the proceeding for declaring a child legitimate, the court shall establish that the child born out of wedlock is legitimate.

**Article 88**

The court within whose territory the child has permanent or temporary residence shall have the jurisdiction for declaring the child legitimate.

**Article 89**

The petition to declare the child legitimate may be filed by the parent, the child or the guardianship authority.

The petition referred to in para. 1 above may not be filed before establishing the child’s paternity in the manner provided for in the law.

**Article 90**

In order to establish whether the child’s parents intended to conclude marriage and were prevented from doing so due to the death of one or both of them, or that upon the child’s conception the marital impediment arose due to which the marriage could not have been concluded, the court shall hear the petitioner and other persons that may give the required statements and obtain evidence of death or impediment due to which marriage cannot be concluded.

**Article 91**

The ruling passed in the proceeding for declaring a child legitimate may be appealed by the petitioner as referred to in Art 89 para. 1 hereunder.

**Article 92**

The enforceable ruling declaring a child legitimate shall be delivered to the authority responsible for maintaining the register of births.

**III. PROPERTY RELATIONS**

[...]


CHAPTER NINE
Determining Compensation for Expropriated Real Property

Article 158

In these proceedings the court determines a compensation for the expropriated real property when the expropriation beneficiary and the previous owner have not concluded a valid agreement on the compensation for expropriated real property before the administration authority responsible for property-related matters.

Article 159

If the agreement on the compensation for expropriated real property is not concluded within two months of the date the expropriation ruling become enforceable, the administration authority responsible for property law matters shall submit the enforceable expropriation decision with the supporting documents to the court within whose territory the expropriated property is located for determining the compensation.

Should the authority responsible for property-related matters fail to proceed as referred to in para. 1 above, the previous owner and the expropriation beneficiary may approach the court directly to determine the compensation.

Article 160

The procedure for determining the compensation for expropriated real property shall be instituted and conducted ex officio.

The proceeding under para. 1 above shall be concluded not later than within three months from the proceedings being instituted before the court.

Article 161

The court shall schedule a hearing to give the opportunity to the expropriation beneficiary and the previous owner to give their opinions of the form and extent or amount of compensation, and on the evidence acquired ex officio.

In the hearing, the court shall also adduce other evidence that the participants propose, if it finds them relevant for determining the compensation, and as needed, order an expert witness report.

Article 162

Upon establishing all relevant facts, the court shall issue a ruling determining the form and extent or amount of compensation, the interest rate and the deadline for payment.
If the expropriation beneficiary and the previous owner agree on the form and the extent or amount of compensation, the court shall base its ruling on their agreement, if it finds that it is not contrary to the mandatory legislation.

**Article 163**

If the expropriation beneficiary and the previous owner agree that the compensation for expropriated building or flat shall be set in the form of another building or flat, the agreement shall also set a time limit for the performance of mutual obligations. If they fail to set such a time limit, the court shall in the expropriation ruling set a time limit for the performance of mutual obligations under the agreement covenants.

The provision of para. 1 above shall be applied mutatis mutandis to the person whose means of livelihood depend on the income derived from such land, where under the agreement with the expropriation beneficiary or upon personal request, the compensation for the expropriated agricultural land was set in the form of title over other real property.

**Article 164**

The costs of proceedings shall be borne by the expropriation beneficiary, except the costs caused by the unjustified actions of the previous owner.

**Article 165**

The provisions of the present Law on the procedure for determining compensation for expropriated real property shall apply mutatis mutandis in other cases when the previous owner is recognized the right to compensation for the real property on which he lost title or other property-related right or the title or other property-related right was limited.

**CHAPTER TEN**

Management and Use of a Common Asset

**Article 166**

In these proceedings the court regulates the manner of managing and using a common asset by co-owners, co-users and other co-possessors of the same asset (commoners).

**Article 167**

Any commoner who believes that his right of managing and using the common asset has been violated may institute the proceedings.
The petition must include all commoners; contain the necessary information on the common asset which is the subject matter of the proceedings, and the reasons for which the proceedings are instituted.

The petition shall be filed with the court in whose territory the common asset is located, and if the asset is located in the territory of several courts, the petition may be filed with each of these courts.

**Article 168**

Upon the receipt of the petition, the court shall schedule a hearing to which it shall summon all commoners, instruct them on the alternatives and assist them in reaching an agreement on the manner of managing or using the common asset. The agreement between/among the commoners shall be entered into the written record as a court settlement if the commoners agree to it when the court has explained them the nature and legal effect of the court settlement.

**Article 169**

If all the commoners do not come to an agreement, the court shall adduce the required evidence, and on the basis of the entire proceedings render a ruling regulating the manner of using or managing the common asset according to the relevant provisions of substantive law, taking care of their particular and common interests.

Where the petition requests the regulation of the use of the shared flat or business premises, the court shall particularly regulate which rooms the commoners shall use separately and which jointly, how the common rooms shall be used, and how the costs of using rooms shall be borne.

**Article 170**

When there is a dispute between/among the commoners as to the right to an asset which is the subject matter of the proceedings, or the scope of the right, the court shall refer the petitioner to file a civil suit or institute a procedure before a competent authority within 15 days, to resolve the disputed right or the legal relationship.

If the petitioner institutes the proceedings he has been referred to, the court shall halt the proceedings until the completion of the other procedure, and if such procedure is not instituted within the specified time limit, the petition shall be deemed withdrawn.

The court may temporarily, until the decision of the competent authority is made, regulate the relations between/among the commoners with regard to the management or use of the common asset when the circumstances of the case require so, in particular in order to prevent considerable damage, arbitrariness or manifest injustice towards individual commoners.
The provisions of para. 3 above shall also apply when the commoners are co-possessors of an asset who do not have evidence on the legal grounds of acquiring possession.

**Article 171**

The enforceability of the ruling rendered in these proceedings shall not preclude the participants from enforcing their claims with regard to the asset whose management or use was decided by this ruling in a civil action or a procedure before another competent authority. The ruling shall not be subject to review.

**Article 172**

The provisions of this chapter of the Law shall also apply to the owners of separate parts of a building with regard to management and use of the common parts of the building that serve the building as a whole or only some separate parts of the building, in which case the commoners shall be understood to mean only the owners of those parts of the building, if the regulation of their mutual relations does not affect the rights of owners of other parts of the building. The relations between owners of separate parts of the building shall be regulated in accordance with the Law on Condominium Ownership (Official Gazette of the Republic of Montenegro 71/04).

**CHAPTER ELEVEN**

**Division of Common Assets or Property**

**Article 173**

In these proceedings the court decides on the division of common assets or property.

**Article 174**

Any commoner may institute the proceedings for the division of assets or property, and the petition must include all the commoners.

The petition must contain the information on the subject matter of the division and shares of the commoners, on the commoners and other persons who have a property right on the asset. In the case of real property, land register information must be stated and the relevant written proof on the rights of ownership, easement and other property rights enclosed.

The petition shall be filed with the court in whose territory the asset or property is located, and if common assets or property are located in the territories of several courts, each of these courts shall have jurisdiction.

**Article 175**
If the court in the course of proceeding upon the petition establishes that there is a dispute between the commoners as to the right to the assets that are the subject matter of division or the right to the property, share in common assets or property, or that there is a dispute as to which assets or rights constitute common property, the proceedings shall be discontinued and the petitioner instructed to file a civil action within 15 days.

If the petitioner fails to file action within the time period specified in para. 1 above, he shall be deemed to have withdrawn the petition.

**Article 176**

Upon receipt of the petition, the court shall schedule a hearing and summon all commoners and persons who have a property right on the subject matter of the division.

The persons holding easement rights or other property rights over assets subject to division may approach the court to decide on those rights.

Each participant may propose to have other persons whose interests may be violated by the division summoned to the hearing. If the commoners do not dispute their rights, this shall be entered in the written record and taken into consideration in rendering the ruling on the division.

**Article 177**

If in the course of the proceedings, the participants reach settlement on the conditions and manner of division, the court shall make a written record of such settlement taking care that the settlement regulates all matters at issue between the commoners, and other persons’ property rights on the subject matter of division, and rights of other persons towards commoners with regard to the division performed.

**Article 178**

If the participants do not reach an agreement on the manner of division, the court shall question them, adduce the required evidence, and if needed, obtain an expert witness report, and then, on the basis of the outcome of the entire procedure, in accordance with the relevant provisions of substantive law, render a ruling on the division and manner of division of the common asset or property, striving to fulfil justified requests and interests of the commoners.

If it proves impossible to divide the common asset or property physically or if that would greatly diminish their value, the court may determine that the assets or property shall go to only one title-holder, provided that it shall set the amount this person is to pay to the other title-holder over the same asset, as well as the time and place for payment or decide for the asset or property to be sold and the amount received to be split.

The sale shall be done in accordance with the provisions of the Law on Enforcement Procedure (Official Gazette of the Republic of Montenegro 23/04).
Article 179

When deciding to whom a certain asset should belong, the court shall particularly take into consideration the specific needs of a particular participant due to which the asset in question should go to him in particular.

Article 180

The division ruling shall contain the asset, conditions and manner of division, information on physical parts of the asset and rights that went to each commoner, and their rights and obligations determined by the division.

In the form of a division ruling, the court shall decide on the manner of exercising easement and other property rights on the parts of the asset that have been physically divided between commoners.

[...]

Draft Law Amending the Law on Non-Contentious Proceedings (as of July 2014)\(^4\)

LAW AMENDING THE LAW ON NON-CONTENTIOUS PROCEEDINGS

Article 1

In Art 1 para 2 of the Law on Non-Contentious Proceedings (Official Gazette of the Republic of Montenegro 27/2006) the words: “the Law on Civil Procedure (Official Gazette of the Republic of Montenegro 22/04 and 28/05)” shall be amended to read “the law governing the civil procedure”.

Article 2

In Art 4 para 2 the words:"Article 76 para 2" shall be deleted.

Article 3

In Art 12, following para 1, a new paragraph 2 shall be added as follows:
"Any court of competent subject-matter jurisdiction shall be the court of competent territorial jurisdiction in the proceedings to establish the time and place of birth."

Current para 2 shall become para 3, and current para 3 shall become para 4.

Article 4

In Art. 24, 33, 43, 62, 66, 67, 92, 99 and 101 the words: "civil registers", shall be replaced by the words “civil registers”.

(\textit{translator’s note: already translated as such in the English version; no substantive difference in the meaning})

\(^4\) The translation of this document was supported jointly by the UNHCR and UNICEF offices in Montenegro.
Article 5

Article 35 para 2 shall be amended to read:
"The court shall not question the person in relation to whom the proceedings are conducted if this may be harmful to his health or if the hearing is not possible considering his mental or physical condition."

Article 6

In Art 48 after para 1, new paragraphs 2 and 3 shall be added as follows:
"The person whose involuntary committal to a psychiatric institution is being decided upon may be assisted by an attorney during the proceedings.
The person unable to provide for an attorney, shall be provided legal aid."

Article 7

Following Art 48, two new articles shall be added: Article 48a and Article 48b, as follows:

"Article 48a
The court is obliged to hold a hearing at the psychiatric institution where the person suffering from mental illness is involuntarily admitted within 3 days from receiving the report from the psychiatric institution or becoming cognizant of the admission.
The court shall hear the person upon whose involuntary admission is being decided if that person is capable of comprehending the relevance and legal consequences of taking part in the proceedings, unless it may cause harm to his health.

Article 48b
The court is obliged to examine all the circumstances relevant for rendering a decision on involuntary committal of a mentally ill person, particularly the opinion of a psychiatric expert witness independent of the psychiatric institution where the person was involuntarily admitted, regarding how justified the reasons for involuntary admission are and the capability of the mentally ill person to comprehend the relevance and the legal consequences of his participation to the proceedings. After having personally examined the mentally ill person, the expert witness shall submit to the court his written findings and opinion within 3 days.
The costs of the expert witness shall be borne by the court’s budget."

Article 8

Art 50 para 1 shall be amended to read:
"The person committed to a psychiatric institution may be subjected to the required treatment under the provisions of the law governing the protection and exercise of rights of persons with mental illness (Law on the Protection and Exercise of Rights of Mentally Ill Persons)."

Article 9

In Art 52, following para 1 a new paragraph 2 shall be added as follows:
"The decision referred to in para 1 above shall be made following the same procedure that exists for involuntary committal of a mentally ill person to a psychiatric hospital."

Article 10
In Art 53 para 1, following the word: "representative” a comma shall be added and followed by the words: “an agent, if any”.

Article 11
In Art 59 para 1, Art 60 para 1, Art 69 para 2, Art 95 para 2, Art 126 para 2, Art 138 para 3, Art 144 paras 1 and 2, Art 146, Art 216, the words: “the Republic of” shall be deleted.

Article 12
In Part II FAMILY RELATIONS, a new CHAPTER THREE A shall be added and the heading: “Establishing Time and Place of Birth” and the new articles 70a, 70b, 70c, 70d, 70e, 70f, 70g, 70h and 70i which shall read as follows:

"Article 70a
In this proceeding the court establishes the time and place of birth of the person whose birth has not been recorded in the civil register of births, as well as of the child not born in a healthcare institution, whose time and place of birth may not be proven in the manner envisaged by the legislation governing civil registers (proof of birth).

The proceeding for determining the time and place of birth may be instigated by a person whose birth is being proven, by the person who holds an immediate legal interest, a guardianship authority, and for a child not born in a healthcare institution, also the persons envisaged by the Law on Civil Registers.

The petition to determine the time and place of birth for persons not entered in civil registers shall contain the data of the person whose birth is being proven, if known, the proofs that establish or make such facts likely, as well as other facts that may facilitate the court in proving birth.

In case of the petition not filed by the person whose birth is being proven or the guardianship authority, the petition shall contain the facts indicating the immediate legal interest (of the petitioner), except when the birth of a child not born within a healthcare institution is being proven.

Upon receiving the petition, the court shall verify whether the person has been registered in the civil register of births by obtaining a report to that effect from competent authorities within the time period not exceeding 30 days.

If no report is provided to the court within the time period set, it shall be deemed that no data are held on the records of the authorities ordered to perform the verification for the person whose birth is being proven.

If there is any indication the person whose birth is being proven held temporary residence in a foreign country, the court shall halt the proceedings until procuring required information from the competent authority of the given foreign state under the mutual legal assistance rules.

Article 70b
Upon receiving the report or the expiry of the time limit for providing a report, the court shall schedule a hearing and summon the petitioners and the person whose birth is being proven and adduce the required evidence.

In order to determine the time and place of birth for the person whose birth is being proven, the court shall hear at least two witnesses of full age whose identity shall be established by means of personal identification documents with a photograph.

The court may order the person whose birth is being proven be examined by a medical doctor of required expertise to give the opinion of his age.

Article 70c

The ruling establishing the time and place of birth shall contain: the name and surname of the person whose birth is being proven, their sex, day, month, year and hour of birth, place of birth, and the data of his parents, if known.

Article 70d

If the court is unable to establish the time of birth for the person whose birth is being established, he shall be deemed to be born on January 01 at 00:01 of the year which may be regarded as the probable year of his birth based on the evidence adduced.

If the court is unable to establish the place of birth for the person whose birth is being proven, the administrative seat of the town or the municipality which, based on the evidence adduced, may be deemed as likely place of birth, shall be deemed the place of birth, and in case the place of birth proves impossible to be established in such a manner, it shall be deemed that the person whose birth is being proven was born at the place where he was found or where he had temporary residence at the time of the petition to establish time and place of birth.

Article 70e

An appeal may be lodged against the ruling on the time and place of birth within fifteen days from its serving.

Article 70f

The petitioners in the proceedings for establishing place and time of birth shall be exempted from court fees, and expert witnesses costs shall be borne by the court’s budget.

Article 70g

The final ruling on the time and place of birth shall be submitted by the first instance court to the registrar responsible for register of births within eight days from its enforceability for the purpose of making an entry of birth.

In the proceeding for acquiring or losing Montenegrin nationality, the competent authority shall not be bound by the enforceable ruling on the time and place of birth if other requirements for acquiring or losing Montenegrin nationality under the Law on Montenegrin Nationality have not been met.

Article 70h

Should it be subsequently established that the person whose birth is being proven has already been registered in the civil register of births, the court rendering the ruling on the time
and place of birth shall, ex officio, institute and conduct the proceedings to repeal the given ruling.

The final ruling repealing the ruling on the time and place of birth shall be submitted by the first instance court to the competent authority within 8 days from its enforceability.

Article 70i

The proceeding for establishing the time and place of birth ending in an enforceable ruling shall not be repeated even in the cases when conditions exist for repeating the proceedings under the civil procedure rules, but the petitioner may pursue his claims in a civil action."

Article 13

In Art 72 following para 1, a new para 2 shall be added as follows:

“Apart from the persons referred to in paragraph 1 above, the proceeding for termination of extended parental right shall also be instituted upon the petition of the person concerned."

Article 14

The title of CHAPTER FIVE shall be amended to read: “Deprivation, Limitation and Restoration of Parental Rights”.

Article 15

In articles 75, 76 and 78 para 2 the word “removal” shall be replaced by the words “deprivation and limitation”.

Article 16

In Art 78 para 2 the words: “The hearing of the parents shall be mandatory” shall be amended to read: “Parents may be heard”.

Article 17

Article 130 shall be amended to read: “If there is a dispute between the parties as to the right to a legacy, the parties may file a civil action or launch a procedure before another competent authority, but the probate proceedings shall not be halted.”

Article 18

Article 147 shall be amended to read: “The court shall entrust all probate proceedings to the notaries with their seats within the territory of the court.”

Article 19

Article 148 shall be amended to read: “The notaries entrusted by court shall carry out actions and pass decision in the probate proceedings in accordance with the provisions of this Law.”

Article 20

In Art 150 paragraph 1, number “30” shall be replaced by number “60”.

Article 21

Article 151 shall be amended to read:
“The notary, as entrusted by the court for the probate proceeding, shall carry out actions and render the decision as set forth in the present Law.

In the cases covered by the provisions of articles 129 and 131 hereunder, the notary shall render a decision to discontinue the proceedings and refer the parties to file a civil action or launch a procedure before another competent authority under Art 132 hereunder.

A complaint may be lodged against the decision to discontinue the proceedings.”

Article 22

Following Art 151 new articles 151a, 151b, 151c and 151d shall be added as follows:

"Article 151a

Once the final ruling has become enforceable, the notary shall certify enforceability.

Article 151b

A complaint may be lodged against the decision rendered by the notary within 8 days from the decision being served to the parties.

The complaint is lodged with the notary who is obliged, without delay, to refer the complaint together with the case file to the entrusting court.

A single judge of the first instance court shall decide upon the complaint.

Article 151c

Lapsed, incomplete or inadmissible complaints shall be dismissed by the court.

Deciding as per the complaint challenging the decision rendered by the notary, the court may, fully or partly, uphold, reverse or set aside such a decision.

In case the decision rendered by the notary is fully or partly set aside, the court shall decide on the part of the decision set aside after having conducted the necessary actions.

Article 151d

An appeal may be lodged against the first instance court ruling within 15 day from the day it was served.

The second instance court shall decide as per the appeal.

By way of an exception to paragraph 1 above, no appeal shall be allowed against the court ruling fully or partly setting aside the notary’s decision.”

Article 23

Article 153 shall be amended to read: “In the probate proceedings conducted by notaries, the service of process shall be conducted under the rules set by the Civil Procedure Law.”

Article 24

Article 155 shall be amended to read:

“The notary shall refuse the entrusted case for the reasons set forth by the Law on Notaries (recusal).

The participant to the proceeding may ask for the recusal of the notary on the same grounds envisaged for recusal of judges.

The Notary Chamber shall decide on the recusal of notaries.

The supervision over the actions notaries take in cases entrusted by courts shall be conducted by the chief judges under the provisions of the Law on Notaries.
The notary is obliged to report to the entrusting court every six months on the cases closed in enforceable decisions.”

Article 25

In Art 172 para 2 the words: “the Law on Condominium Ownership (Official Gazette of the Republic of Montenegro 71/04)” shall be replaced by the following: “the law governing housing matters and maintenance of residential buildings.”

Article 26

Article 175 shall be amended to read: “If the court in the course of the proceeding upon the petition establishes that there is a dispute between the commoners as to the right to the assets that are subject to division or the right to the property, a share in common assets or property, or that there is a dispute as to which assets or rights constitute common property, the proceedings shall be discontinued and the petitioner whose right is deemed less likely instructed to file a civil action within 15 days.”

Article 27

In Art 178 para 3 the words: “the Law on Enforcement Procedure (Official Gazette of the Republic of Montenegro 23/04)” shall be replaced by the following: “the law governing enforcement and security”.

Article 28

Article 181 shall be amended to read: “In these proceedings the court determines the boundary between adjacent real properties when the boundary markers have been destroyed, damaged or moved, and the neighbours cannot determine the boundary by mutual agreement.”

Article 29

In Art 182, the word “user” shall be replaced by the word “user”.  
(translator’s note: already translated as such in the English version)

TRANSITIONAL AND FINAL PROVISIONS

Pending proceedings

Article 30

The cases in which prior to the effective date of the present Law a first instance ruling was rendered, further proceedings shall be conducted in accordance with the provisions in effect before this Law entering into force.

If the first instance ruling referred to in para 1 above is set aside and the case returned to the first instance court for the repeated proceedings, further proceedings shall be conducted in accordance with this Law.

Article 31

This Law shall come into effect on the eighth day upon its publication in the Official Gazette of Montenegro.
11. EXCERPTS OF THE LAW ON INTERNAL AFFAIRS (2012)

DEGREE
PROMULGATING THE LAW ON INTERNAL AFFAIRS

I hereby promulgate the Law on Internal Affairs passed by the 24th Parliament of Montenegro at the eight sitting of the first ordinary (spring) session in 2012 on 26 July 2012.

No 01-986/2
Podgorica, 30 July 2012
The President of Montenegro
Filip Vujanović

Pursuant to Article 82 paragraph 1 item 2 and Article 91 paragraph 2 of the Constitution of Montenegro, the the 24th Parliament of Montenegro at the eight sitting of the first ordinary (spring) session in 2012 on 26 July 2012, adopted the following

LAW
ON INTERNAL AFFAIRS

GENERAL PROVISIONS

Subject Matter of the Law
Article 1

This law shall regulate internal affairs, powers and duties of employees in the Ministry of Interior, as well as other issues of importance for internal affairs.

Term of Internal Affairs
Article 2

Internal affairs shall include tasks laid down by law, which performance shall ensure the protection of safety and property of citizens, as well as other affairs through which rights and freedoms of citizens shall be exercised.

Types of Internal Affairs
Article 3

Internal affairs within the meaning of Article 2 of this Law shall include: police duties, internal administrative affairs as well as other affairs within jurisdiction of the Ministry of Interior (hereinafter referred to as the “Ministry”).
Police duties shall be performed by the body within the Ministry (hereinafter referred to as the “Police”).

**Provision of Expert Assistance**

**Article 4**

The Ministry, within the scope of its jurisdiction, shall provide expert assistance to citizens, legal persons and other state bodies in exercise of their rights and obligations, protection of life, personal safety of citizens and property. Citizens, legal persons and state bodies shall enable unhindered exercise of the internal affairs.

**Informing the Public**

**Article 5**

The Ministry shall inform the public about the performance of internal affairs when in the interest of the citizens of Montenegro and their safety.

Notification referred to in paragraph 1 of this Article containing personal data, shall be submitted in accordance with the separate law.

**Internal Affairs Day**

**Article 6**

Day of Internal Affairs shall be 2\(^{nd}\) October.

**Relevant Implementation of the Legislation**

**Article 7**

General rules on labour shall be applied on the rights, obligations and responsibilities of those employed in the Ministry that are not regulated by this law or regulations for state employees and civil servants.

**Use of Gender-sensitive Language**

**Article 8**

All terms used in this law for natural persons in the masculine gender shall mean the same terms for the feminine gender.

**POLICE DUTIES**

**Police Director**

**Article 9**
As a Police Director (hereinafter referred to as the “Director”) may be appointed a person who, in addition to the general conditions laid down by law, shall also meet the following specific requirements: at least 10 years of experience, out of which at least three years of experience at managerial positions in state administration bodies.

The Director shall be appointed and removed from office by the Government of Montenegro (hereinafter referred to as the “Government”) upon a proposal given by the Minister in charge of internal affairs (hereinafter referred to as the “Minister”) on the basis of public competition.

The proposal for appointment of the Director shall be submitted to the Parliament of Montenegro (hereinafter referred to as the “Parliament”) by the Government for provision of an opinion. After debate within the competent working body, the Parliament shall provide an opinion on proposed applicant.

The Director may have one or more assistants, who shall be appointed by the Minister based on the Director proposal.

The Director shall not be a member of a political party or act politically.

The Director shall be responsible for his/her work and work of the police to the Minister and the Government.

In case of a removal of the Director before exceeding the period within which he/she is appointed or if the Director is prevented to perform his/her duties for any reason permanently or for a longer period, the Minister shall, with previous approval of the Government, authorize one of his assistants to perform tasks of the Director, for the period no longer than six months.

Concept and Types of Police Duties

Article 10

Police duties under this law shall include:
- protection of citizens safety and rights and freedoms guaranteed by the Constitution;
- protection of property;
- prevention of commission and detection of criminal offences and misdemeanours;
- locating perpetrators of criminal offences and misdemeanours and bringing them to the competent authorities;
- maintaining public peace and order;
- securing public gatherings of citizens;
- protecting certain persons and facilities;
- inspection control and controlling traffic safety;
- border control;
- control of movements and staying of foreigners;
- providing conditions for the smooth functioning of courts, Public Prosecution Office and maintaining order;
- providing conditions for custody of persons, and;
- other duties laid down by law.

Principles of Performing Police Duties

Article 11
Police duties shall be based on the principles of legality, professionalism, cooperation, proportion in the exercise of powers, efficiency, impartiality, non-discrimination and timeliness.

**Goal of Performing Police Duties**

*Article 12*

Police duties are performed to ensure equal protection of security, rights and freedoms, to apply law and ensure rule of law.

**Use of Coercive Means**

*Article 13*

When performing police duties, only coercive measures that are allowed by law can be exercised or used, which are laid down by the law and by which an objective is reached with the minimum negative consequences.

**National and International Standards of Police Action**

*Article 14*

Police officers shall act in compliance with the Constitution, ratified international treaties, law and other regulations.

Police officers shall comply with standards of police action, in particular those arising from the duties regulated by international regulations and relating to the duty of serving people, respecting legality and combating illegality, exercising human rights, non-discrimination while policing, limitation and restraint in the use of force, prohibition of torture and inhuman and degrading treatments, providing aid to injured persons, duty to protect classified and personal data, duty to reject unlawful orders and combat any form of corruption.

**Code of Police Ethics**

*Article 15*

The Code of Police Ethics shall include a set of principles of ethical conduct of police officers based on the international standards.

The Code referred to in paragraph 1 of this Article shall be adopted by the Ministry.

**Right to Complaint**

*Article 16*

A natural person has a right to file a complaint regarding policing when considering that a police officer, while performing police duties has violated some of his/her rights or inflicted damage, no later than 30 days from the date of inflicting the damage.

The complaint referred to in paragraph 1 can be also filed by a legal person.

Upon the complaint, the police shall reply in writing to the complainant, within 30 days from receipt of the complaint.
The complainant i.e. legal representative shall be enabled to participate in the process of verifying and determining facts regarding the complaint. If not satisfied with the response, the complainant may contact the Ministry within 15 from the date of receipt of the response.

The manner of handling complaints referred to paragraph 1 of this Article shall be regulated by the Ministry act.

**Right to Judicial Protection and Compensation**

**Article 17**

A person believing that his/her rights or freedoms were violated by a police action, or was inflicted a harm, shall have the right to judicial protection and compensation.

**Assistance in Execution**

**Article 18**

Police officers shall provide assistance to the state authorities, state administration bodies, local administration bodies and legal persons in the process of execution of their decisions, if within the procedure, a physical resistance was demonstrated or expected, in accordance with law. The conditions and manner of providing assistance under paragraph 1 of this Article shall be regulated by the Ministry.

**Vehicles, Vessels, Weapons and Equipment**

**Article 19**

In order to perform duties laid down by law, the Police shall use vehicles, vessels, weapons and special equipment. Colour and markings of vehicles and vessels, weapons and special equipment used for performance of police duties shall be decided by the Government.

**Premises for Custody**

**Article 20**

Premises intended for custody of arrested persons must meet the necessary sanitary and technical requirements, particularly in terms of cubic volume of air, minimum space, lighting and ventilation. The Ministry shall regulate the conditions of the premises for custody of arrested persons under paragraph 1 above.

**Facilities**

**Article 21**

In order to perform duties laid down by law, the Police shall use facilities and related land in accordance with law.
Protection of Certain Persons and Facilities

Article 22

Identifying persons and facilities under Article 10 paragraph 1 item 7 of this law which are protected by the Police, the manner of protection, as well as other issues relevant for protections of persons and facilities shall be laid down by the Government.

POLICE POWERS AND DUTIES

General Rules

Types of Police Powers

Article 23

In addition to powers, measures and actions laid down in the Criminal Procedure Code, Law on Misdemeanours and separate laws, a police officer shall have powers to:
- collect and process personal and other data;
- summon;
- give warnings and orders;
- use another person means of transportation and communication;
- use coercive means;
- undertake undercover police actions.

Conditions for the Exercise of Police Powers

Article 24

Police powers shall be exercised by police officers.
Police powers may be exercised only if the requirements provided by law have been fulfilled.

A police officer shall assess whether the requirements referred to in paragraph 2 of this Article have been fulfilled and shall assume the responsibility for the assessment.

Police officers shall exercise police powers:
- when following the court or public prosecutor order;
- when following the order of a superior officer, in accordance with the law;
- at his/her own initiative, if superior officer is not present, and urgent circumstances require immediate action.

A person against whom police powers are exercised shall have right to be informed about the reasons for undertaking such measures, to indicate the circumstances that considers relevant in this regard, be informed of the police officer identity and to seek a presence of a person who enjoys his confidence, when possible, and if it that does not jeopardize the performance of the police activity.

Enabling Medical Aid

Article 25
While exercising police powers, a police officer shall enable, upon the request of a person against whom a power is applied, the provision of medical aid by a health care institution.

**Principle of Proportionality**

**Article 26**

The exercise of police powers must be proportionate to the need for which they have been undertaken.

The exercise of police powers should not cause harm greater than those which would have occurred if the police powers have not been used.

Between more police powers, the one with a minimum of adverse effects and loss of time by which a task can be performed shall be used.

While exercising the coercive means, they shall be used gradually, from the lightest to the heavier means of coercion, if possible, and in any case with the minimum of necessary force.

**Police Badge and Official Identification Card**

**Article 27**

An official badge and official identification card shall be issued to a police officer for the purpose of proving the police officer capacity.

The content and form of the official identification card and design of the police badge shall be laid down by the Ministry.

**Uniform, Insignia and Weapons**

**Article 28**

Police duties shall be performed by police officers in uniform, as required by the nature and conditions of the job.

A police officer may perform certain duties in plain clothes.

Uniforms, insignia titles and weapons of police officers shall be laid down by the Government.

**Identification and Representation**

**Article 29**

Police officer, while policing in plain clothes, prior to exercising police powers, shall present himself/herself by showing the official badge and official identification card.

A police officer in uniform, prior to exercise of police powers, shall present himself/herself by showing the official badge and identification card at the request of the person against whom the police power is exercised.

Exceptionally, a police officer shall not present himself/herself in the manner referred to in paragraph 1 and 2 of this Article, if the circumstances of the exercise of police powers indicate it could jeopardize the attainment of its objectives. In that regard, while exercising police powers, the police officer shall warn the citizen by the word “Police”.

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The provisions of paragraphs 1 and 3 of this Article shall not apply to acts of police officers undertaking covert police actions, or when, in accordance with a separate law, undertaking special evidentiary actions.

**Exercise of Police Powers against Juveniles**

**Article 30**

Police powers against a minor shall be applied by a police officer with special knowledge in the field of child rights and rules on procedure involving minor perpetrators and minors involved in criminal proceedings.

When taking actions against a minor, in particular when interviewing, a police officer shall proceed cautiously, mindful of the mental capacity, sensitivity, personal capacity and privacy of the minor.

As a rule, police powers against minors shall be exercised in the presence of a parent or legal guardian and attorney.

**Exercise of Police Powers in regard to Individuals with Immunity**

**Article 31**

In regard to a person with immunity, a police officer shall act in accordance with ratified international treaty and separate legislation.

A police officer shall immediately notify a superior of acting in regard to the person referred to in paragraph 1 above.

**Exercise of Police Powers against Military Persons**

**Article 32**

The powers laid down by this law shall be used by a police officer also against military persons, unless otherwise provided by separate legislation.

Upon undertaking police powers against persons referred to in paragraph 1 above, the police shall immediately inform the competent command of the Army of Montenegro.

**Service Weapons and Means of Coercion**

**Article 33**

While carrying out duties, a police officer shall carry firearm and use other means of force, under the conditions stipulated herein.

**Assignment of a Police Officer Abroad**

**Article 34**

A police officer may take part in performance of police duties abroad under the conditions laid down by international treaty.

Decision on assignment of a police officer abroad shall be made by the Minister.
A police officer shall not be assigned abroad to perform duties referred to in paragraph 1 of this Article without his/her written consent. Rights and duties of a police officer to be assigned abroad shall be laid down by a contract. Condition and manner of selection of a police officer to be assigned abroad, as well as his/her rights and obligations shall be laid down by the Ministry.

**Cooperation with a Foreign Country or International Organisation Police Officer**

**Article 35**

A police officer of a foreign country or international organization may perform certain police activities on the territory of Montenegro, under the conditions stipulated herein, with the prior written approval of the Minister. A police officer may, together with a foreign country or international organisation police officer undertake certain actions within joint investigations, when laid down by law or international treaty. A police officer in joint investigation referred to in paragraph 2 of this Article shall act under the provisions of this law, unless otherwise provided by a ratified international treaty.

**Duty to Perform Duties**

**Article 36**

A police officer shall in a manner and under conditions laid down by this Law undertake necessary actions to protect human life even if his/her own life is threaten in exercising these actions.

**Collection and Processing of Personal and other Data**

**Collection of Personal and Other Data**

**Article 37**

Police may collect personal and other data (hereinafter referred to as the “data”) in the extent necessary to perform police duties and use police powers to prevent and suppress crime and maintain public peace and order.

**Manner of Data Collection**

**Article 38**

As a rule, data shall be collected directly from the person they refer to. Without prejudice to paragraph 1 of this Article, data may be collected from other state authorities, state administration bodies, local self-government bodies, organisations, institutions or other legal or natural persons, if it is not possible to collect data directly from the person they refer to, or if such collection would jeopardise use of police powers. Data may be collected in a special manner if performance of a concrete police duty or activity is prejudiced.

**Request for Collection of Data**

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Article 39

Authorities and legal and natural persons referred to in Article 38 paragraph 2 of this Law, which under the law, within their jurisdictions keep data records, shall upon the police request provide the information necessary to carry out statutory duties and powers under its scope of work or jurisdiction.

The request referred to in paragraph 1 of this Article shall include: the legal basis for using the data, which data is needed, for what purpose, sufficient number of data needed to establish identity of a person or subject, and to what point the right of the person to know that his/her data is being used is restricted.

Special Manners to Collect Data

Article 40

The Police may collect data in a special manner in accordance with this Law only if:
- a life or body is threatened, as well as freedoms and rights of an individual or a citizen, or a property of a significant values which preservation is of public interest;
- commission of a serious crime is thus prevented, which is committed by a group or a criminal organisation, and crime prevention was not otherwise possible.

Measures to Collect Data in a Special Manner

Article 41

Collecting data in a special manner shall be done by applying the following measures:
- surveillance of a person in duration of up to 24 hours continually, or in interrupted intervals in duration of 2 days, and;
- covert recording and use of video recordings, and recording of non-private conversation in duration of no longer than 30 days.

Order to Apply Measures to Collect Data

Article 42

Application of measures referred to in Article 41 of this law upon justified proposal of the Director shall be approved by the Minister’s order.

The order referred to in paragraph 1 of this Article shall be in written and justified.

The order referred to in paragraph 1 of this Article for application of measures referred to in Article 41 of this Law shall be issued based on court decision and it shall contain the decision itself.

Application of measures referred to in Article 41 of this law can be extended till the objective due to which measures are applied is reached, and for each prolongation of measures the order is issued in accordance with paragraphs 1,2 and 3 of this Article.

Data obtained in special manner can be used for the purpose they are collected, unless they are necessary to prevent commission of a crime the secret surveillance measures can be ordered for in accordance with law.

Informing the Person
Article 43
When collecting the data, the person subject of the measures referred to in Article 41 of this law is informed thereof, following expiry of define periods, in a manner not to jeopardise the purpose for which the measures are applied.

Records on Collected, Processed and Used Data
Article 44
The Police shall keep proper records on collected, processed and used data, in particular on:
- crime offenders
- perpetrators of misdemeanours
- wanted persons
- persons subjected to the procedure of establishing identity
- operational information
- persons subjected to secret surveillance measures, in accordance with the legislation on criminal proceedings
- DNA analysis results
- events
- persons who, on any grounds are limited or deprived of their liberty
- complaints
- used means of coercion
- fingerprinted persons
- photographed persons
- lost and found property
- criminal intelligence on terrorism and international organized crime
- measures undertaken in accordance with the law stipulating criminal proceedings
- video and audio records

Prior to establishing records referred to in paragraph 1 of this Article, the Police shall obtain approval issued by the Agency for Personal Data Protection in accordance with the law. The form, content and manner of keeping records referred to in paragraph 1 of this Article, except for records referred to in item 7, shall be laid down by the Ministry.

Right to Access the Data
Article 45
The right to access the data referred to in Article 44 paragraph 1 of this Law, shall have a person to whom the information relates, in particular referred to:
items 1 and 2, following final and enforceable ruling on confirmation of the indictment or on date of final and enforceable ruling to institute misdemeanour proceedings for a misdemeanour;
items 3, 4, 8, 9, 10, 11, 12, 13, 14, 16 and 17 once the reasons due to which they were kept ceased to be exist;
item 5, following the information archiving;
items 6 and 15, following final and enforceable ruling to terminate the investigation i.e. on the date of the final and enforceable ruling on confirmation of the indictment;
The person on whom the personal data was collected without his/her consent, and were not deleted, shall be informed thereof, if it is permitted by the nature of police work.

**Storing and Deleting Data**

**Article 46**

Data referred to in Article 44 paragraph 1 of this Law, shall be kept, referred to in:
- items 1, 5, 6, 12, 13, 15 and 16 for 5 years following data entering;
- item 2, for 3 years following the date of issuing decision on instituting misdemeanour proceedings, and if a misdemeanour proceedings are not instituted, for 1 year from the data entry;
- item 3, until locating wanted persons or upon cessation of reasons of the search;
- item 4, for 1 year following data entering;
- item 8, for 3 years following data entering;
- items 9, 10 and 11, for 2 years following data entering;
- item 14, until locating the subject being wanted, or upon termination of the reasons of the search;
- item 17, for three days from the date of recording.

By expiry of periods referred to in paragraph 1 of this Article, re-consideration of further keeping of data for police purposes shall be done.

Data which keeping is not justified shall be deleted from records upon expiry the period prescribed for their keeping.

Data collected contrary to law or which are incorrect shall be deleted or corrected immediately.

Personal data shall be deleted from all records for a person who is acquitted by a final and enforceable ruling, as well as for a person against whom indictment was rejected by a final and enforceable ruling or against whom criminal proceedings were terminated.

**Submission of Data**

**Article 47**

Data from the records referred to in Article 44 of this Law can be submitted by the Police to be used by other state authorities, state administration bodies, local self-government bodies and legal persons if it is necessary for execution of their powers laid down by law.

**International Exchange of Data**

**Article 48**

If necessary for performance of duties out of its scope of jurisdiction, the Police can exchange data, on its own initiative or upon a request of another country or an international organisation, based on the principle of reciprocity.

Personal data can be exchanged only if there are previously guarantee that another country or international organisation using the data shall apply proper measures for protection of personal data laid down in a separate law on personal data protection, as well as that it shall used in for the purpose laid down in this Law.
Data obtained from another country can be submitted to a third country only if there is consent of the submitting country.
The Police shall keep records on exchange of data referred to in paragraph 3 of this Article, and it shall contain information on the date of data submission, receiving party and purpose.

**Relevant Implementation of Legislation on Protection of Personal Data**

**Article 49**

Legislation on protection of personal data shall be applied on the processing of personal data by the Police, unless otherwise provided by this Law.

**Summoning**

**Terms and Manner of Summoning for an Interview**

**Article 50**

The Police can summon a person who is likely to dispose of any notification, when it is necessary to perform police duties.
The summon shall include the name, place and address of the organizational unit of the Police, reason, place and time of the summoning.
A police officer shall inform the person who responded to the summoning that he/she is not obliged to give required notification.
A person can be forced to respond to the summoning, only if alerted to in the summoning itself.
A summon to a person being summoned to an interview shall be submitted in an official language or a language officially used.

**The Time in which a Person can be Summoned**

**Article 51**

A person who is in his/her dwelling may be summoned from 06 - 22 hours.
Exceptionally, if there is a risk from delay, the police officer shall have powers to summon the person from whom the notification is sought beyond the time provided in paragraph 1 of this Article.

**Special Summoning Cases**

**Article 52**

Police officer shall exceptionally have powers to summon the person directly, by phone or other means of electronic communication, in which case he/she shall give the reasons for summoning, and with the person consent, he/she can escort him/her to official premises.
A person can be exceptionally summoned through media when necessary due to the threat from delay or when the summoning is intended to a large number of persons.
Upon request of a person who responded to a summoning, he/she shall be issued a note involving reasons and rationale of the manner of summoning.

**Giving Warnings and Orders**
Giving Warnings

Article 53

A police officer shall warn the person likely to:
- threat, by his/her behaviour a person or property, threat the traffic safety, disturb public peace and order or disturb border control;
- commit, encourage or induce another person to commit a criminal offense prosecuted \textit{ex officio}, or a misdemeanour.

Giving Orders

Article 54

A police officer shall give an order to:
- eliminate the threat to life and property;
- prevent the commission of the criminal offence prosecuted \textit{ex officio} and misdemeanours, capture the perpetrator of the criminal offence and misdemeanours, and finding and providing prints that could serve as evidence;
- maintain or restore disrupted public order;
- secure road safety;
- enable smooth border control;
- prevent access to a protected person, facility or area, as well as access and retention in the area or facility where it is not allowed;
- prevent the occurrence and eliminate consequences of general danger, and
- in other cases laid down by law.

The order referred to in paragraph 1 of this Article, may be given to a larger number of citizens.

The Manner of Giving Warnings and Orders

Article 55

Warnings and orders shall be given: verbally, in written, or in other way (light and sound signals, signs, by hand and in other ways) laid down by the act referred to in Article 84 of this Law.

Use of Another Person’s Means of Transportation and Communication

Conditions of Use and Rights of Owner

Article 56

Another person's means of transportation or means of communication may be used if it is not otherwise possible to access the transportation, or to establish a communication in order to:
- capture an offender directly pursuit;
- transport an injured person being a victim of crime, traffic accident, natural disaster or other accident to the nearest health care institution.

While exercising the powers referred to in paragraph 1 of this Article, the police officer shall present his credentials.
The owner of the transportation or communication means shall be entitled to compensation of costs and actual damage caused by the use of these means.

**Use of the Means of Coercion**

**Types of Coercive Means and Conditions for Use**

**Article 57**

The means of coercion under this law shall include:

- physical force;
- baton;
- handcuffs;
- special vehicles;
- service dogs;
- service horses;
- interdiction means;
- water jet ejectors;
- chemical substances;
- special types of weapons and explosives, and
- firearms.

A police officer shall use coercive means only if he/she cannot complete his/her task otherwise, in a restrained manner and in proportion to the danger that threatens the legally protected goods and values, or the gravity of action which is prevented or suppressed.

A police officer shall always use the mildest means of coercion that guarantee success, in proportion to the reason of use and in a manner by which the duty is performed without undue harm.

Before using coercive means, a police officer shall alert the person against whom he/she intends to use the mean, if possible in a given situation, and if it shall not jeopardize the execution of the duty.

While using means of coercion, a police officer shall protect human lives, cause the least possible harm and damage, and ensure aid to an injured or threaten person as soon as possible, and inform his/her relatives thereof as soon as possible.

**The Use of Coercive Means against a Group of Persons**

**Article 58**

A police officer shall have powers to give an order to a group of persons to split if the group gathered unlawfully, if it acts illegally, thus possibly provoking violence.

If the group referred to paragraph 1 of this Article shall not split, the following coercive measures can be used:

- physical force;
- truncheon;
- special vehicles;
- service dogs;
- service horses;
- water jet ejectors;
The means referred to in paragraph 2 of this Article may be used only upon order of a superior police officer or a police officer authorized by him.

**Reporting, Control and Accountability Regarding the Use of Means of Coercion**

**Article 59**

A police officer shall submit a written report on any use of means of coercion to the superior police officer as soon as possible and no later than 24 hours following the use of means of coercion.

The report referred to in paragraph 1 above, shall contain data on the means of coercion, name, surname and personal identity number of a person against whom it was used, the reasons and grounds of the use, and on other facts and circumstances relevant to the assessment of the legality of the use of coercive means.

Legality of the use of coercive measures shall be assessed by the Minister or a person authorized by him/her.

If assessed by the Minister or a person authorized by him/her that the means of coercion were used unlawfully, he/she shall within three days at the latest following the day of the knowledge, undertake measures to establish accountability of the police officer, who used, or ordered the use of means of coercion.

For the unlawful use of means of coercion, the police officer who used it shall be personally liable, or the one who ordered the unlawful use of force.

**Legal Assistance Regarding the Use of Means of Coercion**

**Article 60**

When assessed that the coercive means were used within the limits of the powers provided by law, the police officer who used it shall be excluded from the liability.

When the criminal proceedings is conducted against the police officer for the use of means of coercion under paragraph 1 of this Article or for undertaking other actions in performing official duties, the Ministry shall provide him/her free legal assistance in this proceedings.

The Ministry shall render free legal assistance also to an individual who provided assistance to the authorized official, if criminal proceedings were instituted against him/her for acts committed in connection with providing assistance.

**Physical Strength**

**Article 61**

The use of physical force, within the meaning of this law, shall mean the use of various grips of martial arts or similar actions against the body of another person, aimed at repulsing the attack or overpowering the resistance of the person by inflicting the least harmful consequences.

The attack shall mean any action undertaken to hurt or kill the attacked person, to enter forcibly facility or area surrounding the facility in which the entry is prohibited or to hinder or prevent police officer in execution of an official duty.
Resistance shall mean any opposition to legitimate official measures and actions that can be done by disregarding, or by assuming kneeling, sitting, lying or a similar position (passive resistance), or sheltering or getting hold on a person or object, grabbing, seemingly to attack the person, or taking similar action (active resistance).
Physical strength shall be used in accordance with the rules of self-defence skills, and it shall cease to be used upon the termination of the attack or the resistance of the person against whom it the was used.

Truncheon
Article 62

The truncheon may be used if the milder manners of use of physical force are unsuccessful or do not guarantee success.
Strikes with a truncheon shall not be made to the head, neck, spine, chest, abdominal, genital and joints, except as a final measure.
Against persons under 14, obviously sick and infirm persons, severely disabled and women whose pregnancy is visible, the truncheon can only be used if any of those persons are with firearms, tools or other dangerous object is threatening another person life.

Instruments of Restraint
Article 63

Instruments of restraint may be used to:
prevent resistance of a person or attack to a police officer;
prevent the escape of a person;
disable self-injury or injuring another person.
The use of instruments of restraint shall mean binding, as a rule, a person hands behind his back.
Instruments of restraint shall mean duty handcuffs, plastic ties or other tools intended for it.
While using instruments of restrains the restrictions under Article 62 paragraph 3 of this Law shall apply.

Special Vehicles
Article 64

Special vehicles may be used to establish disturbed public order, interdict passage of persons and to use chemical substances and firearms built in those vehicles.
The use of special vehicles shall mean ejection of pressurized water with or without chemical substances, use of the built-in firearms, removing obstacles and interdiction of passing of persons by special vehicles. While used, the crew and special vehicle shall be protected by necessary number of police officers.
Special vehicles shall mean the vehicles for ejecting water under pressure, armoured vehicles with or without built-in interdiction fence, helicopters, vehicles for removal of obstacles and other vehicles for special purposes.
Built-in chemical substances and firearms may be used only under the conditions for the use of these means, and weapons, as provided by this law.
Service Dogs
Article 65

Service dogs may be used as means of coercion when:
the conditions for the use of physical force or truncheon are met;
the conditions for the use of firearms are met;
establishing a disturbed public order.
The use of service dogs shall mean letting the dog to a person and interdiction of persons passing by using dogs.
In the cases referred to in paragraph 1 item 2 of this Article, a service dog can be used without a muzzle, whilst in cases referred to in items 1 and 3 only with a muzzle.

Service Horses
Article 66

Service horses may be used as the means of coercion to establish a disturbed public order and to interdict passing of persons.
The use of service horses shall mean the movement on horses towards persons for the purpose of their separation or suppression, or interdiction of persons passing by using horses.

Means of Interdiction
Article 67

Means of interdiction shall mean the means for forced stopping of vehicles and means for interdiction of a person passing.
Means of interdiction shall be protected by a number of police officers, which is determined by their superior.

Stopping a Vehicle
Article 68

Means for forced stopping of vehicles may be used to prevent:
escape of a person found while committing a criminal offence prosecuted ex officio;
escape of an arrested person or being under arrest warrant;
illegal crossing of state border by vehicle;
unauthorized access to vehicles in order to reach a facility or area with persons protected by a police officer.

Means for forced stopping of vehicle shall be devices for these purposes, as well as barbed tape and other means used for forced stopping of the vehicle in motion.
Traffic signs prohibiting overtaking and for mandatory stop shall be placed in front of the set up means for forced stopping of vehicles at the appropriate distance in accordance with the legislation on road safety, if possible in given situation.

Interdiction of Passage of Persons
Article 69

Means for interdicting the passage of persons may be used to intersect and divide an area while maintaining public peace and order and securing public gatherings, to block certain area or facility, or to restrict, prohibit or direct movement of people in public places, certain areas or routes.

Means for interdiction of passage of persons shall mean interdiction fences, special vehicles, service dogs, service horses and other means that can interdict passage of persons.

Water Jet Devices

Article 70

Water jet devices may be used only under conditions and in manner laid down by the Article 57 of this Law against the group who acts likely to provoke violence.

Chemical Substances

Article 71

Chemical substances may be used to repel an attack and overcome resistance which cannot be ensured by the use of physical force and a truncheon, in order to restore disrupted public peace and order, to force persons out of closed areas, solve hostage situation and in cases when the requirements for use of special weapons and explosive substances as well as firearms provided by this Law, have been met.

Chemical substances shall mean short-term use tear-gasses, which upon termination of the action shall leave no effects on psycho-physical and general health, as well as chemical substances of milder effects than tear-gasses.

When using chemical substances in the vicinity of children and old people institutions, hospitals, elementary schools and busy roads and easily flammable substances, special measures of protection shall be undertaken.

Chemical substances shall not be used against persons being in the vicinity of explosive-flammable substances, at the high altitude and in similar places where a human life might be threatened.

Special Types of Weapons and Explosive Devices

Article 72

Special types of weapons and explosive devices may be used only when conditions for use of firearms laid down by this Law are met, if the use of other types of weapons is inefficient or shall not guarantee success.

Special types of weapons within the meaning of paragraph 1 of this Article shall mean electrical paralyser and cold weapons.

Special weapons and explosive devices may not be used for the purpose of preventing a person from escape.

Explosive devices may not be used against persons gathered in a crowd.
Decision on use of special types of weapons and explosive devices shall be rendered by the Director, upon approval of the Minister.

**Firearms**

**Article 73**

While policing, a police officer may use firearms only if other means of coercion already used were inefficient to reach a result, or when it is necessary to:
- protect life of people;
- prevent escape of a person captured while committing a criminal offence prosecuted *ex officio* and punishable by imprisonment sentence of ten years or severe sentence, in case of imminent life threat;
- prevent escape of a person, lawfully arrested, or a person under the arrest warrant for the commission of criminal offences referred to in item 2 of this Article in case of imminent life threat;
- repel from him the imminent attack threatening his life;
- repel attack on facility or persons being protected, in case of imminent life threat.

**Protection of Life of People**

**Article 74**

The use of firearms within the meaning of Article 73 paragraph 1 item 1 of this Law, shall mean the use of firearms aimed at protecting life of one or several persons being attacked, if their lives are directly threatened.

**Prevention of Escape of a Person Caught while Committing a Criminal Offence**

**Article 75**

The use of firearm, within the meaning of Article 73 paragraph 1 item 2 of this Law shall mean the use of firearm during or immediately after commission of a criminal offence in order to prevent the escape of the person found at the place or in immediate vicinity of the location where the criminal offence took place or where the consequences of criminal offence occurred, or to prevent escape of the person in the possession of objects used for commission of the crime or objects incurred during the commission of criminal offence.

**Preventing the Escape of a Person Lawfully Arrested, or Being under Arrest Warrant**

**Article 76**

The use of firearm, within the meaning of Article 73 paragraph 1 item 3 of this Law shall mean the use of firearms to prevent escape of a person where in the arrest warrant or apprehension order was specifically indicated that a police officer shall use firearms to prevent the escape of that person.
Before acting upon the arrest warrant and in order to apprehend the person referred to in paragraph 1 of this Article, a police officer shall warn the person that firearms shall be used if attempted of escape.

**Repelling Imminent Attack on a Police Officer**

**Article 77**

The use of firearms in within the meaning of Article 73 paragraph 1 item 4 of this Law, shall mean the use of firearms to repel the attack with firearms, dangerous tools or other object which can threaten life, the attack by two or more persons, or an attack at a place and time when assistance cannot be expected.

Within the meaning of paragraph 1 of this Article, mere pulling of a firearm or an attempt to pull it shall mean a firearm attack on a police officer.

Within the meaning of Paragraph 2 of this Article, pulling shall mean the movement of a firearm for the purpose of putting it into the position for use, and the attempt of pulling shall mean the movement made towards the firearm.

**Repelling Attack on Protected Facility or Person**

**Article 78**

Use of firearm, within the meaning of Article 73 paragraph 1 item 5 of this Law shall mean the use of firearms for the purpose of repelling direct attacks and during the attack on a facility or a person being protected.

Direct attack on the facility being protected shall mean any action aimed at damaging the facility or its parts or disabling the operation of the facility by destructing or destroying equipment at the facility or otherwise.

Direct attack on the person being protected shall mean any firearm attack, attack with dangerous tool or other object which can threaten life of that person, or an attack by two or more persons.

**Warning Prior the Use of Firearm**

**Article 79**

Prior the use of firearm by a police officer, he/she shall, when allowed by circumstances, warn the person against whom the firearm shall be used by shouting: "Stop, Police, I will shoot!" and by warning shot.

**Special Limitation on Use of Firearms**

**Article 80**

Use of firearms shall not be allowed when lives of other people are threatened, except when such use shall be the only mean to perform tasks laid down in the Article 73 of this Law.

Use of firearms shall not be allowed against underage persons, except when it shall be the only way to protect from direct attack or threat.

**Use of Firearm in Pursuing a Vessel**
Article 81

When necessary to stop a vessel being pursued at the sea or inland waterways, the police may use the firearm against such vessel in order to prevent it from fleeing, to stop it and transfer it to the competent authority, only if is not possible to be achieved by using other currently available means.

Other means, referred to in paragraph 1 of this Article, may be verbal warning and warning shots fired above the vessel, under condition that it shall not threaten anyone.

When, as the final measure, the fires are shot at the vessel, the police shall do so to protect lives of the people at the vessel and at line of fire. Firearms shall not be used if threatening someone’s life and if not necessary to save or protect someone’s life.

Use of Firearms against Animals

Article 82

Firearms may be used against animals only if they present direct danger of attack against a person’s life and body or a threat to the lives or health of people (infectious diseases, etc.). Weapons may also be used against ill and seriously injured animals when a veterinarian or another person is unable to undertake an appropriate measure.

Undercover Police Actions

Undertaking Undercover Police Actions

Article 83

While performing certain police activities, a police officer shall have powers in accordance with the law, to carry out undercover police actions, if obvious that the goal of the police investigation cannot be achieved by other actions.

The actions referred to in paragraph 1 of this Article, shall be undertaken only by written order of the Minister, followed by justified proposal of the Director and approval of a police officer.

If conditions referred to in paragraph 2 above are met, undercover police actions may be conducted also by a police officer of another country in accordance with an international treaty.

In order to protect a police officer and conceal his/her identity, proper documents shall be produced or issued.

Legislation on Performing certain Police Duties

Article 84

Performance of certain police duties and use of police powers during their performance shall be regulated in more detail by the Ministry.

[...]

VII DISCIPLINARY LIABILITY OF POLICE OFFICERS
Types of Breaches of Duty

Article 104

A police officer shall be held disciplinary liable for breaches of duty. Breaches of duty may be minor and severe.

Minor Breaches of Duty

Article 105

Apart from breaches of duties laid down by legislation on state employees and civil servants, minor breaches of duty shall include:

- improper handling of entrusted work tools;
- impolite conduct towards citizens and associates during work;
- failure to wear or improper wearing of service uniform, weapons and equipment;
- untidy appearance.
- For breaches of duty referred to in paragraph 1 of this Article, the following disciplinary measures can be instituted:
  - written warning;
  - fine at the amount of 10% of monthly salary paid for the month when a breach of duty occurred;

Disciplinary measures for minor breaches of duty shall be pronounced by a head of the organizational unit.
Against the decision on pronounced disciplinary measure under paragraph 3 of this Article, an appeal can be lodged to the Minister, within eight days following the day of receipt of the decision.

Severe Breaches of Duty

Article 106

Apart from the breaches of duty laid down by the legislation on state employees and civil servants, severe breaches of official duty shall include:

- disclosure of data to unauthorized persons;
- improper or out of purpose use and disposal of the entrusted means;
- taking or failing to take any action disabling or impairing functioning of the service;
- conduct in or out the service contrary to code of police ethics;
- communicating false data about the Ministry;
- refusing to execute an official order, failing to execute an official order or disdaining an order of an immediate superior or a superior managing execution of an official task, ordered during or related to execution of the police activities;
- arbitrarily leaving the working position;
- arbitrarily leaving of the unit or the place appointed for alertness;
- giving or execution of orders by which safety of persons or property is unlawfully threatened;
- failure to undertake or insufficient undertaking of measures for safety of persons, property and entrusted things;
- any action, or failure to act which disable, obstruct or impair execution of duties;
- failure to undertake or insufficient undertaking of measures and actions by immediate superior or police officer in charge to determine facts in regard to submitted complaint concerning the action taken by police officer;
- conduct that impairs relations between employees or civil servants;
- loss or damage of weapons, techniques, equipment or means that a police officer is entrusted with or is using when performing duty;
- failure to take measures or provide assistance, within a duty, to other state bodies;
- unlawfully obtaining personal or property gain for himself/herself or other person related to the service;
- engaging in activities contrary to duty;
- giving orders which, if executed, would constitute a criminal offence;
- concealing a severe breach of duties executed by an immediate superior;
- failure to act upon verbal or written request of the police officer authorized for execution of internal control over policing or disabling or obstructing performance of work of the internal control over policing;
- any form of corruption.
- For the breaches referred to in the paragraph 1 of this Article, the following disciplinary measures can be pronounced:
  - fine at the amount of 30% of monthly salary paid for the month when the breach of the official duty was committed, for the period from one to six months;
  - impossibility to acquire a rank during the period from 2 to 4 years;
  - termination of employment.

Disciplinary measures for severe breaches of the duty shall be imposed by the Minister. Appeal may be lodged to Appeal Commission against the decision on imposed disciplinary measure referred to in paragraph 2 of this Article within eight days following the day of receipt of the decision.

Act on Disciplinary Liability

Article 107

Disciplinary proceedings, bodies for instituting, conducting and decision making, their organization, as well as the manner of keeping records on imposed disciplinary measures shall be regulated in more detail by the Ministry act.

Temporary Suspension from Work

Article 108

A police officer shall be temporary suspended from work:
- if a disciplinary procedure has been instituted against him/her due to a severe breach of the duty, until completion of the disciplinary proceedings;
- if caught while committing a severe breach of duty for which a measure of termination of employment was prescribed, until completion of the disciplinary procedure;
- during detention period;
- if criminal proceedings have been instituted against him/her for a criminal offence with elements of corruption or a criminal offence committed while working or related to work, until completion of the criminal proceedings.
A police officer may be temporarily suspended from work also before instituting disciplinary proceedings against him/her, if conditions referred to in the paragraph 1 item 4 of this Article are met, while a disciplinary proceedings has to be initiated within 8 days following the day of temporary suspension.

**Termination of Employment by Force of Law**

**Article 109**

Apart from cases of termination of employment laid down by general legislation on state employees and civil servants and general labour legislation, employment shall be terminated to a police officer if:

- while recruitment or working it was established that he/she had given false data on fulfilment of conditions referred to in Article 85 of this law;
- convicted by a final judgement for committed a criminal offence prosecuted *ex officio*, except for criminal offences related to traffic safety, on the day of submission of the final judgement;
- he/she was imposed five disciplinary measures for minor breaches of duty within the period of two years, or two disciplinary measures for severe breaches of duty within the period of one year.

**VII CONTROL OVER THE POLICE WORK**

**Types of Control**

**Article 110**

Control over the police work shall be provided through parliamentary, civil and internal control.

**Parliamentary Control**

**Manner of Performing Parliamentary Control**

**Article 111**

Parliamentary control over the police work shall be carried out in a manner laid down by separate law.

**Civil Control**

**Council for Civil Control**

**Article 112**

Civil control over the Police shall be performed by the Council for civil control over the work of the police (hereinafter referred to as the “Council”).

The Council is a body that shall assess exercise of police powers to protect human rights and freedoms.

The Council may be addressed by citizens and police officers.

The Council shall consist of five members each appointed by: Bar Association of Montenegro, Chamber of Physicians of Montenegro, Association of Lawyers of Montenegro, University of Montenegro and non-governmental organizations dealing with human rights.
The President of the Council shall be elected by the majority of votes of total number of members.  
A term of office of the Council members shall be five years.  
The President of the Parliament shall initiate a procedure of appointment of the Council members by summoning the entities authorized for appointments referred to in the paragraph 4 of this Article.  
The Parliament shall state a completion of the procedure of appointment of the Council members.  
The Council shall adopt its Rules of procedures.  
The police shall, upon request of the Council, provide necessary information and notifications.  
Expert activities for work of the Council shall be performed by the Service of the Parliament.

Assessment and Recommendations of the Council  
Article 113  
The Council shall assess and make recommendations which are submitted to the Minister.  
The Minister shall inform the Council on the undertaken measures.

Internal Control  
Body Performing Internal Control  
Article 114  
Internal control over the Police shall be carried out by a special organizational unit of the Ministry.

Internal Control Activities  
Article 115  
Internal control activities shall include: control of lawfulness of performance of the police activities, in particular in regard to compliance and protection of human rights when performing police tasks and exercising police powers; implementation of counter-intelligence procedures and other control relevant for efficient and legal work.

Police Officer with Powers to Conduct Internal Control over the Police  
Article 116  
Internal control over the police work shall be conducted by a police officer authorised to conduct internal control over the Police (hereinafter referred to as the “authorised officer”).  
The authorised officer shall be issued official badge and ID card for the purpose of proving his/her status.  
The content and form of the official identification card and design of the police badge shall be laid down by the Ministry.

Acting of Authorised Officer  
Article 117  
When conducting internal control activities, the authorised officer shall act upon:  
- his/her own initiative;  
- collected notifications and other knowledge;  
- a proposal, complaints and remonstrance of natural persons and police officers;
The Minister shall be timely informed in written of all cases of undertaking or failure to undertake police actions indentified in the internal control procedure as contrary to the law.

Powers, Rights and Duties of the Authorised Officer

Article 118

The authorised officer, apart from the exercise of the police powers referred to in Article 23 of this law, when conducting internal control shall also have powers to:

- review the records, documents and databases which in accordance with its jurisdiction are collected, compiled or issued by the police;
- take statement from the police officers, injured parties and citizens;
- request from the Police and police officers to submit other data and information from their jurisdiction which are necessary for conducting internal control;
- inspect business premises used by the Police for its work;
- request attests and technical and other data on technical means used by the Police as well as proofs on qualifications of the police officers for use of technical and other devices which they use in their work.

A police officer shall enable to the authorised officer to conduct internal control, provide necessary expert and other assistance.

When conducting internal control, the authorised officer shall not affect the flow of certain police activities or in any other way disturb or jeopardize confidentiality of the police action.

A police officer may temporarily, until the Minister's decision, but not longer than 24 hours, refuse to give documentation to inspection, or to disable inspection of premises and submission of certain data and information, under the threat that execution of the police internal control would disable or significantly hinder exercise of the police powers laid down by this or other law, or it would jeopardize life and health of people exercising them.

Written Report

Article 119

When conducting internal control over the Police, the authorised officer shall undertake necessary actions, establish the state of the affair, gather evidence and compose a written report thereof.

The report referred to in paragraph 1 of this Article, shall also contain a proposal for removal of established irregularities, as well as a proposal for instituting appropriate proceedings to identify liability.

Internal control report referred to in paragraph 1 of this Article shall be submitted to the Minister and Government by the authorised officer at least once a year.

12. EXCERPTS OF THE LAW ON HEALTH CARE (as of 2011)

The Law on Health Care

I PRINCIPAL PROVISIONS

Article 1
Health care represents a set of measures and activities for preservation, protection, and promotion of health, prevention and fighting illnesses and injuries, early detection of illnesses, and timely medical treatment and rehabilitation.

Article 2
The aim of this Law is to create conditions for:
1) preservation and improvement of health of citizens of the Republic of Montenegro (hereinafter: the Republic) and improvement of health condition of the population;
2) the improvement of the quality of life in relation to health;
3) accessibility, under equal conditions, to health care for all citizens of the Republic of Montenegro;
4) particular care of health and socially vulnerable population categories;
5) sustainability of the health system;
6) improvement of the functioning, efficiency and quality of health services, along with the defining of special programs in the area of human resources, facility network, technology, and medical supplies;
7) better functional linking and harmonization among health system institutions of the Republic, as well as the harmonization of private and public interest in this area;
8) incentives for performing health activities in accordance with national and international standards. + See: Art. 1. Of the Law - 14/2010-15.

Article 3
The citizen shall be entitled to health care in line with the law.
The citizen shall be obliged to take care of his/her own health.
No one may put in danger health of other people.
Everyone shall be obliged, within his/her best knowledge and possibilities, to administer first aid to an injured or ill person and to facilitate his/her access to urgent medical assistance.

Article 4
In implementation of entitlements to health care, all citizens shall be equal regardless to nationality, race, gender, age, language, religion, education, social background, income status, and any other personal characteristic.

Article 5
Health activity is the activity of public interest.

Article 6
Health care shall be implemented on principles of comprehensiveness, continuity, accessibility and integral approach in the primary health care, and specialized approach in the specialist-consulting and hospital health care.

Article 7
Health care service shall be liable to the quality control of its expert functioning and to the administrative supervision, in line with this Law.

Article 8
Means for the implementation of health care and for the functioning and development of health services shall be provided in accordance with this Law.

Article 9
In terms of this Law, specific terms and expressions have the following meanings:
1) priority health care measures - health care measures that are accessible to all citizens in the Republic;
2) The health system – comprehensive activity and participation of all entities in the Republic (including health sector and all sectors related to health, educational and other institutions, economic entities and citizens) in providing health care for the population;
3) Health service – health institutions, including health workers and associates, employed by them;
4) Public health – the scientific-research approach to the development of health system and health policy, as well as the organized activity for health promotion, illness prevention, and creation of conditions for equal accessibility to health care among different social categories, as well as for alignment of the population health condition within sustainable development on the Republic level;
5) Health activity – health institutions’ activities and other forms of health services in providing health services aimed at health protection of citizens;
6) Pharmaceutical health activity – provision of medicinal products and medical devices for citizens, in line with the law;
7) The health institution – the legal entity registered for performing health activities, which has a relevant approval in accordance with this Law;
8) The health institutions network – the legal act on establishing and planning the type, the number, and distribution of public and private health institutions on the territory of the Republic;
9) Health – apart from absence of illnesses and disability, it means the state of complete physical, mental, and social welfare;
10) Promotion of health – incentives for certain way of life and identification of social, economic, mental, personal, and other factors that contribute to health, including factors of environment as well;
11) Health worker – a person with medical education who meets other conditions for performing health activities, in line with this Law;
12) Health associate - a person without medical education who can perform certain duties within health activities, in line with this Law;
13) The college specialized in health – the medical college, the dentistry college, and the pharmaceutical college;
14) **Quality of health care** – the level of fulfillment of needs of citizens in terms of the condition of means and equipment and conditions for health care, staff capacity, expertise and skills and their application, improvement of health status, removal of causes and diminishing harmful influence of certain behavior and of the environmental factor, and quality of life;

15) **Accreditation** – evaluation of a health institution in terms of fulfillment of established standards within certain health care area or branch of medicine;

16) **Health technology** – interventions and applied expertise used in health care, including medicinal products, equipment, medical and surgical procedures, and organizational, administrative, and logistic systems within which health care of population is provided;

17) **monitoring** – a systematic process of measuring the performance effects of subjects in health care, in order to evaluate the improvement achieved;

18) **evaluation** – a systematic way of learning by doing and using lessons learned in order to improve the performance of current health care and promote better planning at all levels of the health system;

19) **foreigner** – a foreign citizen and a person without a citizenship. + See: Art. 2. of the Law - 14/2010-15.

II HEALTH CARE

1. Priority Health Care Measures

**Article 10**
Priority health care measures shall include:

1) activities in promoting health and upgrading health status of population in the Republic;

2) health education in relation to the most common health problems of population in the Republic and methods for their identification, prevention, and control;

3) activities in improving systematic provision of food and drinking water to the population, in line with the specific law;

4) prevention and protection from ecological factors harmful to health, including all measures and activities in protecting, improving, and promoting health conditions of living and working environment and hygienic conditions for life and work of citizens;

5) detection, prevention, and fighting illnesses, injuries, and their consequences on the Republic level;

6) prevention, timely detection, medical treatment, and fighting contagious, chronic noncontagious and malign illnesses and immunization against main infectious illnesses, as well as prevention and control of local endemic diseases;

7) health care of children and young people until the end of legally prescribed regular education, protection of women in relation to the family planning, pregnancy, giving birth, and maternity;

8) health care (preventive and curative) of citizens over 65 years of age;

9) health care of war veterans, military invalids, civil war invalids, their family members, and beneficiaries of veterans’ allowance, as well as beneficiaries of social protection, in line with specific regulations;

10) upgrading the level of mental health of citizens, medical treatment and rehabilitation of mentally ill persons who are not otherwise insured, as well as hospitalization and medical treatment of mentally ill persons who may do harm to themselves or to their surroundings, in line with the law;
11) health care of physically and mentally disabled persons (handicapped persons);
12) medical treatment of persons on chronic dialysis program;
13) provision of necessary medicinal products and medical devices – essential medicines, in particular, as well as blood and blood products, in accordance with the special regulation;
14) urgent hospitalization and medical treatment of persons whose life is threatened due to an illness or an injury;
15) establishing cause of death.

2. Public interest in the Area of Health Care

Article 11
Public interest in the area of health care encompasses measures and activities, which contribute to the improvement of living conditions, health, and work of citizens, as well as to the functioning and development of health service.
Public interest in the area of health care shall be provided and implemented on the Republic level and on the level of local self-government units.

Article 12
The Republic shall create conditions for the implementation of health care and conditions for improvement, protection, and preservation of citizens’ health, and it shall harmonize the functioning and development of health system.
The Republic shall establish health policy that defines the objectives for preservation and improvement of citizens’ health on the territory of the Republic.
Implementing the policy referred to in Par. 2 of this article, the Republic shall:
1) establish the development strategy of health in the Republic that includes measures for the implementation of health policy tasks and objectives, priorities in specific areas of health care, measures for improved efficiency of health care provision, and other measures and activities of strategic relevance for the development and promotion of health care;
2) give incentive to the developing of healthy living habits through tax and economic policy measures;
3) facilitate cooperation with other entities in the health system development and the implementation of priority health care measures through the integrated health system;
4) establish measures in the area of living and working environment that may have an impact on citizens’ health, in line with the specific law;
5) establish standards and norms in the area of health in accordance with scientific achievements, economic possibilities, and general and specific needs of health care beneficiaries;
6) establish health institutions network on the territory of the Republic;
7) develop a program of integration of private and public sector;
8) develop a plan of the human resources development in the area of health care;
9) determines the unique methodology of supplying health facilities with medicines, medical devices and equipment, establish an annual plan of needs for medicines, medical devices and equipment, as well as reference prices of medicines and medical devices;
10) provide funds, in accordance with the law.
The Government of the Republic of Montenegro (hereinafter: the Government) shall establish the health policy referred to in Paragraph 2 of this article and shall carry out duties referred to in Par. 3 Items 1, 2, 4, 6, 7 and 10 of this Article. The Ministry competent for health affairs (hereinafter: the Ministry) shall carry out duties referred to in Par. 3, items 3, 5, 8 and 9 of this article.


Article 13
In the area of health care, the Republic shall provide funds from the Budget for:
1) monitoring of the health status of population and identification of health problems in the Republic, as well as for other duties in the area of public health;
2) implementation of priority health care measures referred to in Art. 10, items 1, 2, 3, 4, 10, and 15 of this Law;
3) the implementation of health care measures ordered by the competent state administration authority in emergency situations (epidemics, contagious diseases, physical and chemical accidents, natural disasters and other large disasters, bio-terrorism, and others);
4) illness prevention, health promotion, investigating health problems and risks, and other socialmedical activities relevant to the Republic;
5) implementation of promotional programs for the improvement of health of specific most vulnerable population groups, population categories, age groups, and types of diseases that are not included in compulsory health insurance;
6) the planning, organizing, and implementation of activities in fighting alcoholism, smoking, use of drugs, and dependence (addiction) illnesses;
7) the control of health soundness of the air, drinking water, soil, as well as the control of health soundness of food-stuffs and general purpose items and the noise control, as well as protection of ionizing and non-ionizing radiation, if the funds for this purpose are not allocated otherwise, in line with specific regulations;
8) participation in the funding of scientific-research projects in the area of health care;
9) urgent medical assistance to the citizens who are not covered by health insurance;
10) health care of individuals sentenced to imprisonment, as well of individuals to whom the measure of compulsory custody and medical treatment of alcoholics and drug addicts has been pronounced;
11) health care of individuals who are registered as unemployed if the funds for health insurance of these persons is not otherwise provided, in line with the specific law;
12) health care of beneficiaries of social-protection rights, military invalids, civil war invalids, their family members, and veteran allowance beneficiaries if they are not otherwise insured;
13) health care of foreigners and staff of diplomat-consular representative offices, who are provided with health care on the basis of international agreements if such agreements do not regulate differently, as well as of foreigners who stay in the Republic upon invitation of the state authorities, during their stay in the Republic;
14) health care of foreigners with recognized status of refugees and displaced persons, in line with specific regulations and international agreements;
15) health care of foreigners ill with plague, cholera, viral hemorrhagic fever, or yellow fever, as well as of foreigners – crew members of foreign vessels ill with VD or other illnesses hazardous to health;
16) construction and maintenance of facilities and procurement of medical equipment of high technological value for health institutions founded by the Republic. Construction of facilities and procurement of equipment referred to in item 16 of this article shall be carried out in accordance with health policy priorities as per method and procedures envisaged by specific Law.

In line with health policy for sustainable development of the health system in Montenegro, the Ministry shall issue an approval on investment plans and programs of activities of public health institutions.

*See: Art 2, 3 and 5 of the Law - 14/2010-15.*

Article 14
The local self-government unit, within its rights and obligations, shall participate in providing conditions for implementation of primary health care on its territory through:
1) proposing and initiating measures in the area of primary health care;
2) participating in the planning and implementing of primary health care development, which is of direct interest for the local population, in line with this Law and other legal acts developed on the basis of this Law;
3) participation in the management of health institutions founded by the Republic in line with this Law;
4) undertaking other activities in order to improve primary health care, in line with the law.

3. Health Care Measures in Relation to Work and Working Environment

Article 15
When planning and performing their activities, legal and private entities shall be obliged to provide conditions for the implementation of health care through the development and application of appropriate technologies that are not health and environment hazardous, as well as for the implementation of measures for health protection and promotion of the employed.

Health care measures in relation to work and working environment, with the aim at providing specific health care of the employed, which shall be provided by the employer, in line with labor legislation, are:
1) prevention and detection of occupational diseases, prevention of injuries at work and administering appropriate first aid;
2) protection of health of the employed who are exposed to specific health hazards at work;
3) health care measures established by specific regulations.

*See: Art 6 of the Law - 14/2010-15.*

Article 16
Specific health care of the employed shall include:
1) medical examinations for the establishment of capability for work;
2) monitoring of health condition of the employed;
3) identification and assessment of health risks at work;
4) general medical check-ups, previous, periodical, and control medical examinations of the employed in regard to their gender, age, and working conditions, incidence of occupational diseases, injuries at work, and chronic diseases;
5) counseling on health, safety, hygiene at work, organization, and protection devices;
6) medical examinations of the employed that are mandatory conducted for the protection from hazardous factors of the living and working environment, protection of consumers or service users and other mandatory medical examinations;
7) organizing and administrating first aid and urgent interventions on the spot and in the working process;
8) assessment of working conditions of particular jobs for the protection from occupational diseases;
9) assessing needs and referring workers who are exposed to health hazards at work and those chronically overtired and physically exhausted workers to health-preventive active rest and early rehabilitation and monitoring results of such rest and rehabilitation;
10) health education of the employed.
The Ministry shall closely establish the scope of measures of specific health care of the employed, with an approval of the Ministry competent for labor affairs.

**Article 17**
Specific health care of the employed by the employer shall be implemented on the basis of an agreement between the employer and the health institution.

*+ See: Art. 7 of the Law - 14/2010-15.*

**Article 18**
Implementing health care, each citizen shall be entitled to equality in overall treatment when implementing health care on primary, secondary and tertiary level, as well as to:
1) free choice of a medical doctor or dentist
2) correct information on all issues concerning his/her health;
3) self-determination (free choice);
4) entitlement to possible demurrages for the damage that has been caused by inappropriate health care;
5) another expert opinion;
6) refusal to be used as an object of scientific research without his/her consent or any other examination or medical treatment that is not for the purpose of his/her medical treatment;
7) confidentiality of all data related to his/her health;
8) insight into his/her medical records;
9) free will to leave health institution;
10) objection;
11) urgent medical assistance, and
12) other rights in line with a special Law.
Exercising the right referred to in Paragraph 1 of this Article shall be regulated by a special law.

*+ See: Art. 8 of the Law - 14/2010-15.*

**Article 19**
Citizens shall implement primary health care through a selected MD team or selected MD or a selected dentist (hereinafter: selected team or selected doctor).
The selected team referred to in Par. 1 of this Article shall be, as a rule, consisted of:

- primary health care specialist, i.e. general practitioner, general or urgent medicine specialist, internist, pediatrician, or occupational medicine specialist who is educated for primary health care; and
- other health workers with secondary school and higher education (junior college) who are educated for primary health care.

In places where there are no conditions to implement health care as per Par. 1 of this Article, citizens shall implement health insurance through the doctor who is appointed in line with this Law.

The selection of the doctor shall be made for the minimum of one year.

The Ministry shall establish closer conditions in regard to standards, norms, and quality of the implementation of health care through the selected doctor or selected team, as well as the implementation of health care referred to in Par. 1 of this Article.

Article 20
When implementing health care, the relationship between health workers and citizens shall be based on mutual respect, confidence, and personal dignity.

When implementing health care, citizens’ personal beliefs shall be respected in regard to their religious, cultural, moral, and other determination.

The citizen shall be obliged to use his/her right to health care in accordance with this Law and instructions for medical treatment issued by the health worker.

Priorities in rendering health care shall be based exclusively on medical indications taking into consideration the degree of disability, seriousness of the illness or injury, and other circumstances related to the citizens’ health condition.

Article 21

Article 22
While receiving health care at the health institution, the citizen shall be obliged to adhere to general legal acts of the health institution on conditions of staying and behavior in such institution. + See: Art. 10 of the Law - 14/2010-15.

Article 23
The medical doctor shall be obliged to apply adequate diagnostic and therapeutic procedures if he/she suspects that the person who is under the treatment is ill with a contagious disease and that such person may be dangerous for other people’s health, in accordance with the specific law. If the medical doctor assesses that the nature of patient’s mental illness is such that he/she may put in danger his/her own life or other people’s lives or property, the MD may refer such patient to the hospital treatment. The competent MD in such health institution shall be obliged to admit such patient for the hospital treatment without patient’s prior consent or consent of his/her family member who is of age.

The MD who refers such patient (from Par. 1 of this article) to the psychiatric institution may request assistance from the police if he/she assesses that the patient is in such condition that he/she may be dangerous for the safety of people and surroundings.

Medical doctor shall undertake the measures quoted in Par. 2 and 3 of this article in accordance with the specific law.

Article 24
Health workers shall be obliged to keep as a professional secret all facts that they know about health status of the citizen. Other health employees shall be obliged to keep professional secret if they learn about it while carrying out their duties, as well as students of medical schools. Exceptionally, individuals referred to in Par. 1 of this article may be released from keeping the professional secret if the person whose health condition is at issue agrees on that or if it is necessary for public interest or in the interest of another person. In terms of Par. 3 of this article, public interest or the interest of another person is:
- revealing or trying the heaviest crimes if it would be significantly slowed down or made impossible without the disclosure of health condition data of a citizen;
- protection of public health and security; and
- preventing that another person’s health or life be directly and seriously endangered.

Article 25
The health institution founded by the Republic or by local self-government may offer to the citizens, within established standards, special conditions of rendering health care regarding staff, accommodation, and time – under the conditions defined by the Ministry. The health institution referred to in Par. 1 of this article shall be obliged to have an approval of the Ministry to render health care as per Par. 1 of this article. The citizen who opts for health care as per Par. 1 of this article shall cover in full the cost of such health care by himself/herself.


5. Health Care Implementation

Article 26
In the implementation of health care, the health institution shall be obliged to apply only scientifically proved medical methods and procedures in prevention, diagnostics, treatment, and rehabilitation of the ill. The Ministry shall closely establish criteria, standards, and guidelines for assessing medical technologies, as well as the conditions and procedures for introducing new medical methods and procedures. In the implementation of health care measures, also expertly proven traditional and alternative methods of treatment can be applied that are not harmful to the health of citizens. Medical treatment methods referred to in Par. 3 of this article shall be applied in line with the regulation of the Ministry. The Ministry shall issue an approval for particular treatment methods referred to in Par. 3 of this article.

Article 27
The testing and introducing of new methods for detecting and fighting diseases, treatment and rehabilitation of the ill and injured, as well as conducting biomedical researches, shall be allowed only with the approval of the Ministry competent for health affairs and with written consent of parents or guardians.
The Ministry shall issue its approval for the application of methods and procedures referred to in Par. 1 of this article with the prior opinion of the competent association and the relevant medical college.

**Article 28**
The advertising of health care methods and procedures in media shall be forbidden, as well as such advertising by individuals who are not health workers. Health institutions may advertise in media only the following - the name of health institution, its activity, the address and telephone number, and working hours. The results of expert-medical methods and procedures of health care may be communicated only at expert gatherings and published in expert magazines and publications, on which citizens can be informed through media.


**6. Maintaining of Medical Documentation and Records**

**Article 29**
All individuals rendering health care shall be obliged to maintain medical documentation, reports, and records in accordance with the law. They shall submit, within envisaged deadlines, individual, collective, and periodical reports to the Institute for Public Health (IPH).

**7. Health Care of Foreigners**

**Article 30**
An asylum seeker, an individual with the approved refugee status in the Republic, a person who has been granted subsidiary protection, and a person who has been granted temporary protection in Montenegro shall be entitled to health care in line with provisions of this Law, unless the international agreement otherwise regulates.


**Article 31**
Health institutions and health workers shall be obliged to administer urgent medical assistance to the foreigner. Foreigners shall bear themselves the cost of administered urgent medical assistance or other type of health care, unless the international agreement otherwise regulates. For the use of health care referred to in Par. 1 of this Article, the foreigner shall be charged as per price list of the health institution.

**III THE HEALTH ACTIVITY AND HEALTH INSTITUTIONS**

**1. Levels of Health Activity**

**Article 32**
Health activities shall be organized on primary, secondary, and tertiary levels.
Primary health care is the basis of the health care system and the first level on which a citizen implements health care or where he/she enters the process of the implementation of health care on other levels, apart from emergency cases.

**Article 33**
The health activity performed on the primary level of health care shall usually include:

1) activities for health improvement;
2) the health education related to most common health problems in certain area and to methods of their identification, prevention and control;
3) promoting healthy way of life, including health food of the population;
4) cooperation with other authorities, organizations, and entities in order to support protection, improvement and promotion of the living and working environment and hygienic conditions for the life and work of individuals and local community units;
5) health care of mothers and children and family planning;
6) detection, prevention, and control of contagious and non-contagious diseases;
7) detection, prevention, and control of endemic diseases;
8) detection, fighting, and treating mouth and teeth diseases;
9) health care of the employed;
10) protection and improvement of mental health;
11) immunization against main contagious diseases in accordance with the Immunisation Programme;
12) patronage medical visits (house calls), medical treatment and rehabilitation at home;
13) prevention and medical treatment of common diseases and injuries;
14) urgent medical assistance;
15) zdravstvenu rehabilitaciju djece i mladih s poremećajima u tjelesnom razvoju i zdravlju;

**Article 34**
Urgent medical aid shall be organized in line with the specialized law in order to undertake necessary and emergency medical interventions that otherwise might endanger life and health of citizens or cause permanent damages, if they are not undertaken immediately.

**Article 35**
On the secondary and tertiary levels of health care, citizens shall be provided with specialized and highly specialized health care, which cannot be provided on the primary health care level. Specialized and highly specialized health care referred to in Par. 1 of this article shall include more complex measures and procedures regarding diagnostics, medical treatment, and the implementation of outpatient rehabilitation with the aim at solving out more complex health problems.

Secondary and tertiary levels of health care shall be organized in such way to supplement primary health care and provide it with organized and continuous assistance and support. Among other things, the support shall be in education and offering expert instructions, advice, recommendations, and expert information to the staff working on the primary health care level on practical issues and problems appearing in administering primary health care.
Article 36
Tertiary health care level shall provide highly specialized care by performing the most complex types of specialist care, organize expert lab analysis, and offers logistic support to other levels of health care.
The scientific-research and scientific activity shall be organized and conducted on the tertiary health care level.
Programs of professional support, educational, research and scientific programmes of tertiary levels shall be defined by the annual plan of the institution, approved by the Ministry.
Teaching activities for needs of medical schools shall be conducted on all levels of health activities in the Republic.

Article 37
Health institutions on all levels of health care shall establish a uniformed system of referring citizens from one level of health care to the other.
In the case when a citizen cannot be provided with adequate and timely health care on the primary level health care, the health institution or selected team or selected medical doctor shall refer the citizen to the appropriate institution or to the appropriate specialist on the secondary, or exceptionally on the tertiary, health care level for examination, treatment, and obtaining an opinion and instructions for further medical treatment on the primary health care level.
Hospitals and other types of inpatient health institutions or a doctor-specialist to whom a citizen is referred from the primary level may refer such citizen to the next level of health care where highly specialized health care shall be provided through the top-level health technology.

Article 38
The system of referring citizens from one to other levels of health care shall include the exchange of information from the primary level on the citizen’s health condition with data on the illness or health problems for which he has addressed the selected team or selected doctor and on undertaken measures. From the secondary or tertiary level – information on performed examinations, findings, and undertaken treatment measures and with detailed instructions for further treatment.

2. Types of Health Institutions

Article 39
Health institutions are: the public health center - PHC (“Dom Zdravlja”), the local clinic (“Ambulanta”), laboratory, pharmacy, hospital, institute (“Zavod”), health resort (sanatorium), polyclinic, clinic, clinical center, special institute, and the Institute for Public Health (IPH).
The scope of activities of health institutions referred to in Par. 1 of this article, their organization, conditions and method of work, as well as conditions they have to meet regarding premises, staff, and medical-technical equipment shall be regulated by the Ministry in accordance with the standards and norms. + See: Art. 15. of the Law - 14/2010-15.
+ Court practice

Article 40
The Public Health Center - PHC (“Dom Zdravlja”) is a referral center of primary health care that provides support to the selected team or selected medical doctor referred to in Art.19 of this Law in the following areas:
1) immunization against main contagious diseases; 2) detection and fighting factors that have an impact on incidence and spread of contagious and non-contagious diseases; 3) health care of women and family planning; 4) home care and care through patronage visits.
PHC can also provide support to the selected team or selected medical doctor in the following areas: 1) the implementation of health training and education on common health problems and methods for their identification, prevention, and control; 2) hygienic-epidemiological protection; 3) mental health care; 4) treatment of lung diseases and TB; and 5) lab, x-ray and other types of diagnostics; and other areas that the Ministry shall define.
The selected team or selected medical doctor referred to in Par. 1 of this article may be organized individually or within the PHC.

Article 41
The local clinic (“Ambulanta”) and the Laboratory are health institutions that can perform health activities on all levels of health care.

Article 42
The Pharmacy is a health institution on the primary health care level that performs pharmaceutical health activity.
The pharmacy shall keep financial and material records, in line with the law.

Article 43
The Hospital is a health institution that performs hospital activities.
The hospital activity includes - diagnostics, medical treatment, and medical rehabilitation.
During hospital treatment, citizens shall be provided with accommodation, food, and appropriate health care.
Beside hospital activity, the hospital shall perform the following - specialist-consultative and the medical treatment by a panel of doctors; urgent medical assistance; lab, x-ray and other diagnostics; outpatient medical rehabilitation, if the nature of its work requires it; provision of blood and plasma; anesthesiology activity; pathology activity; morgue; as well as provision of drugs and medical means through the hospital’s pharmacy.
Hospitals can be general and special. Particular forms of specialist health care can be performed in the day-hospital, too.
The general hospital is a health institution on the secondary level of health care that, beside activities quoted in Par. 1,2,3 of this article, performs at least activities in surgery, intern medicine, pediatrics, gynecology and OB.
The general hospital shall establish wards/departments for implementing activities referred to in Par. 5 of this article.
The general hospital shall be obliged to create conditions for taking care of acute contagious diseases and acute psychiatric condition.
Special hospital is a health institution on secondary health care level that performs specialist consultative and highly specialized health activity through a panel of doctors and hospital treatment for certain types of diseases and adequate medical rehabilitation.
The special hospital shall be obliged to have the adequate number of beds according to its purpose, diagnostic and other specific conditions for performing activities in a specific branch of health care that it administers. The day-hospital shall render specialist health care through treatment during the day, without overnight stay.

**Article 44**
The Institute is a health institution, which is founded for a certain area of health care or for health care of certain population category or population group.

**Article 45**
The Health Resort (sanatorium) is a health institution that performs medical treatment and medical rehabilitation using natural factors in treatment (water, mud, sand, sea, and other).

**Article 45a** Polyclinic is a medical facility or the health institution’s organizational unit that provides specialized consulting health care from at least three specialist or rope specialist branches, except for hospital health activity.


**Article 46**
The Clinic is a health institution or the health institution’s organizational unit that performs highly specialized specialist-consultative and hospital health activities within certain branch of medicine or dentistry.

**Article 47**
The Clinical Center is a highly specialized health institution on the tertiary health care level that uses the most complex methods of diagnostics and medical treatment and performs specialist-consultative and sub-specialist hospital health activities within multiple areas of health care, i.e. branches of medicine. The clinical center shall be the teaching facility of the college of medicine and it shall perform the teaching and scientific-research activity within clinical branches of medicine, in accordance with the law. The clinical center shall be responsible for expert-methodology education and coordination in all areas of health care on the secondary level. The clinical center shall organize and implement undergraduate and postgraduate studies for University students at the college of medicine, on the basis of an agreement with the college, in line with the college’s curriculum. The clinical center shall organize and implement specialization courses in the area of health workers’ specialties within clinical branches of medicine, according to Par. 4 of this article.

**Article 48**
The Special Institute is a health institution on the tertiary health care level or the health institution’s organizational unit that performs highly specialized specialist-consultative and hospital activities or only specialist-consultative activity.
The special institute can be founded to perform activities within one or more areas of health care or branches of medicine or dentistry.

The special institute shall perform also the teaching and scientific-research activity, in line with the law.


Article 49

The Institute for Public Health (IPH) is a highly specialized health institution on the tertiary health care level and its activity shall be oriented towards preservation and improvement of health of all citizens.

In carrying out the activities referred to in Par. 1 of this article, the IPH shall:

1) monitor and assess health status of the population and create data base for planning, monitoring, and evaluation of all public health activities and health care activities in the Republic;

2) identify risk factors to health from contagious and chronic mass non-contagious diseases, including biological, ecological, and social-economic factors and life styles and undertake measures for diminishing their impact or for eliminating them;

3) create programs for the prevention, detection and control of contagious diseases, participate in their implementation and enforcement, and supervise their implementation in the territory of the Republic, in accordance with the law.

4) propose and undertake measures for protection and promotion of health, especially in regard to soundness of food stuffs, items of general purpose, drinking water, solid and waste materials, noise, and air pollution;

5) make analysis and report to the competent state authorities on infrastructure, human resources, activities, utilization and quality of health care provided by all health care institutions in the Republic;

6) perform the function of a reference laboratory for certain analysis that the IPH is accredited for;

7) research and develop activities within public health area, health policy, and create public health programs;

8) organize undergraduate and postgraduate education in public health disciplines, as well as the activities of continuous education in other areas of health care;

9) take part in preventive supervision over the design and construction of buildings and other structures and in the development of space and urban planning in view of protection and promotion of the living and working environment and health of citizens;

10) propose necessary measures in case of extraordinary circumstances, natural disasters and epidemics of larger scale and participate in their implementation;

11) maintain records in the area of health care and health activity, in line with specific regulations.

The IPH may carry out microbiological and biochemical trials for health institutions on the primary and secondary level of health care, as well as for other legal and private entities if these activities do not jeopardize the principal IPH activity.

The IPH shall perform activities referred to in Par. 3 of this article on the basis of an agreement with the institution or other legal or private entity.

3. Founding of Health Care Institutions

Article 50
Health institutions shall be founded in accordance with the health institutions’ network that is based on standards, norms, planned development of the health system and priority measures of health care.

Article 51
The founder of a health institution can be the Republic, the local self-government unit, the national and the international legal and private entity. As an exception from Par. 1 of this article, the Republic shall found health institutions on tertiary level involved in public health activities, blood transfusion, human body parts transplantation and urgent medical assistance. The limitation in Paragraph 2 of this Article shall not apply to establishment of institutions which provide a particular service on tertiary level, as well as the forms of providing these services under a public-private partnership.


Article 52
If the founder of a health institution is the Republic or the local self-government unit, then the Government or the competent authority of the local self-government unit shall issue the legal act on foundation.


Article 53
The legal act on foundation of a health institution shall include, in particular:
1) the name and headquarters or domicile of the founder;
2) the name and headquarters of the health institution;
3) activity of the health institution;
4) conditions and methods of obtaining premises and medical-technical equipment;
5) means necessary for the founding and commencement of the health institution’s functioning and methods for their provision;
6) the founder’s rights and obligations in regard to the activity for which the institution is to be founded;
7) health institution’s governing bodies; and
8) other issues relevant to the founding of such institution.

Article 54
The health institution may commence with its activities under conditions prescribed by this Law and regulations of the Ministry. The Ministry shall issue a formal decision on fulfillment of conditions referred to in Par. 1 of this article within 30 days from the day of the submitting of application.

Article 55
Upon receiving the formal decision referred to in Art. 54 of this Law, the health institution shall be entered into the central registry of the Commercial Court.
By being entered into the registry referred to in Par. 1 of this article, the health institution shall acquire status of a legal entity. The health institution referred to in Par. 2 of this article shall be obliged to inform the Ministry on any change of conditions for performing health activities, which are prescribed by this Law.

**Article 56**

The cost incurred in the procedure of applying for the foundation and commencement of work of the health institution shall be borne by the founder, in accordance with the Law. The funds referred to in Paragraph 1 of this Article shall be paid to the budget of Montenegro.


**Article 57**

Provisions of articles 54-56 of this Law shall be applied also in the case of expansion and change of activities of the health institution.

**Article 58**

The health institution shall cease its activities when there is no more need for the activity for which it has been founded or if it does not meet conditions for performing such activity as prescribed by the law. The founder shall issue the decision on cessation of activities of the health institution.

4. The Health Institution Governing Bodies

**Article 59**

The health institution’s governing bodies are the Board of Directors and the Director. The Board of Directors is a managing body and the Director is an executive body of the health institution. The Board of Directors shall not be a mandatory health institution body unless the founder is the Republic or the local self-government unit. If the health institution does not have the Board of Directors, the Director shall perform Board’s functions. If the founder is a private person, he/she may perform Director’s duties or appoint other person.


**Article 60**

The number of members of the health institution’s Board of Directors shall be defined by the Statute depending on the type and volume of activities performed. The number of members of the Board of Directors of the health institution whose founder is the Republic or the local self-government unit cannot be smaller than 5 not bigger than 7 members. The Board of Directors referred to Par. 2 of this article shall be consisted of representatives of the founder and the employed in the health institution. Representatives of the founder shall make more than a half of members of the Board of Directors. President of the Board of Directors of the health institution from Paragraph 2 of this Article shall be elected among representatives of the founder.
Representatives of NGOs whose principal aim is to protect handicapped, disabled, and ill persons can be also appointed to the Board of Directors.


**Article 61**
Upon proposal of the Ministry, the Government shall appoint the Board of Directors in the health institution founded by the Republic.

It is mandatory that one or more representatives of the local self-government unit shall be appointed to the Board of Directors of the health institution referred to in Par. 1 of this article, which is founded for the territory of the local self-government unit, i.e. it performs its activities on that territory.

The competent body of the local self-government unit shall propose, in line with its Statute, members of the Board of Directors referred to in Par. 2 of this article. The competent authority of the local self-government unit shall appoint the Board of Directors in the health institution founded by the local self-government unit.

Term in the office of the Board of Directors members of the health institution founded by the Republic shall be 4 years.

*See: čl. 3. Zakona - 14/2010-15.*

**Article 62**
The Board of Directors of the health institution shall:

1) develop the Statute and other general legal acts;
2) develop the plan and program of activities and development of the institution, the program for staff education and shall supervise its implementation;
3) develop the financial plan and adopt financial statements and reports;
4) propose to the founder the change or expansion of activities;
5) decide in the second instance on specific rights of the employed, in line with regulations in the area of labor;
6) set up charges of health services administered to the third party, upon approval of the Ministry;
7) set up charges for health services that are administered above standards which are established by the specific law, as well as charges for services administered under special conditions, with an approval of the Ministry, in terms of Art. 25 of this Law; and
8) perform other duties as per Statute of the health institution.

The Board of Directors shall bring its decisions by majority of votes of the total number of members unless the health institution’s Statute envisages other qualified majority for deciding on particular issues.

*See: Art. 22. of the Law - 14/2010-15.*

**Article 63**
The Director of the health institution founded by the Republic or the local self-government unit shall be elected on the basis of a competition and submitted program.

The election of Director of the health institution founded by the state shall be approved by the Minister of Health (hereinafter: the Minister).
As an exception of Par. 2 of this article, the Government shall elect and relieve of duties the Director of the clinical center and the IPH, upon the proposal of the Minister. Term in the office of the Director referred to in Par.1 and 3 of this article shall be 4 years, and not more than two consecutive terms.


**Article 64**
The Director shall organize and manage business activities, represent and act for the health institution and shall be responsible for the legality of work and financial activity of the institution, as well as for the application of relevant technologies when providing health care. The Director shall report at least once a year to the Board of Directors on business activities of the institution.
The Director of the health institution established by the state or the local self-government unit shall submit the report referred to in paragraph 2 of this Article to the Ministry, by 31st January of the current year for the previous year.
The Director shall take part in the work of the Board of Directors, with no right of decision.


**Article 65**
The Director may be relieved of duties even before the end of his term in the office to which he has been elected, in the following cases:
1) upon personal request;
2) due to any reason which, based on specific regulations or labor law regulations, may be basis for the termination of employment, i.e. cancellation of the employment agreement;
3) if the health institution does not fulfill contractual obligations towards the Republic Insurance Fund (hereinafter the HIF);
4) if he/she does not adhere to regulations, general legal acts, plans and programs of the health institution or does not, without justification, implement decisions of the Board;
5) if he/she causes damage to the health institution by his/her incorrect or unconscientious work;
6) if he/she contributes to deterioration of expert performance of health activities of the health institution by negligently performing his/her duties.
Prior to the decision on relieve of duties referred to in Par. 1 items 2, 3, 4, 5 and 6 of this article, the Director shall be provided with a possibility to submit his/her comments on reasons for relieve of duties.


**Article 66**
Health institutions on the tertiary health level shall establish the Medical Committee and the Science Center.
The Medical Committee is also established in health institutions which provide particular medical services on tertiary level of health care, in accordance with the law.


**Article 66a**
The Medical Committee is an expert-advisory body in the health institution.
The Medical Committee shall:
1) propose and make decisions on issues of professional activities of the institution;
2) propose professional basis for the work and development program of the health institution;
3) approve the programs of all forms of professional and scientific training necessary for health care institution;
4) evaluate the performance of additional work of health workers;
5) approve the introduction of new diagnostic and therapeutic procedures in the regular scope of health services;
6) approve the use of biological samples for scientific research purposes, and warehousing and storage in biobanks, and
7) perform other activities as stipulated by the law and the Statute of the institution.
The Medical Committee shall meet at least once a month and submit quarterly and annual reports to the Director of the health institution.
The Statute of the health institution shall closely regulate the composition and the number of members of the Medical Committee, the method of their election, and scope of committee’s work.

Article 66b
Center for Science is a separate organizational unit of tertiary level health institutions.
Director of health institution shall appoint Director of the Center for Science, with the approval of the Minister.
Center for Science shall:
1) prepare and ensure the implementation of the curriculum for professional and scientific training;
2) organize the implementation of continuous medical education;
3) establish cooperation in the field of scientific - research activities with medical colleges and other national and international scientific institutions;
4) perform other duties in accordance with law and the Statute of health institution. + See: Art. 27. of the Law - 14/2010-15.

Article 67
Health institutions on the tertiary health level may establish the Ethical Committee.
The Board of Directors shall appoint the Ethical Committee as its advisory body with the aim of conducting activities of the institution on principles of ethics and deontology.
As a rule, the Ethical Committee shall have 5 members: 3 representatives of the health institution and 2 representatives coming from judiciary, scientific and other expert authorities or organizations.
The Ethical Committee members shall elect the Ethical Committee President among themselves, by majority of votes.

Article 68
The Ethical Committee of the health institution shall:
1) monitor application of ethical principles of health profession in the performing of principal activity of the health institution;
2) give an opinion on ethical aspects of scientific testing and research in the health institution;
3) give an approval on scientific research in the health institution;
4) approve clinical testing of medicines and medical devices and monitor their implementation;
5) approve the introduction of new genetic tests and the collection of genetic data and samples;
6) approve the taking of biological samples and their use in the academic and medical purposes;
7) approve the introduction of new diagnostic and therapeutic procedures in the regular scope of health care, and
8) give an opinion on other ethical issues in performing activities of health institutions.


5. The Statute and Internal Organization of Health Institutions

Član 69
The health institution shall develop the Statute and other general legal acts. The Statute shall regulate in particular: the activity of the health institution; the organization and method of functioning of the health institution; conditions for election of the Director and the members of the Board of Directors; mandate and method of work of the Director and the Board of Directors; decision making method and other issues relevant for the health institution functioning.

Article 70
The Ministry or competent authority of local self-government unit shall approve the Statute and legal act on internal organization and system of staff positions of other health organizations that are founded by the Republic or the local self-government unit. In addition, the State authority responsible for finance (hereinafter: the Ministry of Finance) shall approve legal act on internal organization and system of staff positions of the health institution that is founded by the Republic.


6. Organisation of Work and Working Hours

Article 71
Working hours’ schedule in the health institution shall be established depending on the type of health institution, i.e. on the type of health care administered by such health institution, in accordance with the needs of citizens. The health institution shall organize its activities and define its working hours, in terms of Par. 1 of this article, in accordance with the legal act of the Ministry. The health institution shall be obliged to administrate health care continuously within established working hours either by working in shifts or in split shifts or with on-call or duty service. On-call service is a special form of work when the health worker is not obliged to be present in the health institution but has to be available to administrate urgent medical assistance. The duty service shall be introduced and organized in line with labor regulations. Health workers cannot leave their duty before they are replaced even if their hours are up if that could jeopardize health care administering. Health institutions shall be obliged to place the working hours schedule on a visible place.

Article 72
In case of extraordinary situations, natural disasters, and large scale epidemics, the Ministry may undertake the following measures and activities regarding: the organization of work and working hours, change of location and working conditions for specific health institutions, health workers, and health associates.

**Article 73**
Health workers who are appointed as teachers and associates at the college of medicine, perform health, scientific-research and teaching activities within the unique working process. An agreement shall regulate mutual rights and obligations between the health institution and the medical college.

**Article 74**
The health worker who is employed with one health institution may enter an agreement on additional employment with another health institution within the health institutions network, upon an approval issued by the health institution Director, in line with labor regulations. Health care worker who performs additional work in contravention of paragraph 1 of this Article, thus commits a severe breach of duty. Detailed conditions for the performance of additional work in terms of paragraph 1 of this Article shall be defined by the Ministry.

*+ See: Art. 30. of the Law - 14/2010-15.*

**7. Leasing**

**Article 75**
The health institution founded by the Republic or by the local self-government unit may lease its premises, medical-technical equipment, and other means necessary for performing health care activity or any other equipment and means that are in the function of performing health care activity in health institutions. The Ministry shall prescribe conditions for leasing premises, equipment, and other means referred to in Par. 1 of this article. The health institution referred to in Par. 1 of this article shall be obliged to obtain the approval from the Ministry for leasing premises, equipment, and other means in terms with Par. 1 of this article.

*+ See: Art. 3. of the Law - 14/2010-15.*

**8. Funds for Work of Health Institutions**

**Article 76**
The health institution shall acquire funds for work from:
1) the founder, in accordance with the legal act on foundation;
2) the Fund (HIF);
3) the Republic Budget or the budget of local self-government unit;
4) legal and private entities under conditions established by the law, the legal act on foundation, and the health institution’s Statute;
5) the funds of voluntary insurance; and
6) other sources. 
Health institutions founded by the Republic, shall keep records of the funds referred to in paragraph 1, items 4, 5 and 6 of this Article as income in the consolidated account recorded in the Ministry of Finance.


Article 77
Public and private health institutions shall be entitled to obtain funds provided by the HIF, in accordance with this Law and the law regulating health insurance.

9. Other Entities that Can Perform Health Activities

Article 78
Institutions of social care and childcare, penitentiary institutions and other institutions aimed at accommodating people, as well as state authorities with specific needs in the area of health care and enterprises may perform health activities on the primary level of health care, under conditions established by this Law for corresponding health institution.
Hotels may perform health care activities for the persons accommodated in them, under the conditions referred to in Par. 1 of this article.
The Ministry shall closely regulate conditions for performing health activities in regard to premises, staff, and medical-technical equipment, depending on the type of health institution in terms of Par. 1 and 2 of this article.

Article 79
The obligation of health institutions established by this Law in regard to the maintaining of medical documentation, records and submitting of relevant reports shall be accordingly applied to the institutions, state authorities, and other entities quoted in Art. 78 of this Law.

[...]

VII SUPERVISION

Article 133
The Ministry shall perform, in line with the law, supervision over the application of provisions of this Law and regulations and other general legal acts developed on the basis of this Law, as well as over the implementation of prescribed measures of health care.
Health inspectors shall carry out, in line with the law, the inspecting supervision within the Ministry’s competence.

VIII PENAL PROVISIONS

Article 134
The health institution shall be fined for an offence with €1,000.00 up to €20,000.00 if it:
1) does not admit a mentally ill patient for temporary in-patient medical treatment if such patient may endanger his/her own life or lives of other persons, in line with the provision of Art. 23, Paragraph 2 of this Law;
2) provides health care under special conditions, which is in collision with the provision of Article 25 of this Law;
3) in implementation of health care, does not apply recognized and scientifically proved medical methods and procedures prescribed by Article 26, Paragraph 1 and Article 27 of this Law;
4) advertises medical methods and procedures of health care in media, thus acting against provisions of Article 28 of this Law;
5) performs activities before the Ministry has established that conditions for performing health activity are met according to the provision of Article 54 of this Law;
6) does not inform the Ministry on the change of conditions for performing health activity in terms of the provision of Article 55, Paragraph 3 of this Law;
7) does not provide continuity of health care and working hours schedule, in line with the provision of Article 71 of this Law;
8) leases premises, medical-technical equipment, and other means necessary for performing health care activity or other equipment and means that serve for the provision of health care, which is in collision with the provision of Article 75 of this Law;
9) prevents the health worker or associate from his/her professional capacity building aimed at maintaining and improving of the health care quality, in line with the provision of Article 86 of this Law;
10) does not conduct internal control of the professional performance quality in terms of articles 112 and 113 of this Law;
11) does not perform autopsy of a dead body in terms of Article 128 of this Law.

Also, the responsible person of the health institution shall be fined with the amount of €250,00 up to €2,000.00 for an offence referred to in Paragraph 1 of this article.


Article 135
- deleted -

Article 136
The health worker shall be fined for an offence with €250,00 up to €2,000.00 for performing health activity if he/she:
1) does not point to the citizen consequences that may occur on the basis of refusal of medical intervention, in terms of the provision of Article 22 of this Law;
2) does not implement appropriate diagnostic and therapeutic procedures if he/she suspects the person is dangerous for the health of others due to contagious disease, in terms of the provision of Article 23, Paragraph 1 of this Law;
3) breaches the obligation of keeping professional secret established by Article 24, Paragraph 1 of this Law;
4) advertises medical methods and procedures of health care in media, thus acting against provisions of Article 28 of this Law;
5) performs health activities before it has been established by a formal decision that conditions for performing health activity are met, which is in opposition to Article 54 of this Law;
6) abandons working place, which is in opposition to Article 71, Paragraph 6 of this Law;
7) performs additional work out of health institutions’ network, i.e. without director’s approval (Article 74, Paragraph 1).

**Article 137**
The health worker shall be fined for an offence with €250,00 up to €2,000.00 for performing health activity if he/she:
1) in emergency situation, does not administer urgent medical assistance to the injured or ill person or does not provide such person with an access to the emergency facility, in line with the provision of Article 3, Paragraph 4 of this Law;
2) advertises medical methods and procedures of health care in media, and he/she is not a health worker in line with Article 81 of this Law;
3) buries a dead person after deadlines prescribed by Article 130 of this Law.

**Article 138**
Legal entity shall be fined for an offence with €1,000.00 up to €20,000.00, if it enables advertising medical methods and procedures of health care in media, thus acting against provisions of Article 28 of this Law.
The responsible person of the legal entity shall be fined for the offence referred to in Paragraph 1 of this Article with the amount of €250,00 up to €2,000.00.

**Article 139**
Employer shall be fined for an offence with €1,000.00 up to €20,000.00, if it does not provide specific health care of the employed, in line with Article 15 of this Law.
The responsible person of the employer shall be fined for the offence referred to in Paragraph 1 of this Article with €30,00 up to €2,000.00.

**13. EXCERPTS OF THE LAW ON MEDICAL EMERGENCY SERVICE (2008)**

**ENACTMENT PROMULGATING THE LAW ON EMERGENCY MEDICAL SERVICES**
*(Official Gazette of Montenegro, No. 49/08 from 15 August 2008)*
No: 01-1554/2
Podgorica, 4 August 2008

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LAW ON EMERGENCY MEDICAL SERVICES

I General Provisions

Article 1
Emergency medical services (hereinafter referred to as: the emergency services), as a separate field of healthcare activity, rendered at the primary level, shall be organized to provide necessary and urgent medical intervention, the absence of which would jeopardize the life and health of citizens, or cause a permanent damage, and it shall be carried out in accordance with this Law and regulations on health protection and health insurance.

Article 2
Emergency services shall mean emergency medical care of persons whose life, certain organ or limb is directly threatened due to illness, suffered damage, or impairment, and/or whose basic bodily functions, breathing and heart functioning could be jeopardized within a short period of time, and which are provided for the purpose of maximum reduction of time from the occurrence of an emergency condition to the complete medical care, i.e. until sending the persons to further treatment.

Emergency services shall be rendered at the place of incident, during primary ambulance transportation, as well as in emergency departments, 24 hours constantly.

Article 3
Emergency services shall be rendered by healthcare workers who received special education in the field of emergency services, in accordance with this Law.

In case of larger accidents and larger-scale epidemics, emergency services shall be carried out in accordance with a separate law.

Article 4
As used in this Law, the following terms shall have the following meaning:
- Reanimation car shall mean an specially equipped rescue vehicle with the standardized medical and technical equipment;
- Vehicle for emergency ambulance transportation shall mean a rescue vehicle for emergency ambulance transportation of patients to a healthcare institution that provides health protection at the secondary or tertiary level;
- Emergency ambulance transportation shall include organization and manner of transportation of a patient from the place of incident to the nearest healthcare institution that provides health protection at the secondary or tertiary level.

II Organization of Emergency Services
1. Institute

Article 5
The activity referred to in Article 2 of this Law shall be organized and implemented by the Emergency Services Institute (hereinafter referred to as: the Institute).
Article 6
The activity of the Institute shall be:
- To receive, examine and triage patients in the order of priority;
- To reanimate and monitor the basic bodily functions;
- To observe a patient’s condition after reanimation;
- To give adequate therapy, primary treatment of wounds and injuries;
- To give vaccines and serums based on indications, antibiotics, analgesics, and other indicated medications;
- To send patients to healthcare institutions of secondary and tertiary level;
- To observe medically patients in case additional diagnostic procedures might be needed for the purpose of making an exact diagnosis;
- Ultrasound and laboratory diagnostics;
- To stop bleeding, treat fractures, immobilization;
- To give advice to patients regarding their health condition;
- To receive calls from citizens by employees employed in emergency dispatch centre;
- Triage of calls in the order of priority and sending of emergency teams to provide emergency services;
- To monitor and analyze emergency services measures in Montenegro and report to competent institutions;
- To form a doctrine in the emergency services field;

Official Gazette of Montenegro, number 49/08, dated 15 August 2008 [unofficial translation] Law on Emergency Medical Services
- To propose the programme of measures regarding health protection within its scope of activities;
- To determine standard operating procedures for all forms of emergency services and harmonize the application of standards in providing emergency services;
- To participate in the development and implementation of certain health protection projects in extraordinary circumstances;
- To provide for continuing medical education of healthcare workers, healthcare associates, students, pupils of medical school and other personnel;
- To cooperate with the Public Health Institute, healthcare institutions, a state administration body in charge of internal affairs and police, the Army of Montenegro, the Red Cross of Montenegro, operating units for protection and rescue, domestic and international non-governmental organizations dealing with emergency services, and international professional medical institutions;
- To provide for ambulance assistance of public gatherings and sports manifestations, ambulance transportation of sick people in the country and abroad by a vehicle, helicopter or airplane;
- To perform other activities in accordance with law and foundation agreement of the Institute.

[...]

Article 10
Each emergency department and sub-station shall have a necessary number of teams, reanimation cars, and vehicles for emergency ambulance transportation.
Team in an emergency department and sub-station shall consist of: doctor, two medical nurses or two medical technicians, out of which one is a driver of ambulance vehicle.

Team for emergency ambulance transportation in an emergency department shall consist of: two medical nurses, or two medical technicians, out of which one is a driver of ambulance vehicle.

The Ministry shall prescribe the necessary number of emergency teams, reanimation cars and vehicles for emergency ambulance transportation in an emergency department and sub-station, as well as the conditions regarding technical characteristics of vehicles, medical and technical equipment of a vehicle and list of medications used in reanimation cars and vehicles for emergency ambulance transportation.

**Article 11**
Doctor in an emergency team shall carry out the examination, diagnostic procedures, determine and apply a therapy in accordance with the Protocol on Diagnostic and Therapeutic Procedures in Emergency Services, and he shall coordinate the work of other team members.

The Ministry shall adopt the Protocol referred to in paragraph 1 of this Article.

**Article 12**
In all cases when it is not possible to take care of a patient at the place of incident or in an emergency department, a doctor in emergency team, after providing necessary medical assistance, shall refer a patient and transport him to the closest healthcare institution of secondary or tertiary level.

**Article 13**
Patients whose basic bodily functions are endangered shall be transported by a vehicle for emergency ambulance transportation to the closest healthcare institution of the secondary or tertiary level, accompanied only by a doctor.

Patients who are transported and received in the healthcare institution referred to in paragraph 1 of this Article, and who are not hospitalized, cannot use a vehicle for emergency ambulance transportation when leaving the healthcare institution. Official Gazette of Montenegro, number 49/08, dated 15 August 2008.

**Article 14**
Healthcare workers in the Institute shall be obliged to wear uniform of a unique design with an international emergency mark on it.

**Article 15**
The Institute shall organize and implement an ongoing education of doctors and medical nurses, and medical technicians for the provision of emergency services.

The Ministry, at the proposal of the Institute, shall prescribe the programme and the manner for implementing the ongoing education.

**Article 16**
In addition to the obligatory records prescribed by a separate law, the Institute shall be obliged to keep other records as well, in accordance with the Protocol referred to in Article 11 of this Law.
14. EXCERPTS OF ACT ON EMPLOYMENT AND EXERCISING RIGHTS WITH RESPECT TO UNEMPLOYMENT INSURANCE (2010)

Decree promulgating the Law on Employment and Exercising Rights with respect to Unemployment Insurance

I hereby promulgate the Law on Employment and Exercising Rights with respect to Unemployment Insurance passed by the 24rd Parliament of Montenegro at the second sitting of the first ordinary session in 2010 on 9 March 2010.

No: 01-752/2
Podgorica, 15 March 2010

The President of Montenegro,
Filip Vujanovic, sgd.

Pursuant to Article 82 paragraph 1 item 2 and Article 91 item 1 of the Constitution of Montenegro, the 24rd Parliament of Montenegro, at the second sitting of the first ordinary session in 2010 on 9 March 2010, shall adopt the

Law on Employment and Exercising Rights with respect to Unemployment Insurance

The Law was published in the Official Gazette of Montenegro No. 14/2010 of 17.3.2010

I. BASIC PROVISIONS

Subject
Article 1

Employment and rights with respect to unemployment insurance shall be exercised in accordance with this Law.

Application
Article 2

This Law shall apply to an unemployed person, employed person seeking change of employment, employer and other persons seeking information and advice on employment conditions and opportunities.

Unemployed person
Article 3

(1) Unemployed person shall be a person from 15 to 65 years of age who is a Montenegrin citizen and a foreigner with a personal work permit, who is registered at the
Employment Office of Montenegro (hereinafter referred to as: the Office), capable or partially disabled, who did not conceive a contract of employment and is actively seeking employment.

(2) Unemployed person shall be considered a regular secondary school student, a student, employee whose rights with respect to employment are suspended, retired person and farmer registered in the registry of farmers at the competent authority.

**Unemployment insurance**

**Article 4**

Unemployment insurance shall be participation of persons employed and employer, through paying contributions, in securing funds for exercising rights arising from unemployment.

**Principles**

**Article 5**

Acquiring rights with respect to unemployment shall be based on the following principles:

1) Freedom of choice of occupation and work;
2) Prohibition of discrimination;
3) Gender equality;
4) Affirmative action directed towards hard-to-employ unemployed persons;
5) Impartiality of institutions in charge of employment activities;
6) Provision of services to unemployed persons free of charge.

[...]

**Mediation in employment**

**Article 33**

Mediation in employment shall be providing technical assistance in connecting persons seeking employment and employers, in order to conclude an employment contract, in accordance with separate law.

**Individual employment plan**

**Article 34**

(1) Individual employment plan shall be an agreement between institution in charge of employment and the unemployed person on the activities of the unemployed person in seeking employment and participation in active employment policy measures.

(2) Individual Employment Plan shall be updated and changed in accordance with new knowledge and changing circumstances in the labour market.

(3) The content and manner of determining an individual employment plan shall be regulated by the general act of the Office.

**Vocational guidance**

**Article 35**

Vocational guidance shall be deemed as:

1) providing assistance to unemployed person, employed person or other entity, to objectively perceive, plan and execute his professional career;
2) Alignment of individual needs and abilities of unemployed persons with the needs and demands of the labour market.

Financing of trainees salaries
Article 36
Financing of trainees’ salaries shall be financing of salaries of unemployed person who for the first time conceive employment at a particular level of education or level of education and occupation.

Support to self-employment
Article 37
(1) Support to self-employment shall be financial and technical assistance that may be achieved by an unemployed person who establishes one of the forms of performing economic activities, in accordance with separate law, if as the founder conceive employment.
(2) Support to self-employment may also be providing financial and technical assistance to the employer who creates new jobs and employs an unemployed person.

Employment subsidies
Article 38
Employer may achieve certain subsidies in the case of employment of:
1) Trainees who after completed the traineeship conceive employment for an unspecified period of time;
2) Recipients of unemployment benefit who conceive employment for an unspecified period of time;
3) hard-to-employ person, except persons with disabilities whose employment shall be subsidized in accordance with separate law;
4) In other cases determined by the Action Plan and the regulations of the Government.

Education and training of adults
Article 39
(1) Education and training of adults shall be activities by which a person seeking employment shall be offered the possibility, through programs of education and training, to gain qualification to the first occupation, renew knowledge within the same occupation and education level, reclassify and gain key skills.
(2) Activities of institutions in charge of employment shall be: preparation and selection of unemployed persons, the choice of the organizers of education, referral of candidates in the programs of education and training, monitoring and evaluation, funding, or co-funding of education and training programs.
(3) Education and training may be done by organizers of education for the needs of employers and the labour market.

Vocational rehabilitation of hard-to-employ persons
Article 40
(1) Vocational rehabilitation of hard-to-employ persons, except for persons with disabilities, shall include measures and activities to be implemented in order to train in an
appropriate manner a hard-to-employ person for work, maintaining employment and progressing in it.

(2) The procedure for exercising the right to vocational rehabilitation shall be initiated at the request of the unemployed persons, and rehabilitation counsellors.

(3) If the procedure referred to in paragraph 2 of this Article shall be initiated by the vocational rehabilitation counsellor, the consent of the unemployed persons shall be required.

(4) The procedure referred to in paragraph 2 of this Article shall be conducted by the Office in accordance with separate law.

(5) Measures and activities referred to in paragraph 1 of this Article shall be organized and conducted by the performer of vocational rehabilitation, in accordance with standards laid down by the Ministry.

Public work
Article 41

Public work shall be work that is organized for the purpose of employment for a certain period of time, with priority of hard-to-employ persons, in order to preserve and improve their job skills, as well as achieving a particular public interest.

[…]

V. RIGHTS WITH RESPECT TO UNEMPLOYMENT INSURANCE

Mandatory insurance
Article 45

Mandatory unemployment insurance shall be conducted in accordance with separate law.

Rights with respect to unemployment insurance
Article 46

Unemployment insurance referred to in Article 45 of this Law shall provide to an unemployed person a right to unemployment benefit and the right to health insurance, pension and disability insurance for the duration of exercising rights to unemployment benefit.

Right to unemployment benefit
Article 47

(1) Insured person shall have the right to unemployment benefit who prior to termination of employment has insurance period of at least 12 months continuously or intermittently over the past 18 months (hereinafter referred to as the recipient of unemployment benefit).

(2) Insured person who was employed part-time shall be entitled to unemployment benefit if it shall by redistribution of working hours on a full time meet the requirements of paragraph 1 of this Article.

(3) The insured persons referred to in paragraphs 1 and 2 of this Article shall have the right to unemployment benefit to whome, in terms of separate law, employment was
terminated without his consent, or guilt, who reports to the Office and submits an application within the deadline laid down by Article 48 paragraph 1 of this Law.

**Deadline for submitting application**

**Article 48**

1) Unemployment benefit shall belong to the unemployed person from the first days after termination of employment, if he reports to the Office within 30 days of termination of employment and within this period submit an application for unemployment benefit.

2) Unemployment benefit shall belong to unemployed person who shall submit an application under paragraph 1 of this Article after the expiry of 30 days, form the date of application.

3) The right to unemployment benefit shall not have the unemployed person who shall apply after the expiry of time for which he would be entitled to a benefit, in accordance with this Law.

4) The period referred to in paragraph 1 of this Article shall not run during the period of temporary incapacity for work under the regulations on health care and health insurance.

5) Unemployed person shall be obliged to apply to the Office within eight days after the cessation of temporary incapacity for work referred to in paragraph 4 of this Article.

**Cases where insured person may not acquire right to unemployment benefit**

**Article 49**

Insured person may not achieve the right to unemployment benefit his employment shall be terminated due to:

1) Amicable termination of employment;
2) Termination on the part of employed person;
3) Dismissal by the employer, in special cases determined by separate law, except in the case:
   - Expiry of the deadline of employment for a specific period of time, or expiry of the employment contract concluded for a specific period of time;
   - If the employed person shall not present adequate results during probation period;
   - When employed person shall receive dismissal wage on the basis of redundancies;
4) Fulfilling requirements for termination of employment by operation of law, except in the event of termination of employment due to bankruptcy or liquidation, and in all other cases of termination of work of the employer in accordance with separate law;
5) Meeting conditions for acquiring the rights to old-age, disability or family pension under separate law.

**Exceptions**

**Article 50**

Unemployed person, who has cancelled the employment contract, shall have the right to unemployment benefit if the termination of employment occurred due to:

1) Relocation of the spouse to other place of residence, in accordance with special regulations;
2) A change of residence in order to form a community of life after entering into a marriage;
3) Health reasons of unemployed person or a member of immediate family in order to relocate into other place on the basis of the findings of the competent authorities of adequate health facilities.

**Duration of the right to unemployment benefit**

**Article 51**

Unemployment benefit shall belong to the unemployed person who prior to termination of employment shall meet the requirements of Article 47 of this Law, namely:

1) 3 months if the insurance period shall be one to five years;
2) 4 months if the insurance period shall be five to 10 years;
3) 6 months if the insurance period shall be 10-15 years;
4) 8 months if the insurance period shall be 15-20 years;
5) 10 months if the insurance period shall be 20-25 years;
6) 12 months if the years of service shall be over 25 years;
7) until re-employment, or when one of the grounds for termination of rights to receive compensation under this Law, if there shall be more than 30 years of insurance (women), or more than 35 years of insurance (men);
8) An unemployed person with more than 25 years of insurance, who is a parent to a person who by law shall be entitled to personal disability allowance, shall be entitled to unemployment benefit until the re-employment, or until the occurrence of any of the grounds for termination of rights to unemployment benefit according to this Law.

**Continuation of the right to unemployment benefit**

**Article 52**

The right to unemployment benefit referred to in Article 47 of this Law shall continue during:

1) Maternity leave, in accordance with separate law;
2) temporary incapacity for work established by separate law, as long as the incapacity shall exist, but no later than the deadline established by that law, when an unemployed person shall be referred to the assessment of residual work capacity.

**Suspension of right to unemployment benefit**

**Article 53**

(1) The right to unemployment benefit of the recipient of unemployment benefit shall be suspended during:

1) Reference to work abroad within the framework of international - technical or cultural and educational cooperation in the diplomatic and consular and other missions;
2) Serving of imprisonment sentence, security measures, corrective or protective measures for up to six months;
3) The time of residing abroad as the spouse of the employed person who is sent to work abroad.

(2) Unemployed person who, in the cases referred to in paragraph 1 of this Article, shall register with the Office within 30 days from the date of the reason for the suspension of rights to unemployment benefits shall have the right to continue using the right to unemployment benefit for the remaining time.
Termination of the right to unemployment benefit

Article 54

The right to unemployment benefit shall terminate for the recipient, if:
1) The period for which he has been granted the right shall expire;
2) The recipient shall conclude a contract of employment with the employer;
3) The recipient shall register as an entrepreneur;
4) The recipient shall fulfil conditions for old-age or qualify for disability or family pension;
5) The conditions for termination of rights to unemployment benefit shall be determined;
6) Without reasonable excuse, shall fail to respond to the invitation of the Office for employment;
7) Without justifiable reasons, in two consecutive months, shall not report to the Office;
8) Fail to notify the Office within eight days of any change that may affect the acquisition, implementation and termination of rights to unemployment benefit;
9) refuse suitable employment in their place of residence;
10) Without any justifiable reason, refuse to engage in active employment policy measures;
11) Shall enter imprisonment sentence, security measures, corrective or protective measures for a period longer than six months;
12) A decision of the competent inspection finds that contrary to regulations on work;
13) Ceases to be registered in the registry of unemployed persons.

Reacquiring right to unemployment benefit

Article 55

(1) Unemployed person, whose right to unemployment benefit was terminated in terms of Article 54 of this Law, except in the case of fulfilling conditions for old-age or acquiring right to disability pension, may again be entitled to unemployment benefit, if he shall meet the requirements referred to in Article 47 of this Law.

(2) The unemployed person referred to in paragraph 1 of this Article, when re-entitled to unemployment benefit, shall be recognized years of service made after the last of receipt of unemployment benefit.

(3) Notwithstanding paragraph 2 of this Article, where an unemployed person shall be entitled to unemployment benefit in accordance with Article 51 paragraph 1 item 7 and 8 of the Law, when re-entitled to unemployment benefit, shall be recognized the total years of service and time of receiving unemployment benefit.

Remaining unemployment benefit

Article 56

Recipient of unemployment benefit, whose right to unemployment benefit ended in terms of Article 54 items 2 and 3 of this Law prior to expiry of period for exercising this right, if he shall become an unemployed person again, without his fault, shall continue to
exercise the right to unemployment benefit for the remaining unemployment benefit of the set amount, if it shall be more favourable for him.

**Amount of unemployment benefit**

**Article 57**

Unemployment benefit shall amount to 40% of the minimum wage established under the General Collective Agreement.

**VI. PROCEDURE FOR ACQUIRING RIGHTS**

**Initiating and running the procedure**

**Article 58**

(1) During the procedure for acquiring rights under this Law, the provisions of the law governing general administrative procedure shall apply, unless otherwise stipulated by this law.

(2) The procedure for exercising rights under this law shall be initiated at the request of the unemployed persons and employers.

(3) In the first instance procedure for exercising the rights referred to in paragraph 2 of this Article manager of organizational unit shall issue a decision in writing, and in second instance procedure it shall be done by the director of the Office, except in cases acquiring the right to engage in active employment policy measures.

(4) Exceptionally, at the request of an unemployed person and the employer, the competent authorities referred to in paragraph 3 of this Article shall issue a written decision in the procedure of exercising the right to engage in active employment policy measures as well.

(5) Requests, rulings, appeals and other submissions and acts in the procedure of exercising the rights of the unemployed persons shall be exempt from tax payment.

**Initiation of administrative dispute**

**Article 59**

Against a decision adopted by the appeal an administrative dispute may be instituted.

**Return of funds**

**Article 60**

(1) Unemployed person who acquired right to unemployment benefit or other funds shall notify the Office within eight days of any change affecting the termination or suspension of that right.

(2) Unemployed person who has received unemployment benefit or other funds groundlessly shall be obliged to return them on the basis of agreements concluded with the Office.

(3) If an unemployed person shall not act within the meaning of paragraph 2 of this Article, the Office may seek compensation of damages, upon complaint before the competent court.

**Compensation of damage**
Article 61
1) The office shall have the right to require from the employer to compensate damages in case if a final court ruling shall determine that employment of the unemployed person who was entitled to unemployment benefit terminated contrary to the law.
(2) Compensation of damage under paragraph 1 of this Article shall include the gross amount of cash benefits.
(3) During the procedure of acquiring rights to compensation of damage provisions of the law regulating obligations shall apply.

[...]

Law on Amendments to the Law on Employment and Exercise of Rights based on Unemployment Insurance (December 2013)

Article 1
In the Law on Employment and Exercise of Rights based on Unemployment Insurance (Official Gazette of MNE no.14/10), in Article 3, Paragraph 1, the words “65 years” shall be replaced by the words “67 years”.

Article 2
In Article 6, following Item 9 a new item is added as follows:

“9a) employer shall be a domestic or foreign, i.e. part of a foreign legal entity or physical person who reports the need for employing people, i.e. employs a person seeking employment.”

Article 3
In Article 10 Item 2 the word “special” shall be replaced by the word “this”.

Article 4
In Article 13, Paragraph 1, item 7 shall be amended as follows:

“7) decides on other issues, in accordance with the law and the statute of the Bureau.”

Article 5
In Article 22, Paragraph 1, following item 2 a new item is added as follows:

“2a) mediation in employment of the citizens of Montenegro abroad, in accordance with the special law;”.

Paragraph 3 shall be amended as follows:

“(3) The agency shall inform the Bureau semi-annually about the performed employment activities referred to in Paragraph 1 of this Article.”

Paragraphs 4, 5, 6 and 7 shall be erased.

Article 6
In Article 23, Paragraph 1, Item 6 is amended as follows:

“6) obtains financial assistance during education, training, professional rehabilitation of persons that are more difficult to employ, and participation in other measures aimed at increasing employment, i.e. reducing unemployment, in accordance with the general act of the Bureau.”

Article 7
In Article 24, Item 5 the words: “three months” shall be replaced by the words “two months”.

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Article 8
In Article 26, following Paragraph 1, a new paragraph is added as follows:
“(2) Vacant posts, in the sense of Paragraph 1 of this Article, shall not include the following cases, unless stipulated otherwise by a special law:
1) if there is a need, due to expiry of the previous labor contract, to conclude a new labour contract with the same employee for a limited or unlimited time;
2) if there is a need to assign the employee to another post with the same employer;
3) taking over of an employee, based on an agreement between employers, with the consent thereof.”

Article 9
In Article 27, Paragraph 1, following the word “board”, the words “and web page” shall be added, while the words “five days” shall be replaced by the words “two working days”.

Article 10
In Article 33 following the word “employment”, comma shall be added, followed by the words “that is, change of employment”.

Article 11
In Article 34, Paragraph 3, the words: “shall be regulated by a general act of the Bureau” shall be replaced by the words “shall be stipulated by the Ministry”.

Article 12
In Article 51, Item 7 shall be amended as follows:
“7) until new employment, i.e. until reasons to suspend the right to financial compensation based on this law cease to be valid, if the person has over 35 years of pension insurance”.

Article 13
Following Article 51, a new article is added as follows:
“Financial compensation for unemployed professionally disabled persons

Article 51 a
Exceptionally from Articles 47, 48 and 51 of this Law, financial compensation shall be granted to an unemployed professionally disabled person of the 2nd or 3rd category, who is not a beneficiary of the temporary compensation according to the regulations on pension and disability insurance, irrespective of the number of years of insurance, while awaiting employment, i.e. until one of the grounds to end the exercise of the right to financial compensation arises in accordance with this Law.

The right referred to in Paragraph 1 of this Article shall start running from the date of submission of the application.

Application referred to in Paragraph 2 of this Article shall be submitted to the regional office of the Bureau based on the place of registration of the unemployed professionally disabled person of the 2nd or 3rd category.”

Article 14
Following Article 55, a new Article is added as follows:
“Renewed exercise of rights

Article 55 a
Exceptionally from Article 55 of this Law, an unemployed professionally disabled person of the 2nd or 3rd category whose right to financial compensation in the sense of Article 54 of this Law has ceased, except in case of meeting the requirements for age pension or gaining the right to disability pension, may renew the right to financial compensation, in accordance with Article 51 a of this Law.”

Article 15
In Article, Paragraph 3, following the words “director of the Bureau”, instead of comma a full stop is added, and the words “except in cases of exercise of the right to participation in the active employment policy measures” shall be erased.
Paragraph 4 is erased. Previous paragraph 5 shall become paragraph 4.

**Article 16**

Article 62 shall be amended as follows:

"**Records**"

(1) In order to look into the situation and developments in the labour market, the Bureau shall keep records in the area of employment in accordance with this Law.

(2) Record keeping in the area of employment provides data for statistical research and an integrated information system in the employment sector."

**Article 17**

Following Article 62, two new articles are added as follows:

"**Types of records**"

**Article 62 a**

Records in the area of employment shall be records regarding the following:

1) persons seeking employment;

2) vacant posts.

**Records regarding persons seeking employment**

**Article 62 b**

Records regarding persons seeking employment shall be records regarding the following:

1) unemployed persons;

2) persons who are employed but with incomplete/reduced working hours;

3) employed persons seeking change of employment”

**Article 18**

In Article 63, Paragraph 1 the words “90 days” shall be replaced by the words “60 days”.

In Paragraph 3 the words: “in the manner stipulated by the act of the Bureau” shall be replaced by the words: “minimum once in the time period of 90 days”.

In Paragraph 4 the words: “in accordance with the act of the Bureau” shall be replaced by the words: “minimum once in the time period of 90 days”.

**Article 19**

In Article 64 in the introductory sentence of Paragraph 1 the words “records regarding an unemployed person” shall be replaced by the words “records regarding a person seeking employment”.

In Item 7 the words: “status of the unemployed person” shall be replaced by the words “status of the person seeking employment”.

In Item 8 the words: “65 years” shall be replaced by the words “67 years”

**Article 20**

Following Article 64 three new articles are added as follows:

"**Records regarding vacant posts**"

**Article 64 a**

(1) The Bureau shall keep a record of vacant posts on the basis of the reports submitted by the employer, in accordance with this Law.

(2) Record of vacant posts shall contain data on the work post, necessary knowledge and skills, as well as other requirements necessary for the execution of the specific job.

**Special records**

**Article 64 b**

Besides the records referred to in Article 62 of this Law, the Bureau shall keep special records in the area of employment, as follows:
1) regarding persons who are involved in the active employment policy measures;
2) regarding beneficiaries of financial compensation;
3) regarding issued work permits for foreigners;
4) regarding citizens of Montenegro working abroad;
5) regarding organizers, voluntary work beneficiaries and volunteers;
6) other records in accordance with the law.

**Manner of record keeping**

**Article 64 c**
The Ministry shall prescribe content, form, and manner of record keeping and reporting based on the records stipulated by this Law.”

**Article 21**
Article 66 shall be amended as follows:
“(1) A legal entity shall be punished with a fine ranging from EUR 500 to EUR 20,000 if:
1) it fails to announce a vacant post in the announcement board or web page of the Bureau, or, at the request of the employer, and in cases when this is stipulated by a special law, in the media, within two working days from the date of reporting (Article 27, Paragraph 1);
2) it fails to keep records in the area of employment (article 62 Paragraph 1).

(2) A responsible person in the legal entity shall be punished for the misdemeanour offense referred to in Paragraph 1 of this Article with a fine ranging from EUR 100 to EUR 2,000.”

**Article 22**
Article 67 shall be amended as follows:
(1) A legal entity shall be punished with a fine ranging from EUR 500 to EUR 20,000 if:
1) it fails to report to the Bureau a vacant post, in order to allow for monitoring of the demand and supply in the labor market (Article 26);
2) it fails to inform the Bureau about establishment of an employment relationship with an unemployed person within five days from the date of establishment of employment relationship (Article 27, Paragraph 2).

(2) A responsible person in the legal entity shall be punished for the misdemeanour offense referred to in Paragraph 1 of this Article with a fine ranging from EUR 100 to EUR 2,000.

(3) An entrepreneur shall be punished for the misdemeanour offense referred to in Paragraph 1 of this Article with a fine ranging from EUR 150 to EUR 6,000.”

**Article 23**
Article 68 shall be amended as follows:
“(1) A legal entity shall be punished with a fine ranging from EUR 500 to EUR 20,000 if:
1) it commences business activity prior to obtaining work permit (Article 20, Paragraph 3);
2) it discharges employment activity contrary to Article 22, Paragraph 1 of this Law;
3) it fails to keep records regarding activities referred to in Article 22, Paragraph 1 of this Law (Article 22, Paragraph 2);
4) fails to inform the Bureau semi-annually about the implemented employment activities (Article 22, Paragraph 3).

(2) A responsible person in the legal entity shall be punished for the misdemeanour offense referred to in Paragraph 1 of this Article with a fine ranging from EUR 100 to EUR 2,000.”

**Article 24**
Following Article 70 three new articles shall be added as follows:

“**Acquired rights of the professionally disabled persons**

**Article 70 a**
A professionally disabled person of the 2\textsuperscript{nd} or 3\textsuperscript{rd} category, who exercises the right to financial compensation in accordance with the regulations and general acts applicable by the date of coming into effect of this Law, shall exercise the right to financial compensation in the scope, duration and amount in accordance with this Law, if this is more favourable for that person.

**Deferred implementation**

**Article 70 b**

Exceptionally from Article 51, Item 7 of this Law, the right to financial compensation shall be granted to an unemployed women when she achieves:
- in 2014, 30 years and three months of years of insurance;
- in 2015, 30 years and six months of years of insurance;
- in 2016, 30 years and nine months of years of insurance;
- in 2017, 31 years of years of insurance;
- in 2018, 31 years and three months of years of insurance;
- in 2019, 31 years and six months of years of insurance;
- in 2020, 31 years and nine months of years of insurance;
- in 2021, 32 years of years of insurance;
- in 2022, 32 years and three months of years of insurance;
- in 2023, 32 years and six months of years of insurance;
- in 2024, 32 years and nine months of years of insurance;
- in 2025, 33 years of years of insurance;
- in 2026, 33 years and three months of years of insurance;
- in 2027, 33 years and six months of years of insurance;
- in 2028, 33 years and nine months of years of insurance;
- in 2029, 34 years of years of insurance;
- in 2030, 34 years and three months of years of insurance;
- in 2031, 34 years and six months of years of insurance;
- in 2032, 34 years and nine months of years of insurance.

**Deadline for adoption of regulations**

**Article 70 c**

Regulations referred to in Article 34, Paragraph 2 and Article 64c of this Law shall be adopted within six months from the date of coming into effect of this Law.”

**Cessation of validity**

**Article 25**

Provisions of the law on records in the area of labor and employment (Official Journal of MNE no. 69/03) regarding type, content and manner of record keeping in the area of employment and Article 118 of the Law on Amendments to the Law stipulating misdemeanour fines (Official Journal of MNE no. 40/11) shall cease to be valid.

**Coming into effect**

**Article 26**

This Law shall come into effect on the eighth day from the date of being published in the Official Journal of Montenegro.

Ref. no. 19-4/12-1/5
EPA 914 XXIV
Podgorica, 26 July 2012

**Parliament of Montenegro of the 24\textsuperscript{th} convocation**

President,

**Ranko Krivokapic**
On the basis of Article 82 Paragraph 1 Item 2 of the Constitution of Montenegro and Amendment IV, Paragraph 1 of the Constitution of Montenegro, on 23rd December 2013, the Parliament of Montenegro in its 25th convocation, at the sixth meeting of the second (autumn) session in 2013, adopted the following

**LAW ON AMENDMENTS TO THE LAW ON EMPLOYMENT AND EXERCISE OF RIGHTS BASED ON UNEMPLOYMENT INSURANCE**

**Article 1**

In the Law on employment and exercise of rights based on unemployment insurance (Official Journal of MNE no. 14/10, 39/11, 40/11 and 45/12) following Article 69 a new article is added as follows:

“**Article 69a**

An unemployed person who exercised by the date of coming into effect of this Law the right to financial compensation amounting to EUR 33.00 shall exercise the right to financial compensation in accordance with Article 57 of this Law as of the date of commencement of enforcement of this Law. The right referred to in Paragraph 1 of this Article shall be granted to an unemployed person until new employment, i.e. until one of the grounds for ending the right to financial compensation according to this Law arises.”

**Article 2**

Following the Article 70a a new article shall be added as follows:

“**Article 70b**

As of the date of enforcement of this Law, a professionally disabled person of a 2nd or 3rd category who exercised the right to financial compensation in accordance with Article 51a and 57 of this Law, shall exercise the right to financial compensation on the basis of unemployment amounting to minimum pension in Montenegro stipulated by the Law on pension and disability insurance”.

Previous Articles 70b and 70c shall become Articles 70c and 70d.

**Article 3**

This Law shall come into effect on the day following the date of publication in the Official Journal of Montenegro, and it shall be applied as of 1 January 2014.

Ref. no. 19-4/13-2/8
EPA 337 XXV
Podgorica, 23 December 2013

Parliament of Montenegro of the 25th convocation
President,
Ranko Krivokapic

15. **EXCERPTS OF THE DRAFT SOCIAL HOUSING LAW**

**DRAFT**

**SOCIAL HOUSING LAW**

Subject
Article 1
This Law shall regulate the conditions and manner of exercising the right to social housing and other issues relevant to social housing.

Social Housing
Article 2
The social housing, under this Law, shall represent the housing of a specific standard, provided to individuals or households, which are not able to solve the problem of housing due to social, economic or other reasons.
Housing of an adequate standard, pursuant to paragraph 2 of this Article hereof, is the housing compliant with the following postulates: availability, legal security, accessibility of the housing object to persons with reduced mobility and persons with disability, stability and duration of the building, aseismic and architectural designing, construction of the building, health protection, environment protection, protection from natural, technical and technology disasters, fire protection, explosions and industrial incidents, thermal protection, energy efficiency and noise and vibration protection.

Right to Social Housing
Article 3
The right to social housing, under this Law, can be exercised by natural persons who do not own an apartment i.e. other housing unit (hereinafter: housing unit), i.e. persons whose housing unit does not have adequate standard and who can not provide a housing unit from the income they earn.
The right pursuant to paragraph 1 of Article hereof, can be exercised by Montenegrin citizens with residence within the territory of Montenegro, if he/she fulfils the conditions set forth by this Law.
The right referred to in paragraph 1 of Article hereof, can also be exercised by a foreign citizen and person without citizenship, whose status is regulated according to this Law, i.e. international agreement.

Priority
Article 4
The priority in exercising the right to social housing, according to this Law, have in particular: single parents i.e. legal guardians, persons with disability, persons over 67 years old, the young who were children without parental care, families with children with disabilities, members of Roma and Egyptians (RE population), displaced persons, internally displaced persons from Kosovo who reside in Montenegro, foreigner with permanent residence or temporary stay whose status of displaced or internally displaced person was acknowledged and victims of family violence.

Social Housing Programme
Article 5
The Government of Montenegro (hereinafter: the Government) shall adopt the social housing programme, pursuant to the proposal of the competent statutory authority dealing with housing issues (hereinafter: the Ministry).
The social housing programme shall define the development goals of social housing, in line with regional, overall economic and social development, as well as social housing development and other important elements for social housing.

The programme under the paragraph 1 of Article hereof shall contain priority groups, pursuant to Article 5 of this Law, average amount of resources and criteria under which the resources defined by the programme can be used, in accordance to this Law.

The Programme under paragraph of this Article shall be adopted for the period of three years.

**Local Programme of Social Housing**

**Article 6**

According to social housing programme the local self-government body shall adopt the local social housing programme (hereinafter: the local programme).

The local programme shall contain the following:

- persons, i.e. groups of people within the local self-government territory whose social housing issue shall be treated, pursuant to this Law,
- the scope and conditions for allocation of resources to business companies, natural persons and housing communities, together with the manner of refunding, pursuant to this Law and detailed parameters and criteria for establishing the cost of the rent for usage of housing objects, according to this Law.

The local self-government unit shall present the draft of the local programme to the Ministry for approval.

In the process of granting the approval pursuant to paragraph 3 of Article hereof, the Ministry shall verify its conformity with the social housing programme.

The Ministry shall evaluate the conformity of the draft local programme with the social housing programme within 30 days from the receipt of the draft local programme.

The draft local programme, which is not harmonized with the programme under Article 5 of this Law, shall be returned for further elaboration.

Local programmes of the local self-government units shall be adopted for the period of one year upon getting the approval under the paragraph 3 of Article hereof.

**Competence of Local Self-Government Unit**

**Article 7**

In the area of social housing the local self-government unit can do the following:

- Collect data needed for development and adoption of the local programme (screening and analysis of existing housing fund and housing needs etc.)
- Manage projects of construction of housing objects,
- Conduct activities of housing objects renting,
- Develop new financing programmes of social housing and promote partnerships between public, private and non-profit sectors within the social housing area,
- Organize maintenance activities of housing objects for social housing and
- Perform other activities within the social housing area, in line with this Law.

**Criteria for Exercising Social Housing Right**

**Article 8**
The exercise of the right to social housing for persons within the groups of people defined under Articles 5 and 6 of this Law, shall be provided by using the following criteria:

- Existing housing situation,
- Income and assets,
- Duration of uninterrupted stay or residence, in the place where the housing issue is being solved,
- Number of household members,
- Disability,
- Health condition and
- Age.

Detailed criteria referred to in paragraph 1 of Article hereof, according to the social housing programme, shall be determined by the Government regulation, i.e. local self-government unit, pursuant to the local programme.

The regulation referred to in the paragraph 2 of Article hereof shall be adopted by the local self-government with previous consent of the statutory authority competent for social housing issues.

**Family Household**

**Article 9**

Members of the family household, under this Law, shall be the persons who live with the person referred to in Article 3 of this Law in a common household, such as:

Spouse or person who lives in common-law relationship with the person referred to in Article 3 of this Law,

Children born within marriage or out of the marriage, adopted or step-children and

Other individuals who are to be maintained by the person referred to in Article 3 of this Law or his/her spouse by force of the Law.

**Financial Resources for Social Housing**

**Article 10**

The financial resources for social housing, according to this Law, can be provided from:

- Budget of Montenegro,
- Budget of local self-government units,
- Donations,
- Funds from loan repayment, approved in accordance with this Law,
- Loans and
- Other resources, according to the Law.

The method and detailed criteria for using the funds referred to in paragraph 1 of this Article shall be defined by the Government regulation, i.e. local self-government unit.

**Method of Social Housing Provision**

**Article 11**
The social housing, according to this Law, shall be provided by:

- Buying or construction of housing objects for social housing, for the purpose of renting,
- Allocation of buildings for construction of housing objects for social housing,
- Allocation of building material for construction of new or reconstruction of existing housing object,
- Provision of subsidies for social housing, according to the Law,
- Provision of long-term loans to business companies, natural or legal persons and housing communities in order to provide housing objects for social housing,
- Provision of financial resources for setting up partnership of public, private and non-profit sector in the area of social housing.

Prior to construction of the buildings for social housing referred to in the paragraph 1 sub-paragraph 1 of Article hereof, an invitation to bid shall be advertised for urban and architectural preliminary design.

Rent

Article 12

The housing objects for social housing constructed or bought with funds of the Budget of Montenegro or other resources provided by the Government, according to Article 11 paragraph 1 sub-paragraph 1 of this Law, shall be assigned to local self-government unit on which territory they are built, for the purpose of renting, pursuant to provision of this Law regulating the procedure and method of housing object renting.

The housing objects for social housing constructed or bought with funds from the budget of the local self-government unit pursuant to Article 11 paragraph 1 sub-paragraph 1 of this Law, shall be rented according to provision of this Law regulating the procedure and method of housing object renting.

Housing Objects Renting Procedure

Article 13

The procedure for renting of housing objects shall be initiated by the competent local government body by advertising a public call for lease of apartments, according to the local programme.

Public call referred to in paragraph 1 of Article hereof shall contain:

- Criteria on which basis housing objects will be given on lease,
- Data on applicant (name and surname, place of stay i.e. address, nationality, number of household members, number of members maintained by the applicant, proof that the applicant is a beneficiary of the family material support, assets, profession and other data important for conducting the procedure referred to paragraph 1 of this Article),
- Number and structure of housing objects which will be given on lease,
- List of documentation which to be submitted along with the application for public call referred to in paragraph 1 of Article hereof,
- Note saying that the application of the applicant whose documentation is incomplete or untimely submitted shall not be considered,
- Public call deadline,
- Place and time for submission of documentation, i.e. application for the public call,
- Basic elements of the lease agreement, according to the Law (parties to the agreement, their rights and obligations, rent, prohibition and limitations or other).

The public call referred to in paragraph 1 of Article hereof shall be advertised at the notice board and web-site of the competent local administration body, competent social welfare centre and one daily printed media at least, distributed throughout Montenegro.

More detailed procedure of housing objects lease shall be regulated by local self-government regulation.

**Lease Agreement**

**Article 14**
The housing objects shall be given on lease by signing the lease agreement.
The agreement referred to in paragraph 1 of Article hereof is concluded by the competent local administration body and person referred to in Article 3 of this Law within 30 days from the final decision on housing object lease.
The lease agreement is concluded on definite time and not longer than 20 years, without the possibility for extension.
Notwithstanding paragraph 3 of Article hereof, the lease agreement with persons having the priority in exercising the right to social housing pursuant to Article 4 of this Law can be concluded for the period longer than 10 years.
The agreement referred to in paragraph 1 of Article hereof, apart from elements prescribed by the Law, shall contain data from the decision on giving on lease the housing object, data on persons using the same housing object with the lessee, i.e. living with the lessee in the same household and the manner of participation of the lessee in maintenance of the housing object given on lease.
The competent authority of the local administration shall keep records on concluded lease agreements referred to in paragraph 1 of Article hereof.
Issues related to lease agreement which are not regulated by this Law shall be regulated by provisions of the law dealing with contractual relations.

**Housing object Area**

**Article 15**
The person referred to in Article 3 of this Law can be given an apartment of maximum 25 m² for one-member household, i.e. not more than 7 m² for each additional member of the household.
The total area of the assigned apartment cannot be larger than 85 m².

**Prohibition of purchase and other limitations**

**Article 16**
The housing objects given on lease, according to this Law, cannot be purchased, inherited, given on sublease nor alienate.

**Rent**

**Article 17**
For utilization of housing object referred to in the lease agreement, a rent shall be paid.
The cost of the rent shall be determined based on the amount of household income of the lessee, size of the housing object and expenses for maintenance of the housing object and common parts of the housing object.
The rent cannot be smaller than the amount necessary for covering the costs of regular maintenance of the housing object, according to the law regulating rights and obligations of condominium owners and in relation to housing object maintenance and maintenance of common parts of the housing object.
The lessee – beneficiary of the right to family material support can be exempt from paying the rent, on the basis of decision of the competent local administration body, in line with the law. Maximum rent cannot be more than ten times greater than the minimum amount of rent referred to in paragraph 3 of Article hereof.

Rent Amount Modification
Article 18
If the amount of the rent is changed due to modification of criteria for rent definition, the lessee shall pay the modified rent without the agreement alteration, on the basis of calculation of the lessor.

Assignment of Lease Agreement
Article 19
In the case of death of the lessee, rights and obligations from the lease agreement pass to a household member who fulfils the conditions for lease agreement conclusion, according to this Law.
Household member referred to in paragraph 1 of Article hereof shall demand the conclusion of lease agreement, within 60 days from the day the change occurred.
The competent local administration body shall conclude the lease agreement with a household member referred to in paragraph 2 of Article hereof, with rights and obligations of the lessee, upon establishing that he/she fulfils conditions for lease agreement conclusion, according to this Law.

Lease Agreement Termination
Article 20
Lease agreement shall terminate if:
The lessee or a member of his household, acquires the ownership right, i.e. lease right to another housing object,
The lessee does not pay the rent, according to the lease agreement,
The lessee has given incorrect data or has hidden important data for establishing the fulfilment of conditions for exercising the right to social housing,
Ownership status of the lessee changes (income increase or similar) and
The lessee ceases to fulfil other conditions established by the agreement i.e. this Law.
The lessee shall free the housing object of objects and persons within 30 days from the day of lease agreement termination.

Construction Site Allocation
Article 21
The construction site for housing object construction, in Montenegrin ownership, can be allocated, i.e. given on lease to person referred to in Article 3, paragraph 2 of this Law, by Government decision, i.e. local self-government unit, according to the law. The construction site referred to in paragraph 1 of Article hereof, can be given on lease to a foreign citizen or person without citizenship referred to in Article 3, paragraph 3 of this Law, by Government decision, i.e. local self-government unit, according to the law. The procedure for allocation of construction site the local self-government unit shall be subjected to the provisions under Article 13 of this Law.

Building Material Granting
Article 22
The local self-government unit can grant building material to the person referred to in article 3 of this Law, for construction of new or reconstruction of existing housing object. The conditions for building material granting for construction of the new housing object are: possession of the building lot and building permit. The procedure for building material initiates by advertising a public call for construction material granting. The public call procedure shall be subject to provisions referred to in paragraph 3 of Article 13 of this Law.

Conduction of Works and Building Material Quantity
Article 23
The construction works or reconstruction of the housing object shall be conducted by the person who was granted the building material, in his own organisation. The quantity and type of granted building material shall be determined according to the type and scope of works necessary for construction of new i.e. reconstruction of existing housing object. The value of building material for construction of new housing object cannot be greater than the value of material necessary for construction of a living space of a size defined in accordance with Article 15 of this Law. The deadline by which the person referred to in Article 21, paragraph 1 of this Law shall build, i.e. reconstruct the existing housing object, shall be defined by the agreement on building material allocation.

Social Housing Subsidies
Article 24
The subsidies for social housing shall be granted by the Government decision, i.e. local self-government unit. The subsidies for social housing shall be acquired by: Covering the rent cost, Subsidising lending rates for commercial mortgage loans granted to the beneficiary for purchase or construction of housing object; Covering the costs for quality improvement of housing object; Covering the costs of improvement of housing conditions (by granting loans under favourable conditions, providing grants or similar).
Loan Granting

Article 25
Long-term loans to business companies, natural or legal persons and housing communities shall be granted by the Government decision, i.e. local self-government unit.

Long-term loans to business companies, natural or legal persons and housing communities for the purpose of provision of housing objects for social housing can be granted for:
- Construction or purchase of housing objects for collective housing,
- Construction or purchase of individual housing objects,
- Improvement of housing conditions and
- Legalisation of an informal housing object.

More detailed criteria and procedure of loan granting referred to in paragraph 1 of Article hereof, shall be regulated by the Government.

Private Public Partnership

Article 26
Private-public partnership in the area of social housing shall be established in accordance to the agreement concluded pursuant to the Law.

The funds for establishment of public, private and non-profit sector partnership can be provided by the Government, i.e. local self-government unit, pursuant to programmes referred to in Article 5 and 6 hereof.

Housing objects that are constructed or bought, according to the agreement referred to in paragraph 1 of Article hereof, can be assigned or given on lease, pursuant to this Law.

Exercised Right

Article 27
The person who exercised the right to social housing according to one condition referred to in Article 11 of this Law, cannot exercise that right on another basis defined by this Law.

Supervision

Article 28
The supervision over implementation of this Law and regulations enacted on the basis of this Law, shall be conducted by the Ministry.

The supervision over implementation of bylaws which shall be adopted by local self-government units pursuant to this Law, shall be conducted by the competent local administration body, in line with special regulations.

The inspection supervision over implementation of this law, shall be conducted by the administration body competent for activities of inspection supervision.

Deadline for Programme Adoption

Article 29
The social housing programme shall be adopted within six month from the day of entering into force of this Law.

The local self-government unit shall develop the draft local programme of social housing within three months from the day of entering into force of the programme referred to in paragraph 1 of Article hereof.
The local self-government unit shall adopt the local social housing programme within 30 days from the day of obtaining consent referred to in Article 6, paragraph 3 of this Law.

**Deadline for Passing Bylaws**

**Article 30**
On the basis of authorisation set forth by this law, bylaws shall be enacted within a year from the day this Law entered into force.

**Entering into Force**

**Article 31**
This Law shall enter into force on the eighth day from the day of its publication in the “Official Gazette of Montenegro”.

### 16. EXCERPTS OF THE FOREIGNERS LAW (as of 2009)

**FOREIGNERS LAW**
The Law was published in the “Official Gazette of Montenegro”
82/2008 and 72/2009

**I GENERAL PROVISIONS**

**Subject of the Law**

**Article 1**
This Law shall regulate the conditions of entry into, movement and stay of foreign citizens in Montenegro.

**Scope of the Law**

**Article 2**
This Law shall not apply to foreign citizens who enjoy privileges and immunities according to international law, unless otherwise stipulated by this Law;
For persons without citizenship, the provisions of confirmed and published international treaties and generally accepted rules of international law shall be applied, when this is more favorable for them.

**The Restriction or Prohibition of Movement**

**Article 3**
Foreign persons shall be subject to a restriction or prohibition of movement in a particular area in Montenegro if so required for the reasons of national security and public order.

**Obeying the Law**

**Article 4**
During his/her movement and stay in Montenegro, a foreign person shall be obliged to observe the applicable regulations and decisions of the competent state bodies.
Application of Regulations Governing General Administrative Procedure

Article 5

The regulations governing general administrative procedure shall apply in the process of making a decision on the rights and obligations of foreign persons, unless otherwise provided by this Law.

Definition of Terms

Article 6

The terms used in this Law shall have the following meanings:

- **Foreign citizen** means any citizen of another state or a stateless person;
- **Entry into Montenegro** means crossing of the State border, meaning a border crossing point where border control is performed. Stopping of foreign persons at an airport or port transit area shall not be considered as an entry into Montenegro in the sense of this Law;
- **Transit** means passing through the territory of Montenegro;
- **Foreign travel document** means a valid personal, family or group passport, diplomatic passport, service passport, seaman's booklet, shipping book or other travel document recognized by international treaties pursuant to which the identity of its holder can be established, which has not expired and which has been issued according to the regulations on issuing travel documents of a foreign state;
- **Valid travel document** means a document issued by the competent authority, clearly confirming the term of validity of the document and the identity of its holder.
- **Carrier** is a company or entrepreneur who is registered to conduct business of passenger transportation on land, sea, lakes, rivers and air;
- **ID card for foreigners** is the identity document that may be issued to a permanently residing foreigner or a foreigner on a temporary stay, without a valid travel document.

II ENTRY AND EXIT OF FOREIGNERS

Control at Border Crossing Point

Article 7

Foreign persons shall submit themselves to border control when entering or leaving Montenegro. Border control of foreign persons shall be carried out according to the law governing the surveillance of the state border and including verification of the conditions laid down in Articles 8, 9 and 10 of this Law.

Denial of Entry

Article 8

A foreign person shall not be permitted to enter Montenegro, if:
- He/she fails to satisfy the requirements from Article 10 of this Law;
- He/she has insufficient financial resources to support himself or herself during his/her stay in Montenegro and to return to his/her country of origin or to travel to a third country;
He/she is in transit and fails to satisfy the requirements for entry into a third country;
A pronounced protective measure of expulsion or deportation is in force;
This is required by reasons of national security and public order;
He/she is on the corresponding records as an international offender;
The prohibition of entry shall be entered into the valid travel document of a foreigner.

Denial of Exit
Article 9
A foreigner shall not be allowed out of Montenegro, if:
he/she uses another person’s, i.e. invalid, false passport or other document,
there is reasonable suspicion that he/she intends to avoid criminal or misdemeanor
prosecution, prison sentence, the execution of court orders, or deprivation of liberty;
this is required by reasons of national security and public order.
Upon termination of the reasons referred to in paragraph 1 of this Article the foreigner is
allowed to exit from Montenegro.

Entry, Movement and Stay
Article 10
A foreigner may enter, move to and reside in the territory of Montenegro with a valid travel
document into which a visa or residence permit is entered, unless otherwise provided under
this Law or an international treaty.
A foreigner whom Montenegro is obliged to accept on the basis of international treaties, for
humanitarian reasons, reasons of public order or public health, shall be granted an entry
without a valid travel document.
Nationals of certain countries may also enter Montenegro with a valid identity card or other
document under which their identity and nationality can be determined, in accordance with
international agreements or regulations on visa regime under Article 14(2) of this Law.

The Entry of Foreigners with Multiple Citizennships
Article 11
A foreigner who has multiple citizenships is considered to be the citizen of the State which
issued the passport with which he/she entered Montenegro.
The foreigner referred to in paragraph 1 of this Article shall be obliged to uses the passport
with which he/she entered Montenegro during his/her stay in Montenegro.

Entry and Exit Based on a Joint Passport
Article 12
A foreign person whose name is entered into the travel document of another person shall
enter or exit Montenegro only accompanied by the person into whose travel document
his/her name is entered.
Foreign persons who have a joint travel document shall enter or exit Montenegro only
together.
A person entered into a joint travel document shall have an individual document containing
a photograph on the basis of which his/her identity may be established.
The group leader shall have a personal passport.
Movement of Foreign Persons in Uniform

Article 13
A foreign person may move about in a foreign military, police or customs official uniform under the conditions set forth by this Law.

Visa for Short-Term Stay (C Visa)

Article 19
A visa for a short stay (C Visa) shall be issued for tourist, business, personal and other travel, for a single or multiple entries into the territory of Montenegro, and for an uninterrupted stay or the total length of successive stays of foreign persons with a visa for short-term stay in Montenegro that shall not exceed 90 days within a period of six months, counting from the day of the first entry.

A multiple-entry visa for a short stay (C Visa) shall be valid for not longer than one year.

Notwithstanding paragraph 2 of this Article, a short-stay visa (C Visa) for multiple entries can be issued with a longer validity period, but no longer than five years, as decided by the government authority responsible for foreign affairs.

A visa for a short-term stay (C Visa) may be issued to a group of travelers which was formed before making a decision about the travel, where the members of that group enter the territory of Montenegro together, stay there and leave as a group. This visa shall not be valid for longer than 30 days.

The visa from paragraph 4 of this Article shall be entered into a group passport and may be issued to a group of not less than 5 and not more than 50 persons, whereas the person who leads the group shall have a personal passport and, when necessary, the visa.

Detailed conditions for issuing visas referred to in paragraphs 2 and 3 of this Article shall be provided by the state authority responsible for foreign affairs.

Visa for Long-Term Stay (D Visa)

Article 20
The visa for a long-term stay (D Visa) shall be issued to a foreign person intending to stay continuously in the territory of Montenegro for a period longer than 90 days, whereas not longer than one year, counting from the day of first entry.

Visas for longer stays (D visas) shall be issued for one or more entries into Montenegro.

More detailed requirements for a visa under paragraphs 1 and 2 of this Article shall be prescribed by the authority of state administration in charge of foreign affairs.

Limitations on the Validity

Article 21
When issuing a visa, the validity period of the travel document into which a visa is entered shall be at least three months longer than the period of validity of the visa.

Exceptionally, if so required for humanitarian reasons, national interests or international obligations of Montenegro, a visa entered into a travel document may be valid until the
expiry of validity of the travel document, when the return of the foreigner into his/her country of residence or a third country is ensured.

**Authority for Visa Issuing**

**Article 22**
A foreigner shall be required to obtain a visa prior to entry into Montenegro. Visa shall be issued by a diplomatic or consular mission of Montenegro unless otherwise stipulated under this Law.
A visa application shall be submitted by a foreigner in person, on a special form. Prior to issuing visas, diplomatic or consular mission of Montenegro shall be obliged in certain cases to obtain a prior consent of the authorities responsible for police matters (hereinafter referred to as the Police).
Notwithstanding paragraph 2 of this Article, if so required due to humanitarian, personal or professional reasons, the following may be issued at the border crossing point by the Police:
- A short-stay visa (C visa) for a single entry and stay of up to 15 days,
- A transit visa (B Visa), for a single transit of up to five days, and
- A transit visa (B Visa), for a seaman, or a group of sailors.
Visas shall be issued by entering a visa form into a valid foreigner's passport. When so required due to humanitarian reasons, national interests or international obligations of Montenegro, visas may be entered on the form for entering the visa if the passport contains no place for visa entering or if the passport is not valid for crossing the state border.
A more detailed procedure for issuing visas, the application form for a visa, cases in which it is necessary to obtain prior approval of the Police, the visa form, procedure for visa entry into the passport and visa entry form shall be prescribed by the state authority responsible for foreign affairs.
[...]

**Reasons for the Rejection of Visa Application**

**Article 25**
No visa shall be issued to a foreign person if:
1) An obstacle from Article 8 of this Law exists;
2) He/she fails to appear in person following the request of a diplomatic or consular mission of Montenegro abroad;
3) After the request of a diplomatic or consular mission, he/she fails to submit the required documents proving the purpose and conditions of his/her stay in Montenegro;
4) After the request of a diplomatic or consular mission of Montenegro, he/she fails to submit proof of health and travel insurance;
5) he/she stayed in Montenegro for 90 days, and it was not six months from the date of first entry.
The foreigner shall be verbally advised about the reasons why his/her visa was not issued. Exceptionally, in the cases from paragraph 1 of this Article, a foreigner may be issued a visa for humanitarian reasons, if this is in the interests of Montenegro or if so required due to internationally valid obligations.
In this case, a foreigner may be allowed to enter the country solely through a specified border crossing point.

[…]

**IV RESIDENCE OF FOREIGN CITIZENS**

**Types of Residence**

**Article 30**

The residence of a foreign citizen in Montenegro in the sense of this Law shall include a:
- Sojourn of up to 90 days;
- Temporary residence;
- Permanent residence.

**Stay of up to 90 Days**

**The Right to a Stay of up to 90 Days**

**Article 31**

A foreigner shall be entitled to a stay of up to 90 days on the basis of short-stay visa (C Visa), in accordance with Article 19 of this Law, or without a visa on the basis of regulations under Article 14 paragraph 2 of this Law.

In the case referred to in paragraph 1 above, a foreigner may stay in Montenegro for 90 days in a period of six months from the date of first entry, unless otherwise provided by this Law or an international treaty.

A foreigner who has resided in Montenegro for 90 days, in accordance with paragraphs 1 and 2 of this Article, may re-enter and reside in Montenegro after a period of six months from the date of first entry.

**Cancellation of Stay of up to 90 Days**

**Article 32**

A stay of up to 90 days may be canceled for a foreigner if:
1) he/she has no valid passport or other document used for crossing the state border,
2) he/she does not meet the conditions for entry and residence laid down in this Law,
3) he/she has no funds for support during his/her stay in Montenegro and to return to the country of origin or to travel to a third country,
4) he/she fails to pay the fine imposed in Montenegro,
5) there is reasonable suspicion that a stay will not be used for the reported purpose.

The cancellation of residence referred to in paragraph 1 of this Article shall be decided by the Police. The decision includes the period within which a foreigner must leave the territory of Montenegro and the imposition of a ban on the entry into Montenegro for a certain period time (hereinafter referred to as “the ban”).

The period of ban referred to in paragraph 2 of this Article shall be counted from the day of departure from Montenegro.

An appeal against the decision referred to in paragraph 2 of this Article may be filed to the authority of state administration in charge of interior (hereinafter referred to as “the Ministry”), within eight days from the date of receipt of the decision.
The enforcement shall not be postponed by an appeal. The cancellation of a stay of up to 90 days and the ban are registered in the foreigner's passport.

A detailed procedure for the registration of a cancellation of stay of up to 90 days and the prohibition of entry into the foreigner's passport shall be prescribed by the Ministry.

**Termination of Stay of up to 90 Days**

**Article 33**

A foreigner’s stay of up to 90 days shall cease due to:

1. cancellation of the residence,
2. the expiration of the term for which his/her visa was issued, and
3. the expiration of the period referred to in Article 31 paragraph 2 of this Law,
4. if he/she was returned to Montenegro on the basis of an international treaty (readmission) because of an illegal stay.

**The Cancellation and Termination of Residence on the Basis of D Visa**

**Article 34**

The provisions of Articles 32 and 33 of this Law shall apply to the cancellation and termination of stay of foreigners on the basis of residence visa issued for a longer stay (D Visa).

**Temporary Residence**

**Entitlement to Temporary Residence**

**Article 35**

Temporary residence may be granted to a foreign person intending to stay in Montenegro for a period longer than 90 days for the purpose of:

- employment and work, performance of economic or entrepreneurial activity;
- seasonal work;
- secondary education or study;
- participation in programs of international student exchanges or other youth programs,
- specialization, vocational training and practical training;
- scientific research work;
- medical treatment;
- family reunification;
- humanitarian reasons;
- other justifiable reasons prescribed by law or international treaty.

A foreigner who is granted a temporary stay for the reasons set forth in paragraph 1 of this Article may stay in Montenegro in accordance with the purposes for which his/her temporary stay was granted.

**The Conditions for the Issuance of Approval**

**Article 36**

A foreigner may be granted a temporary stay if:

- he/she has means of subsistence;
Application for and Deciding on Temporary Residence
Article 37

An approval for temporary residence in Montenegro shall be issued by the Ministry, subject to prior approval by the Police.

An application for authorization of a temporary stay shall be submitted by a foreigner to a diplomatic or consular mission of Montenegro.

A foreign person requiring no visa for entering Montenegro may submit an application for the first temporary stay to the Ministry, at his/her place of residence.

With the application from paragraph 2 and 3 of this Article, a foreigner shall enclose a valid travel document, in addition to any other evidence justifying the reasons for applying for a temporary residence permit.

The foreigner who applied for temporary residence shall not change the reason of stay in the course of the application procedure.

A foreigner who applies for temporary residence before the expiry of 90 days of stay may remain in Montenegro until the final decision.

Refusal of Application
Article 38

The refusal of application for the issuance of temporary residence shall be made by a decision.

An appeal against the decision referred to in paragraph 1 of this Article may be lodged to the Ministry, within eight days from the date of receipt of the decision.

Validity Period
Article 39

Temporary residence shall be granted for a period of not longer than one year, unless otherwise provided by this Law.

Temporary residence permit shall be entered into the foreign person’s valid travel document whose period of validity shall exceed the period covered by the permit by at least three months.

If the application is filed in a foreign country, the first temporary residence permit shall be entered into the foreigner's passport by the diplomatic or consular mission of Montenegro.

Temporary stay for a foreigner who has no valid travel document shall be granted by a decision, until the travel document is issued.

More detailed procedure for issuing permits for temporary residence, as well as the form of approval and the application form referred to in Article 37 paragraph 2 of this Law shall be regulated by the Ministry.
Extension of Temporary Residence

**Article 40**

Temporary residence may be extended for a period not longer than two years, unless otherwise provided under this Law.

An application for the extension of temporary stay of foreigners shall be submitted to the Ministry, at the place of residence, not later than 30 days before the expiration of a temporary residence.

The provisions of Article 37 paragraphs 1, 4, 5 and 6 and Article 39 paragraphs 2 and 4 of this Law shall apply to the extension of temporary residence.

The application form for an extension of temporary stay shall be prescribed by the Ministry.

**Temporary Residence for Employment**

**Article 41**

Temporary residence for employment and work, and the performance of a business or entrepreneurship activity, may be granted to a foreign citizen who was previously issued a work permit, in accordance with the law governing the employment of foreigners.

Temporary residence of a foreigner under paragraph 1 of this Article shall be issued for a period specified in the work permit, or the period referred to in Article 39 paragraph 1 of this Law.

**Temporary Residence for Seasonal Employment**

**Article 42**

Temporary residence for seasonal employment may be granted to a foreigner who meets the requirements of Article 36 of this Law, and a work permit may be enclosed as a proof of legitimacy of the application for temporary residence.

The temporary residence under paragraph 1 of this Article may be granted for a period of up to eight months in a calendar year.

A temporary residence permit referred to in paragraph 1 of this Article shall be issued within seven days from the date of application.

**Temporary Residence for High School or Higher Education**

**Article 43**

Temporary residence may be granted to a foreigner for the purpose of high school or higher education provided that the requirements from Article 36 of this Law are met, with a certificate of training or studying enclosed as a proof of legitimacy of the application for temporary residence.

The temporary residence permit from paragraph 1 of this Article may be extended for a period not longer than two years following the expiration of the actual period of education, i.e. university attendance.

For the granting of temporary residence to a minor foreigner, for the purpose of secondary education, an approval of his/her legal representative shall be required.

**Temporary Residence for Participation in International Exchange Programs**
**Article 44**
A foreigner who comes to Montenegro to participate in programs of international exchange of students or other youth programs may be granted temporary residence if the requirements of Article 36 of this Law are met, and if the following is enclosed as a proof of legitimacy of the application for temporary residence:
1) confirmation of the state body i.e. institution responsible for the implementation of ratified international treaties on the exchange of high school or university students, confirming the participation of foreigners in international exchange programs,
2) confirmation of the competent authorities or institutions on financing the cost of education or study, support, accommodation, health insurance and the costs of repatriation of a foreigner back to the country of his/her nationality.

**Temporary Residence for Training, Professional Training or Practical Training**

**Article 45**
The temporary residence for the purpose of specialization, professional training or practical training may be granted to a foreigner who meets the requirements of Article 36 of this Law, and who files a certificate issued by a legal person or competent authorities in Montenegro approving the specialization, training or practical training, as well as a program establishing the duration of his/her stay, as a proof of legitimacy of the application for temporary residence.

**Temporary Residence for Scientific Research**

**Article 46**
Temporary residence for scientific research may be granted to a foreigner who meets the requirements of Article 36 of this Law, and who submits a contract concluded with a scientific institution in Montenegro proving the legitimacy of the application for temporary residence.

**Temporary Residence for Medical Treatment**

**Article 47**
Temporary residence for medical treatment in Montenegro can be granted to a foreigner who meets the requirements of Article 36 of this Law, and who submits a certificate issued by the health institution where he/she will be treated, including the time required for treatment, proving the legitimacy of the application for temporary residence.
The temporary residence under paragraph 1 of this Article may be extended for the time required for the treatment of foreigner.

**Temporary Residence for Family Reunification**

**Article 48**
An application for temporary residence for family reunification shall be submitted by a foreign person who is an immediate family member of a Montenegrin national or a foreign person who was granted the status of a temporary resident in Montenegro.

An immediate family in the sense of paragraph 1 of this Law shall include: a spouse, children born in our out of wedlock, step children and adopted children.
Notwithstanding paragraph 2 of this Article, another relative may also be considered as a family member if there are special personal or humanitarian reasons for family reunification in Montenegro.

Temporary residence for family reunification shall be granted for a term not exceeding one year or until the expiry of the temporary residence permit of the foreigner with whom the reunification was requested.

Temporary residence referred to in paragraph 4 of this Article may be extended when a Montenegrin citizen referred to in paragraph 1 of this Article died, as well as in the case of termination of marriage which lasted in Montenegro for at least three years.

A foreigner, an immediate family member of the Montenegrin citizen or a foreigner who is granted permanent residence in Montenegro, temporary residence may be extended until the conditions for eligibility for permanent residence under Article 54 paragraph 1 of this Law are satisfied.

Marriage of Convenience

Article 49

Temporary residence for family reunification shall not be granted to a foreigner if it is determined that the marriage is concluded to gain benefits.

Marriage of convenience, in terms of paragraph 1 of this Article, is considered to be the marriage that was entered into with the intention to achieve the entry or residence of foreigner in Montenegro, contrary to the conditions stipulated by this Law.

Circumstances that may indicate that the marriage was concluded to gain benefits are:
1) the spouses do not hold marriage;
2) the spouses fail to fulfill obligations arising from marriage;
3) the spouses did not get to know each other before the conclusion of marriage;
4) the spouses did not provide accurate personal data;
5) the spouses do not speak the language they both understand; and
6) tangible assets were given to conclude the marriage, and not as a custom of giving dowry, when the spouses come from the countries where there is a custom of giving dowry;
7) there is evidence that a marriage of convenience was previously concluded by the spouses, either in Montenegro or in a foreign country.

Temporary Residence of a Child Born in the Territory of Montenegro

Article 50

Temporary residence shall be granted and extended to a minor born in the territory of Montenegro who is not a citizen of Montenegro for the duration of temporary residence of one of his/her parents or guardians.

Temporary Residence for Humanitarian Reasons

Article 51

Temporary residence permit for humanitarian reasons may be granted to an alien who is assumed to be a victim of the criminal act of human trafficking, as well as a minor foreigner who is abandoned or the victim of organized crime, even if the requirements of Article 36 of this Law are not met.
The temporary residence on humanitarian grounds shall not be granted to a foreigner if it is required by reasons of national security and public order. The temporary stay on humanitarian grounds is granted for a period of three months to one year and may be extended for as long as there are grounds referred to in paragraph 1 of this Article. A foreigner referred to in paragraph 1 of this Article shall not be forcibly removed because of illegal entry or residence in Montenegro. A foreigner referred to in paragraph 1 of this Article, for whom there is reasonable fear that by giving a statement he/she could be exposed to danger to life, health, physical integrity or liberty, shall be provided with physical protection and rights under the provisions of the law governing the protection of witnesses.

**Cancellation of Temporary Residence**

**Article 52**
Temporary residence of a foreign person be cancelled if the following is subsequently established:

- Existence of causes from Article 8 of this Law;
- Employment and work without a valid work permit, that is contrary to the law governing the employment and work of foreigners;
- Residence for other purposes, contrary to those for which his or her residence permit was issued;

When considering the cancellation of a foreign person’s residence, the following shall be particularly taken into account:

- Duration of residence;
- Personal, family, economic and other circumstances;
- Period of time within which the foreign person shall have to leave Montenegro, provided that such a period may not be longer than 30 days;
- Period of prohibition of entry into Montenegro.

The cancellation of temporary residence under paragraph 1 of this Article shall be made by the Police. The decision shall determine the period within which a foreigner must leave the territory of Montenegro and the imposition of ban on entry into Montenegro. The ban of entry referred to in paragraph 3 of this Article shall be counted from the day of departure from Montenegro.

An appeal against the decision referred to in paragraph 3 of this Article may be lodged to the Ministry, within eight days from the date of receipt of the decision. Cancellation of temporary residence and the prohibition of entry shall be entered in the foreigner's passport.

A detailed procedure for the registration of cancellation of temporary residence and the prohibition of entry into the foreigner's passport shall be regulated by the Ministry.

**Termination of a Temporary Residence**

**Article 53**
Temporary residence of a foreign person in Montenegro shall be concluded if:

- His/her temporary residence was cancelled;
- A protective measure of expulsion or security measure of deportation was pronounced;
The period of temporary residence expired.
The grounds for which the temporary residence was granted ceased to exist;
The duration of temporary residence outside Montenegro is longer than 90 days.
The decision on termination of temporary residence on the grounds referred to in paragraph 1 items 4 and 5 of this Article shall be issued by the Ministry.
An appeal may be filed against the decision referred to in paragraph 2 of this Article within eight days from the date of receipt of the decision.
The appeal referred to in paragraph 3 of this Article shall be decided by the Ministry.

3. Permanent Residence

The Right to Permanent Residence

Article 54

Citizens of the countries established in the territory of former Yugoslavia who had registered permanent residence in Montenegro before 3 June 2006 shall be eligible for permanent residence without application and without special approval, subject to the obligation of filing for registration.
Permanent residence may be granted to a foreigner who stayed in Montenegro for five consecutive years on the basis of a temporary residence permit before the date of application.
Exceptionally, permanent residence may be granted to a foreigner who was granted temporary residence in Montenegro for less than five years continuously before the application, if so required by reasons of humanity, or would be of interest for Montenegro.
Continuous residence within the meaning of paragraphs 1 and 2 of this Article shall mean a temporary residence during which a foreigner was absent from Montenegro several times for a total period of 10 months or six months continuously.
For a foreigner who is granted temporary residence in Montenegro in accordance with Article 43 of this Law, the time required for approval of permanent residence shall include half of the time spent in Montenegro.
The time required for approval of permanent residence shall not include the time during which a foreigner was in Montenegro:
1) on temporary residence approved for seasonal work,
2) serving a prison sentence.

The Rights and Responsibilities of a Foreigner with Permanent Residence

Article 55

A foreigner who is granted permanent residence in Montenegro has the right to:
1) labor and employment;
2) education and training;
3) recognition of diplomas and certificates;
4) social welfare, health and pension insurance;
5) tax benefits; and
6) access to the market for goods and services;
7) freedom of association, connecting and membership of organizations representing the interests of workers or employers.
A foreigner shall be entitled to the rights referred to in paragraph 1 of this Article in accordance with the laws regulating the manner of exercising these rights.

**Application and Approval**

**Article 56**
Permanent residence permit shall be issued by the Ministry.

A foreigner shall submit an application for permanent residence to the Ministry, at his/her place of residence.

Permanent residence permit shall be entered in the foreigner's passport.

A more detailed procedure for the issuing of permits for permanent residence, and the form of approval and the application form referred to in paragraph 2 of this Article shall be prescribed by the Ministry.

**Rejection of Application**

**Article 57**
No permanent residence shall be granted to a foreign person who:

- Has no valid travel document;
- was convicted in Montenegro of a criminal act for which he or she is being prosecuted ex officio or where the criminal charges were brought against that person for having committed such a criminal act;
- Has no financial resources for personal maintenance;
- Is not covered by health insurance;
- Has no accommodation;
- If so required for the reasons of security and public order.

Administrative proceedings may be instituted against the decision of the Ministry rejecting an application for permanent residence.

**Cancellation of Permanent Residence**

**Article 58**

The permanent residence status of a foreign person may be cancelled if:

- He or she has been unconditionally sentenced to a prison term of more than six months for a criminal act for which he or she is being prosecuted ex officio;
- So required for the reasons of national security, public order or the protection of public health;
- The existence of reasons for the cancellation of permanent residence is established;
- He or she provided false information on personal identity or concealed any circumstances of relevance for the issuing of a permit.

The provisions of Article 52 paragraphs 2 of this Law shall apply accordingly to deciding on the cancellation of permanent residence.

The decision on cancellation of permanent residence shall be issued by the Ministry. The decision establishes the period within which a foreigner shall leave the territory of Montenegro and the imposition of a ban on entry into Montenegro.

The period of ban on entry referred to in paragraph 3 of this Article shall be counted from the day of departure from Montenegro.

368
Administrative proceedings may be instituted against the decision referred to in paragraph 3 of this Article. Cancellation of permanent residence and the prohibition of entry shall be entered in the foreigner's passport. A detailed procedure for the cancellation of registration of permanent residence and the prohibition of entry into the foreigner's passport shall be prescribed by the Ministry.

**Termination of the Right to Permanent Residence**

**Article 59**

The right of a foreign person to permanent residence shall be terminated if:

A security measure of deportation or protective measure of expulsion was pronounced against this person;

It is established that a foreign person moved out of Montenegro or continuously stayed abroad for a period longer than one year without having informed the Ministry accordingly;

His or her permanent residence was cancelled;

He or she renounced his or her right to permanent residence by making a declaration;

He or she was granted Montenegrin citizenship.

The decision on termination of permanent residence from item 2 paragraph 1 of this Article shall be issued by the Ministry. Administrative proceedings may be instituted against the decision from paragraph 2 of this Article.

**Application of the Special Law**

**Article 60**

The law governing the domicile and residence of Montenegrin citizens and foreigners shall apply to the registration or deregistration of place of residence or change of home address.

**V. ILLEGAL RESIDENCE**

**Obligation of Foreign Citizen to Leave Montenegro**

**Article 61**

Any stay in Montenegro with no visa or residence permit shall be regarded as illegal residence.

A foreign person illegally residing in Montenegro shall leave its territory immediately or within a specified deadline.

It shall be deemed that a foreign person left Montenegro when he or she enters another country into which he or she is allowed to enter.

A foreign person shall be obliged to prove that his/her stay in Montenegro is legal.

**Deadline for Departure from Montenegro**

**Article 62**

The Police shall issue a decision specifying the deadline within which a foreign person whose residence is illegal must leave the territory of Montenegro, and also, if so required the point
of crossing of the state border and an obligation to report to the competent border police official.

An appeal against the decision referred to in paragraph 1 of this Article may be lodged to the Ministry within three days following that of its delivery.

The Ministry shall issue a decision on the appeal from paragraph 2 of this Article, not later than within eight days following that of its submission.

The execution of the decision shall not be deferred by the appeal.

When setting the time limit from paragraph 1 of this Article, an objective time limit within which the foreign person in question will be able to leave the territory on Montenegro shall be taken into consideration, whereas such deadline may not be longer than 30 days after the issuing of a decision.

Following the request of a foreign person or ex officio, another time limit may be set for a foreign person who failed to leave the territory of Montenegro for justified reasons within the time limit from paragraph 5 of this Article.

A foreign person who was pronounced a protective measure of expulsion or security measure of deportation or who has to be deported according to international treaty shall be given a time limit to leave the country only if such an action is justified by legitimate reasons.

The Protective Measure of Deportation

Article 63

In misdemeanor cases specified by this Law, the protective measure of deportation may be imposed on a foreigner.

The provisions of Article 52 paragraph 2 shall apply accordingly to the consideration of a decision to proclaim the protective measure of deportation.

VI. COMPULSIVE DEPORTATION

Execution of Compulsive Deportation

Article 64

A foreign person who resides in Montenegro illegally or fails to leave Montenegro within the specified deadline shall be compulsively deported by the Police.

Prohibition of Compulsive Deportation

Article 65

No foreign person shall be compulsively deported to a country where his or her life or freedom may be threatened because of racial, religious or ethnic belonging, membership in a particular social group or for having a different political conviction or where he or she might be exposed to torture, inhuman or degrading treatment and punishment.

Detention of Foreigners

Article 66
When so required for the reasons of ensuring a compulsory deportation, a foreign person may be detained at the premises of the Police, but not for a period longer than 12 hours. The provisions of the law regulating police affairs shall accordingly apply to the detention of foreign persons.

**Accommodation Facilities for Foreigners**

**Article 67**
The freedom of movement of a foreign person who could not be compulsively deported at once or whose identity was not established shall be limited by placing this person into a Shelter for foreign persons (hereinafter referred to as “The Shelter”). Exceptionally, another appropriate lodging shall be found for a foreign person in need of medical care or having other special needs.

A foreigner who has a provided accommodation and means of subsistence and cannot be forcibly removed may be required to have to stay in a particular place.

**Deciding on the Stay at the Shelter**

**Article 68**
The Police shall issue a decision on accommodation at the Shelter.

An appeal against the decision referred to in paragraph 1 of this Article may be lodged to the Ministry, within eight days from the date of receipt of the decision.

The appeal referred to in paragraph 2 of this Article shall be decided by the Ministry, within eight days from receipt of the appeal.

**Duration of Stay at the Shelter**

**Article 69**
The stay at the Shelter shall not be longer than 90 days. Following the expiration of the time limit from paragraph 1 of this Article, foreign person may be placed at the Shelter for 90 days more if:

- The procedure for the establishing of identity or data collection is in progress;
- So required for security reasons;
- Intentionally interfering with forced removal.

The time spent by a foreigner outside the Shelter, serving a sentence of imprisonment or detention, shall not be included in the duration of his/her stay at the Shelter.

A foreigner whose identity was established can be granted to leave the Shelter, if not forcibly removed for the reasons mentioned in Article 65 of this Law.

**Observing of the Rules of Conduct at the Shelter**

**Article 70**

A foreign person shall observe the rules of conduct at the Shelter and shall not leave the Shelter without permission.

A foreign person who may be reasonably suspected of behaving in the future in a manner contrary to paragraph 1 of this Article shall be subject to an enhanced supervision.

The rules of conduct at the Shelter shall be prescribed by the Ministry.
Termination of Stay at the Shelter

Article 71
The stay of a foreigner’s at the Shelter shall be terminated:
Following the departure from Montenegro;
when he/she applied for the grant of asylum;
following the expiration of the determined period of stay;
after determining the identity, if that was the reason for staying at a shelter.

Placement of Underage Person in the Shelter

Article 72
An underage person shall be placed in the Shelter together with his or her parents, that is another legal representative, unless assessed that another type of accommodation is more favorable for him or her.
The measure of enhanced supervision at the Shelter may be ordered for an underage foreign person who has not turned 16 years of age yet, only if such a person is accompanied by his or her parents or another legal representative.
An underage person shall not be returned to the country of origin or a third country that is ready to accept such a person if this is contrary to Articles 3, 5 and 8 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment including Protocol No 2 amending the Convention, and Articles 9 and 37 of the Convention on the Rights of the Child.

Determination of Compulsory Place of Residence

Article 73
The compulsory residence from paragraph 3 of Article 67 shall be established by the Police ex officio.
The compulsory residence from paragraph 1 of this Article shall not be longer than six months.
Determination of the mandatory stay under paragraph 1 of this Article shall not relieve the foreigner of having to leave Montenegro.
A foreigner for whose compulsory stay in a certain place is established shall be issued a special identification document which the foreigner is obliged to return before leaving Montenegro.
The appearance and content of the special identification document of a foreigner who is required to stay under paragraph 4 of this Article shall be prescribed by the Ministry.

Restriction of Movement to a Particular Place of Residence

Article 74
In the case from Article 73 of this Law, a foreigner shall remain at a defined address and regularly report to the Police at his/her place of compulsory residence.

Termination of Compulsory Residence

Article 75
The compulsory residence of a foreigner shall be terminated:
Following his/her departure from Montenegro;
Following the expiration of established time limit;
if he/she fails to report regularly to the Police in accordance with Article 74 of this Law;
if he/she is granted refugee status, subsidiary or temporary protection, temporary residence or permanent residence,
if it is determined that he/she has no accommodation or means of subsistence provided.
A foreigner alien whose mandatory stay at a certain place stopped, and who failed to leave Montenegro shall be forcibly removed or placed at the Shelter.

Foreigners with Special Needs
Article 76
During the process of forced removal, special needs of foreigners shall be taken into account such as: minors, persons totally or partially incapacitated, children separated from parents or guardians, persons with disabilities, elderly persons, pregnant women, single parents with dependent children, as well as persons who have been exposed to torture, rape or other serious forms of psychological, physical or sexual violence.
In the conduct of official actions affecting the foreigners referred to in paragraph 1 of this Article, the Police shall act in compliance with international treaties and the regulations governing placement of persons with special needs.

Removal of Documents and Objects
Article 77
For the purpose of ensuring the execution of a protected measure of deportation, travel and other documents, travel tickets and funds may be temporarily taken away from a foreign person.
Seized funds are used for covering the costs of forced removal of foreigners. A receipt on the seizure of travel and other documents, travel tickets, objects and funds shall be issued on a form prescribed by the Ministry.

Costs of Forced Removal
Article 78
The costs of placement at the Shelter or due to a forced removal shall be borne by the foreign person.
If the foreigner does not have the funds to reimburse the costs referred to in paragraph 1 of this Article, the cost shall be compensated by:
1) a natural or legal person who has committed to bear the costs of stay of the foreigner;
2) the carrier that failed to transport the foreigner in accordance with Article 29 paragraph 2 of this Law;
3) the employer who employed the foreigner contrary to the law governing the work and employment of foreigners.
The amount of costs referred to in paragraph 2 of Article shall be established by the Police. The Costs that cannot be charged as set forth in paragraphs 1 and 2 of this Article shall be settled from the budget of Montenegro.
The form of payment of accommodation costs at the Shelter and forced expulsion and the form of a certificate on the recovery of costs shall be prescribed by the Ministry.

[...]

X COLLECTING PERSONAL DATA ABOUT THE FOREIGNER

Article 96
The Police may collect personal information about a foreigner from the bodies of state administration, business organizations, entrepreneurs and the foreigner if this is:
1) in the interest of a foreigner, who not object it,
2) necessary to verify the information on a foreigner.
The authorities referred to in paragraph 1 of this Article shall, at the request of the Police, provide the requested information.
Collecting and processing of personal data about a foreigner shall be in accordance with the law governing the protection of personal data.

XI. RECORDS

Types and Jurisdiction for Keeping

Article 97
The Ministry shall keep records of: issued travel documents for foreigners, the replaced and issued ID cards for foreigners, issued travel papers for foreigners in Montenegro and foreigners whose permanent residence was canceled.
The state administration body responsible for foreign affairs shall keep records of: issued visas, rejected visa applications and canceled visas, issued special identity cards for foreigners and issued travel papers for foreigners in another country.
The Police shall keep the records on: foreigners whose residence was canceled, foreigners who were refused entry into/exit from Montenegro, visas issued at the border crossing, rejected visa applications, and annulled and shortened visas, reported missing identification documents for foreigners and temporary seizure of travel documents.
The content and manner of keeping the records referred to in paragraphs 1 and 3 of this Article shall be prescribed by the Ministry and the content and manner of keeping the records referred to in paragraph 2 of this Article shall be stipulated by the state administration body responsible for foreign affairs.
[...]

17. EXCERPTS OF THE LAW ON ASYLUM

Official Gazette of the Republic of Montenegro 45/06 of 17 July 2006 [unofficial translation]

Pursuant to Article 88 item 2 of the Constitution of the Republic of Montenegro, I hereby issue the

Decree Promulgating the Law on Asylum
I hereby promulgate the Law on Asylum passed by the Parliament of the Republic of Montenegro at the seventh sitting of the first ordinary session in 2006 on 10 July 2006.

No 01-993/2
Podgorica, 11 July 2006
President of the Republic of Montenegro
Filip Vujanovic

LAW ON ASYLUM

I GENERAL PROVISIONS

Scope

Article 1
This Law shall regulate the principles, conditions and procedures for granting asylum, recognising refugee status and according subsidiary and temporary protection, the authorities responsible for decision-making, the rights and obligations of asylum seekers, persons who have been recognised as refugees and persons who have been accorded subsidiary or temporary protection, as well as the reasons for the cessation and revocation of refugee status and subsidiary protection and the cessation of temporary protection in the Republic of Montenegro (hereinafter referred to as “Montenegro”).

Granting asylum

Article 2
An alien shall be guaranteed the right to file an application for asylum in Montenegro. Asylum shall be given to aliens in need of international protection in accordance with the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and other ratified international agreements and universally accepted rules of international law, pursuant to this Law.
Refugee status shall be recognised with respect to an alien if, based on his or her asylum application, it has been established that he or she has a well-founded fear of being persecuted for reasons of race, religion, citizenship, membership of a particular social group, or political opinion, in his or her country of origin, and because of this fear he or she is unable or unwilling to avail himself or herself of the protection of the country of origin.
Subsidiary protection, as supplemental protection of refugees in accordance with human rights instruments, shall be accorded to an alien who has not met the requirements for the recognition of refugee status but who would be subjected to torture or inhuman or degrading treatment or punishment, or whose life, safety or freedom would be threatened on account of generalised violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or freedom, in case he or she is returned to his or her country of origin or another state.
Temporary protection is an urgent and exceptional measure by which aliens shall be provided protection in the case of a mass, sudden or expected influx from a state where their life, safety or freedom is threatened on account of generalised violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or
freedom, where because of the mass influx there is no possibility to conduct individual procedures for refugee status determination.

Applicability of other laws

Article 3
The provisions of the Law on General Administrative Procedure shall apply to asylum procedures except as otherwise provided for in this Law.
The provisions of the law governing the residence of aliens may not be applied, once an asylum application has been submitted, until a final judgment has been issued.
An alien who submits an asylum application shall be considered to have abandoned any application he or she has submitted for residence authorisation under the provisions of the law referred to in paragraph 2 of this Article.

Definitions

Article 4
The terms used in this Law shall have the following meanings:
1) asylum is the right to residence and protection given to an alien who, on the basis of a decision of the authority charged with adjudicating asylum claims, has been recognised as a refugee or accorded another form of protection pursuant to this Law;
2) an alien is a person who is not a Montenegrin citizen, irrespective of whether he or she is a citizen of another state or stateless;
3) an asylum application is a submission through which an alien seeks asylum;
4) an asylum seeker is an alien who submits an asylum application in the territory of Montenegro, from the day of the submission of the application until the issuance of the final judgment;
5) a refugee is an alien who, owing to a well-founded fear of being persecuted for reasons of race, religion, citizenship, membership of a particular social group or political opinion, is outside of his or her country of origin and is unable or, owing to such fear, unwilling to avail himself or herself of the protection of that state, or an alien without citizenship who is outside of the country of his or her last habitual residence and unwilling, or owing to such fear, unwilling to return to the country of origin;
6) a recognised refugee is an alien who is in the territory of Montenegro and who has been found by the competent authority to have a well-founded fear of persecution in his or her country of origin on account of race, religion, citizenship, membership of a particular social group or political opinion, to be unable or unwilling, owing to such fear, to avail himself or herself of the protection of his or her country of origin;
7) an unaccompanied minor is an alien younger than 18 years of age who has been left without the attendance of either parent or guardian either before or after his or her arrival in Montenegro, until he or she has been placed under guardianship;
8) an adult without legal capacity is an alien who is over 18 years of age, fully or partially deprived of legal capacity by virtue of a court decision;
9) a person accorded subsidiary protection is an alien who has not met the requirements to be recognised as a refugee, and who is granted residence and protection because in his or her country of origin or another country he or she would be subjected to torture or inhuman or degrading treatment or punishment, or his or her life, safety or freedom would be threatened on
account of generalised violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or freedom;

10) persons accorded temporary protection are aliens to whom protection is provided on an exceptional basis in the case of a mass, sudden or expected influx from a state where their life, safety or freedom is threatened on account of generalised violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or freedom, where because of the mass influx there is no possibility to conduct individual procedures for refugee status determination;

11) country of origin is the state or states of which an alien is a citizen or in which a stateless person had a place of habitual residence;

12) community connotes the citizens of Montenegro within a specific area.

II BASIC PRINCIPLES

Subsidiary protection

Article 5
If an authority, after conducting the procedure to adjudicate an asylum application, determines that the conditions for refugee status recognition have not been fulfilled, it shall be obligated to determine whether the conditions for according another form of protection have been fulfilled as provided for by this Law.

Non-refoulement

Article 6
A person who has been granted asylum or whose asylum has ceased or been revoked, shall not be returned or expelled to the border of a state where:

1) his or her life or freedom would be threatened on account of race, religion, citizenship, membership of a particular social group or political opinion;

2) he or she could be subjected to torture, inhuman or degrading treatment or punishment;

3) his or her life, safety or freedom would be threatened on account of generalised violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or freedom.

The rights referred to in paragraph 1 of this Article may not be invoked by a person if there are serious reasons to believe that he or she is a threat to the security of Montenegro, or if he or she, after being convicted through a final court judgment of a serious criminal offence, constitutes a danger to the community, except in the case referred to in paragraph 1, item 2 of this Article.

After it is established that a person meets the conditions described in paragraph 1, item 2 of this Article, the person shall be given authorisation for residence in accordance with the law governing the residence of aliens.

Non-discrimination

Article 7
Discrimination in the asylum procedure shall be prohibited on any basis, and in particular on the basis of race, colour, sex, citizenship, social origin or birth, religion, political or other opinions, country of origin, economic status, culture, language, age, or mental or physical disability.
Confidentiality and data protection

Article 8
All personal data contained in individual asylum applications, as well as all statements, explanations and data from documents that become known or are used in the course of the procedure, shall be confidential and constitute official secrets.
The authorities conducting the procedure, other authorities and persons involved in the procedure shall store the personal data they collect or learn in the course of the procedure in accordance with ratified international agreements, regulations on personal data protection and the provisions of this Law.
The authorities and persons referred to in paragraph 2 of this Article shall be obligated to ensure that the statements, explanations and data from the documents referred to in paragraph 1 of this Article do not become available to the authorities of the asylum seeker’s country of origin.
The Office of the United Nations High Commissioner for Refugees (hereinafter referred to as “UNHCR”) shall be given unhindered access to asylum seekers, their files, information and statistical data.

Family unity

Article 9
With the consent of the asylum seeker, measures shall be taken in the asylum procedure for safeguarding family unity.

Non-punishment for unlawful entry or residence

Article 10
An asylum seeker who has come directly from a state where his or her life or freedom was threatened within the meaning of Article 2 of this Law shall not be punished for unlawful entry or residence, provided that he or she files an asylum application without delay and cites reasons, recognised as valid, for his or her unlawful entry or residence.
A person referred to in paragraph 1 of this Article shall not be deprived of liberty except when stipulated by law.

Protection of persons with special needs

Article 11
In the asylum procedure, care shall be taken of the special needs of minors, persons completely or partially deprived of legal capacity, unaccompanied minors, persons with mental or physical disabilities, elderly persons, pregnant women, single parents with minor children, persons subjected to torture, rape or other serious forms of mental, physical or sexual violence and other vulnerable persons.

Provisions relating to gender

Article 12
Asylum seekers shall be treated in a gender-sensitive manner at all the stages of the asylum procedure.
An asylum seeker shall have the right to communicate with an official and interpreter of the same gender.
Females who are accompanied by males shall be informed of their right to file their own personal asylum applications.

**Respect for legal order**

*Article 13*

An asylum seeker or person granted asylum shall be obligated to abide by the Constitution, laws, other regulations and ratified international agreements, and to act according to the measures of the competent authorities.

**Restriction of political activity**

*Article 14*

An asylum seeker or person granted asylum shall be prohibited from founding, taking part in or assisting political and other organisations that, through their activities, threaten Montenegro’s security and public order, or that have goals contrary to the principles of international law.

**Voluntary return**

*Article 15*

The competent authorities may provide assistance to recognised refugees or persons accorded another form of protection who voluntarily return to their country of origin or a third country. Upon the cessation or revocation of refugee status and subsidiary protection, or the cessation of temporary protection, the Office referred to in Article 19, paragraph 2 of this Law may organise, in cooperation with UNHCR, voluntary return to the country of origin or a third country.

**Cessation of protection**

*Article 16*

A decision on the cessation or revocation of refugee status and subsidiary protection may be issued only after conducting a procedure and establishing one of the reasons for cessation or revocation of protection stipulated by this Law.

**Legal protection**

*Article 17*

An appeal may be lodged against any decision of the first-instance body conducting the procedure. The appeal must be lodged within 15 days from the day on which the first-instance decision is served, unless a shorter period is provided in this Law. An administrative dispute may not be lodged against a decision of the second-instance body.

**Cooperation with UNHCR**

*Article 18*

The first-instance and second-instance bodies referred to in Article 17 of this Law shall cooperate with UNHCR at all the stages of the asylum procedure and share information and statistical data on asylum seekers, or persons who have been granted asylum, and on the implementation of the Convention Relating to the Status of Refugees and other international instruments concerning refugees, as well as laws and other regulations that are in force or that will be promulgated in the future.
IV GRANTING OF ASYLUM

1. Reception of asylum seekers

Assistant to asylum seekers

Article 23

An asylum seeker shall be provided with necessary assistance, given information on the conditions and procedures for granting asylum, on rights and obligations, and on establishing communication with persons providing legal aid, UNHCR and other organisations engaged in protecting the rights of refugees, as a rule, in writing and in a language he or she can be reasonably expected to understand.

An asylum seeker shall have the right, at all the stages of the procedure, to communicate with the persons and bodies referred to in paragraph 1 of this Article, for the purpose of obtaining assistance.

A representative of UNHCR shall be enabled, at all the stages of the procedure, to communicate with an asylum seeker and collect information on the course of the procedure.

Submission of asylum applications

Article 24

An alien may declare, at a border crossing, his or her intention to submit an asylum application, after which he or she shall be permitted to enter Montenegro and provided accommodation.

An asylum seeker shall be enabled, as soon as possible, to submit his or her asylum application and to receive confirmation of the submitted application.

An asylum application shall be submitted to the Office, in the written form or orally on the record, in a language that is in official use in Montenegro. If the asylum seeker does not speak the language in official use, he or she may submit the application in the language of his or her country of origin, or in a language with which he or she is familiar.

A state administration body, a body of local self-government, or another non-competent body before which an alien seeks asylum shall be obligated to record the claim and inform the Office about it without delay.

The Ministry shall prescribe the form of the asylum application as well as the form for the records referred to in paragraph 3 of this Article.

Accommodation of asylum seekers

Article 25

The competent body shall provide accommodation for asylum seekers in the Centre for Accommodation of Asylum Seekers (hereinafter referred to as “Centre”) or in another of the competent body’s facilities for collective accommodation.

Persons with special needs shall be given special accommodation and care.

A person who has his or her own financial means, or who is in a position to secure accommodation and maintenance in another way, may be accommodated outside the Centre or other facility for collective accommodation, but is not entitled to social welfare.
The UNHCR, the Montenegrin Red Cross and other organisations dealing with the protection of refugees may organise pedagogical, educational or other programs in the Centre and may provide legal or other assistance, upon the consent of the competent body.

**Data collection**

*Article 26*

After being accommodated at the Centre, an asylum seeker shall be photographed and fingerprinted, his or her signature taken, and if necessary other data collected for the purpose of verification or establishment of identity.

An asylum seeker shall be obligated to get photographed and to provide the data referred to in paragraph 1 of this Article.

The Ministry shall prescribe the procedure and manner of collecting the data referred to in paragraph 1 of this Article.

**Temporary seizure of documents**

*Article 27*

Documents that can serve as proof for establishing facts in the procedure – in particular, travel documents, visas and residence permits; identity cards or other identification documents; certificates, extracts and other documents from the registries of births, marriages and citizenship, travel tickets, as well as other documents – may be temporarily seized from an asylum seeker if they have not been attached to the application.

A certificate shall be issued confirming the temporary seizure of documents.

Temporarily seized travel and personal documents shall be returned to the person at his or her request, except in the case of abuse or forgery.

**Minors and persons of age without legal capacity**

*Article 28*

After establishing identity and the fact that a minor is unaccompanied, or that a person of age is without legal capacity, such persons shall be provided with guardians in accordance with the law.

Asylum applications by the persons referred to in paragraph 1 of this Article shall be resolved on a priority basis and decisions shall be taken within 30 days from the day of the application’s submission.

During the procedure, care shall be taken regarding the accommodation, psycho-physical condition and best interest of a minor and measures shall be undertaken for the tracing of his or her family members.

A person of age without legal capacity shall be entitled to necessary care and protection, in accordance with the law.

**2. Rights and obligations of asylum seekers**

**Rights of asylum seekers**

*Article 29*

An asylum seeker shall be entitled to:

1) residence and freedom of movement;
2) an identification document proving his or her identity, legal status, residence right and other rights stipulated by this Law; 
3) an aliens’ travel document for the purpose of travelling abroad, pursuant to the regulations on the residence of aliens; 
4) free primary and secondary education in public schools; 
5) provision of accommodation if necessary, and appropriate living standards; 
6) health care, in accordance with separate regulations; 
7) family unity; 
8) legal aid; 
9) work within the Centre or other facility for collective accommodation; 
10) social welfare; 
11) freedom of religion; 
12) access to UNHCR and non-governmental organisations for the purpose of obtaining legal aid in the asylum procedure; 
13) humanitarian assistance.

Obligations of asylum seekers

Article 30
Law on Asylum 10
Official Gazette of the Republic of Montenegro 45/06 of 17 July 2006 [unofficial translation]
An asylum seeker shall be obligated:
1) to reside in the Centre or other facility for collective accommodation if the accommodation and maintenance have not been provided in another manner; 
2) to cooperate with the bodies charged with the implementation of this Law, submit identity documents and all documents in his or her possession, facilitate searches of his or her person, luggage and vehicle, provide data on property and income and other data that may be used as evidence in the procedure; 
3) to remain available and reply to requests by the Office and the competent body; 
4) to report to the competent body any changes in finances and property that could affect eligibility for social welfare, accommodation, maintenance, health care and other rights; 
5) to report to the Office any changes of residence and address within three days from the day of the change, if the asylum seeker has himself or herself provided the accommodation; 
6) not to leave Montenegro without permission, during the pendency of the asylum procedure; 
7) to submit to a medical examination and other measures aimed at preventing the spread of infectious diseases, in accordance with health regulations; 
8) to respect the house rules of the Centre or other facility for collective accommodation; 
9) to abide by any decision on the temporary restriction of movement.

Temporary restriction of movement

Article 31
An asylum seeker may, on an exceptional basis and through a decision of the competent body, be restricted in movements outside of the Centre or other facility for collective accommodation, or outside of a designated area, for up to 15 days if:
1) his or her identity needs to be established;
2) he or she has destroyed his or her travel or personal documents or possesses false documents with the intention of misleading the competent authorities;
3) it is necessary to do so in order to protect the safety of the community.

The person referred to in paragraph 1 of this Article shall have the right to communicate with UNHCR.

The movement of persons under 16 years of age, who are unaccompanied, shall not be restricted unless that is the only possibility.

An appeal against the decision referred to in paragraph 1 of this Article may be lodged within eight days from the day of the receipt of the decision. The appeal shall not have suspensive effect.

3. Asylum procedure

Objective of the procedure

Article 32
In the course of the asylum procedures, it shall be established whether the conditions for granting asylum have been fulfilled in accordance with this Law.

An asylum seeker shall be given sufficient time to prepare his or her statement and to obtain legal aid.

Use of language and script in the procedure

Article 33
If an asylum seeker does not understand the language in official use in Montenegro, he or she shall follow the course of the procedure and participate in it in his or her own language, or in a language that he or she has indicated he or she understands, through an interpreter provided by the Office.

An asylum seeker may engage his or her own interpreter.

Evidence accompanying an asylum application written in a language and script which is not in official use must be translated if relevant to reaching a decision on the application.

Exclusion of the public

Article 34
The public shall be excluded from the asylum procedure.

A legal representative, a person with power of attorney, a guardian of a minor or person of age without legal capacity, a UNHCR representative, and an interpreter may be in attendance when the asylum seeker gives testimony.

The persons referred to in paragraph 2 of this Article shall be informed in writing of the date, time, and venue of the asylum seeker’s testimony.

Testimony

Article 35
An asylum seeker shall be enabled, as soon as possible after the submission of the asylum application, to present the facts and circumstances of relevance to the decision-making. If necessary, the person may give testimony multiple times.

The official conducting the procedure shall be obligated to enable the asylum seeker to extensively describe, explain and prove, in his or her testimony, all of the circumstances and facts
that may be of relevance to the granting of asylum, on which the asylum seeker shall be informed in the summons referred to in Article 34, paragraph 3 of this Law, as well as to ensure that lack of knowledge and experience does not undermine the rights of the asylum seeker.

The asylum seeker shall be obligated to cooperate, throughout the procedure, with the official conducting the procedure, to enable access to all evidence in his or her possession, and to submit all documents and papers and present and explain all facts and circumstances of relevance to the decision-making.

During the testimony referred to in paragraph 1 of this Article, minutes shall be taken and signed by the persons who took part in the procedure.

The testimony may be audio recorded, provided that the asylum seeker is informed of this.

**Reasons for exclusion**

**Article 36**

Refugee status shall not be recognised in the case of an alien with respect to whom there are reasonable grounds to believe:

1) that he or she has committed a crime against peace, a war crime or a crime against humanity, within the meaning of the international instruments that contain provision on such crimes;

2) that he or she has committed a serious crime under international law, outside Montenegro and prior to arrival in Montenegro;

3) that he or she is guilty of acts contrary to the objectives and principles of the United Nations.

Refugee status shall not be recognised in the case of an alien who enjoys the protection or assistance of a body or agency of the United Nations, other than UNHCR.

The provision of paragraph 2 of this Article shall not apply when protection or assistance has ceased, for any reason whatsoever, prior to the final settlement of the status of the alien, if the asylum procedure has not been completed.

Refugee status shall not be recognised in the case of an alien who has been recognised by the authorities in Montenegro as having the rights and obligations arising from the possession of Montenegrin citizenship.

**Service of documents**

**Article 37**

Documents in the asylum procedure shall be served on an asylum seeker in person, or on his or her legal representative or on a person to whom the asylum seeker has given power of attorney. A document shall be considered served when it has been received, in a legally defined manner, by one of the mentioned persons.

The summons and other documents shall be served on the asylum seeker in a language and script that the asylum seeker has indicated he or she understands.

**4. Decisions on asylum applications**

**Types of decisions**

**Article 38**

On the basis of the taken evidence and established facts, a decision shall be reached to terminate the procedure, grant the application and recognise refugee status, accord subsidiary protection, or reject the application.
Termination of the procedure

Article 39
A decision may be taken to terminate the procedure if the asylum seeker:
1) abandons his or her asylum claim, orally on the record or in writing;
2) fails to respond to the Office’s summons as well as to the resent summons, without previously giving a valid reason;
3) fails to inform the Office of a change in place of residence or address, or otherwise prevents service of the summons, without a valid reason;
4) refuses to cooperate in establishing his or her identity;
5) deliberately avoids providing information on the facts or circumstances, or submitting evidence in his or her possession, essential for establishing the merits of the application;
6) leaves the Centre or other facility for collective accommodation without prior notice and fails to return within three days of his or her arbitrary departure, as established on the basis of official records;
7) leaves Montenegro during the procedure, without authorisation.

An appeal against the decision referred to in paragraph 1 of this Article may be filed within eight days from the day of its service.

The State Commission shall issue a decision on the appeal referred to in paragraph 2 of this Article within 30 days from the day on which the appeal is lodged.

Rejection of asylum applications

Article 40
A decision shall be taken to reject the asylum application if it has been established that:
1) there is no well-founded fear of persecution or real risk referred to in Article 2, paragraphs 3 and 4 of this Law;
2) there is a reason for exclusion referred to in Article 36 of this Law;
3) the application is manifestly unfounded, based on the reasons referred to in Article 41 of this Law;
4) the asylum seeker holds the citizenship of a third country and has not sought its protection, unless he or she cites compelling reasons for not being able to avail himself or herself of the protection of that state;
5) the persecution referred to in Article 2 of this Law is limited to a part of the state of which he or she is a citizen, or in which a stateless person has habitual residence, unless, based on all the circumstances, it cannot be expected that the person will receive protection in another part of that state.

The State Commission shall issue a decision within 15 days of the lodging of an appeal against the decision rejecting an asylum application of an unaccompanied minor or a person of age without legal capacity.

Manifestly unfounded asylum applications

Article 41
An asylum application shall be deemed manifestly unfounded if the person has no valid
grounds for the application due to fear of persecution in the country of origin, or if the application is based on deliberate fraud or abuse of the asylum procedure.

An asylum seeker shall be considered to have no valid grounds for the application due to fear of persecution if:

1) the application is based on economic reasons or better living conditions;
2) the application is entirely lacking in information that the asylum seeker would be exposed to fear of persecution in the country of origin, or the asylum seeker’s statement does not contain any circumstances or details of personal persecution;
3) the claim obviously lacks credibility, and the person’s statement is inconsistent, contradictory or realistically impossible;
4) it may be generally considered that no fear of persecution can exist due to the overall political circumstances, legal situation or enforcement of laws in the country of origin or third country, unless the asylum seeker can prove that this state is not safe for him or her;
5) the person was earlier banned from entering Montenegro, in accordance with the law, and the reasons for which the ban was imposed have not changed.

An asylum seeker’s application shall be deemed to be based on deliberate fraud or abuse of the procedure if:

1) the application is based on a false identity or falsified documents, unless the asylum seeker provides valid reasons for this;
2) the asylum seeker, after the submission of the asylum application, deliberately gives untrue statements, orally or in writing, which are essential for refugee status recognition;
3) the asylum seeker deliberately destroys, damages, or hides documents or evidence essential to the application, or has used another travel document, instrument or ticket with the intention of creating a false identity or complicating the examination of the application;
4) the asylum seeker deliberately conceals that he or she has already submitted an asylum application in another state, particularly if he or she has used a false identity;
5) he or she files the application with the intent to avoid expulsion from Montenegro, even though there were sufficient opportunities to file the asylum application earlier;
6) the asylum seeker has manifestly failed to comply with essential obligations related to the asylum procedure prescribed by this Law;
7) the asylum seeker has concealed that his or her application for asylum in Montenegro or another state, after examination in a procedure that incorporated adequate procedural guarantees set out in international instruments, was rejected, and the circumstances on which the application was based have not changed;
8) the asylum seeker was granted asylum in another state and continues to enjoy the protection of that state.

In the cases referred to in paragraphs 2 and 3 of this Article, the decision shall be issued within 15 days from the day of the submission of the application.

An appeal may be lodged against the decision referred to in paragraph 4 of this Article within eight days from the day of the receipt of the decision.

The State Commission shall issue a decision on an appeal referred to in paragraph 5 of this Article within 15 days from the day of the lodging of the appeal.

Decision
**Article 42**
The decision through which an application is accepted and refugee status recognised or subsidiary protection accorded shall contain the rights stipulated by this Law. The decision through which an asylum application is rejected shall contain the reasons for which the asylum application was not accepted, instructions on the right to appeal and the deadline within which the person is obligated to leave Montenegro. The deadline referred to in paragraph 2 of this Article may not be shorter than 15 days, or three days from the day on which the decision becomes final, if the decision has been issued for the reasons referred to in Article 41 of this Law.

**Return and expulsion**

**Article 43**
A person with respect to whose asylum application the procedure is terminated shall be obligated to leave Montenegro within 15 days from the day on which the decision becomes final, while a person whose asylum application is rejected shall be obligated to leave within the deadline stipulated in the decision rejecting the application. If a person with respect to whose application the procedure is terminated, or whose asylum application is rejected, fails to depart Montenegro within the deadline specified in paragraph 1 of this Article, or within the deadline stipulated in the decision, his or her return or expulsion shall be carried out in accordance with the law governing the residence of aliens.

[...]

VI SUBSIDIARY PROTECTION

1. Authorisation and duration of subsidiary protection

**Authorisation of subsidiary protection**

**Article 53**
Subsidiary protection shall be accorded to a person to whom refugee status was not recognised, but with respect to whom there are serious reasons to believe that he or she would be exposed to genuine risks referred to in Article 2, paragraph 4 of this Law upon return to his or her country of origin or another state. Subsidiary protection shall not be accorded to a person if:
1) the serious reasons referred to in paragraph 1 of this Article do not exist;
2) there are reasons for exclusion referred to in Article 36 of this Law;
3) there are serious reasons to believe that his or her residence constitutes a threat to the community or to the security of Montenegro;
4) before arriving in Montenegro, he or she committed, apart from the cases referred to in Article 36, paragraph 1 of this Law, one or more criminal offences, for which a prison sentence would have been envisaged had they been committed in Montenegro, and he or she has left the country of origin solely with the intention of avoiding punishment for the above criminal offences.

**Duration of subsidiary protection**

**Article 54**
Subsidiary protection shall last one year. The duration of subsidiary protection may be extended for six-month periods as long as the reasons referred to in Article 53, paragraph 1 of this Law exist.

2. Rights and obligations of persons accorded subsidiary protection

Article 55
A person accorded subsidiary protection shall be entitled to:
1) residence;
2) freedom of movement and choice of place of residence;
3) an identification document confirming his or her identity, legal status, right to residence and other rights stipulated by this Law;
4) an alien’s travel document, in accordance with the regulations on the residence of aliens, for the purpose of travelling abroad;
5) unimpeded access to courts and legal aid;
6) freedom of religion;
7) free primary and secondary education in public schools;

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8) work pursuant to Article 46 of this Law;
9) social protection pursuant to Article 45 of this Law;
10) basic accommodation, if required, until means of subsistence have been secured, and not longer that six months from the day when the decision on the authorisation of subsidiary protection becomes final;
11) free emergency medical treatment;
12) assistance with inclusion in society;
13) family reunification.

A person accorded subsidiary protection shall have other rights and obligations as those accorded to an alien granted residence in Montenegro for a specified period of time.

3. Cessation and revocation of subsidiary protection

Article 56
Subsidiary protection shall cease when the circumstances referred to in Article 2, paragraph 4 of this Law have ceased to exist or have changed to such an extent that protection is no longer needed.
Subsidiary protection shall be revoked, or its duration shall not be extended if:
1) the person should have been excluded or reasons have emerged for exclusion referred to in Article 36 of this Law;
2) the person’s misrepresentation of facts or circumstances, including the use of forged documents, was decisive in the recognition of refugee status;
3) the person has permanently left Montenegro;
4) protection has been accorded on the basis of another law or international agreement;
5) the person enjoys international protection or has lawful residence in a third country;
6) the person has acquired the citizenship of another state.

VII TEMPORARY PROTECTION
Authorisation of temporary protection

Article 57
Temporary protection shall be accorded to persons in need of protection pursuant to Article 2, paragraph 5 of this Law, provided that they had:
1) habitual residence in the country of origin and directly entered Montenegro;
2) legal residence in Montenegro and, upon the expiry of such residence, are temporarily prevented from returning to the country of origin.
The Government shall issue a decision on the need to accord temporary protection and on the number of persons to whom the protection is to be accorded.

Duration of temporary protection

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Article 58
Temporary protection shall last one year.
The duration of temporary protection may be extended for six months, but not longer than one year.
The Government shall periodically re-examine the existence of the circumstances referred to in Article 57 of this Law and decide on the extension of temporary protection.
Individual decisions related to temporary protection shall be passed in accordance with the Government’s decision and the principles stipulated by this Law, outside the prescribed procedure upon individual asylum applications.

Denial of temporary protection

Article 59
A person shall not be accorded temporary protection if:
1) the reasons referred to in Article 57, paragraph 1 of this Law do not exist;
2) there are reasons for exclusion referred to in Article 36 of this Law;
3) there are serious reasons to believe that his or her residence constitutes a threat to the community or to the security of Montenegro;
4) he or she has committed a criminal offence in Montenegro for which a prison sentence of minimum five years has been imposed;
5) he or she is a recognised refugee or has been accorded residence under the provisions of the law governing the residence of aliens;
6) he or she enjoys international protection or has the citizenship of, or authorised residence in, a third country;
7) temporary protection has already been authorised or has ceased at his or her request.

Rights of persons accorded temporary protection

Article 60
A person accorded temporary protection shall be entitled to:
1) residence;
2) freedom of movement;
3) an identification document confirming his or her identity, legal status, right to residence and other rights stipulated by this Law;
4) an alien’s travel document, in accordance with the regulations on the residence of aliens, for the purpose of travelling abroad;
5) basic living conditions in organised accommodation;
6) work in the facilities for organised accommodation;
7) free emergency medical treatment;
8) free primary and secondary education in public schools;
9) unimpeded access to courts and legal aid;
10) freedom of religion;
11) humanitarian assistance.
The residence referred to in paragraph 1, item 1 of this Article shall not be deemed residence within the meaning of the laws governing the residence of aliens and citizenship.

Notwithstanding paragraph 1 of this Article, a person accorded temporary protection may be granted reunification with family members, if this is possible only in the territory of Montenegro.
The right to family reunification referred to in paragraph 3 of this Article shall pertain to minors who have not started their own families and to spouses of persons accorded temporary protection. Family members shall be accorded temporary protection at their request.

Cessation of temporary protection

Article 61
Temporary protection shall cease:
1) upon the cessation of the existence of the reasons for which temporary protection referred to in Article 57, paragraph 1 of this Law has been accorded;
2) upon the expiry of the period for which it has been accorded;
3) if reasons for exclusion referred to in Article 36 of this Law arise;
4) when the person has permanently left Montenegro;
5) when the person has been accorded another form of protection on the basis of law or an international agreement;
6) if international protection or authorised residence is given in a third country;
7) if citizenship of another state has been acquired.

Filing of an asylum application

Article 62
A person accorded temporary protection has the right to file an asylum application during or after the period of temporary protection, but may not benefit from the rights referred to in Article 29 of this Law during the period of temporary protection.
If the asylum procedure has not been completed prior to the cessation of temporary protection, it shall be completed after its cessation.
A person accorded temporary protection, whose asylum application has been rejected, shall enjoy temporary protection for the period for which it has been accorded.

 […]

VIII EXERCISE OF RIGHTS
Place and time of exercise of rights

Article 63
The rights referred to in Articles 29, 44, 55 and 60 of this Law may be exercised only in the territory of Montenegro and pending a final decision on the asylum application, cessation or revocation of refugee status and subsidiary protection and cessation of temporary protection. After a final decision on the rejection of an asylum application, cessation or revocation of refugee status and subsidiary protection, and on cessation of temporary protection, and after the termination of the rights referred to in paragraph 1 of this Article, the provisions of the law governing the residence of aliens shall be applied to a person who continues to reside in Montenegro.

Manner of exercise of rights

Article 64
Resources for the exercise of the rights referred to in Articles 29, 44, 55 and 60 of this Law shall be provided in line with existing economic, social and other capabilities. The Ministries responsible for the affairs of social welfare, education and health shall define, within their competencies, the manner of the exercise of the rights referred to in Articles 29, 44, 55 and 60 of this Law.

[...]

18. EXCERPTS OF THE LAW ON REGISTRY ON PERMANENT AND TEMPORARY RESIDENCE (2008)

Montenegro

The Government of Montenegro

LAW ON REGISTERS OF TEMPORARY AND PERMANENT RESIDENCE
Podgorica, February 2008

I BASIC PROVISIONS

Scope of the Law
Article 1

The present law shall establish and define the procedure of keeping of the Register of permanent residence and Register of temporary residence of Montenegrin citizens and foreign citizens, as well as the procedure of supplementing, use and protection of data.

Procedure of Keeping the Register and Register’s Purpose
Article 2
Register of permanent residence and register of temporary residence (hereinafter referred to as: Registers) are computer managed data bases consolidated from individual records provided for by this Law.

Data contained in Registers shall be used for exercise of Montenegrin citizen’s rights and performance of legally prescribed affairs of public authorities, local government bodies and other users and purposes provided for by this Law.

Integral part of the Register is a collection of documents which form the basis for entry of data in the Registers.

**Authenticity of Data in Registers**

Article 3

Data contained in Registers and facts proved by them shall be deemed true until, in a manner prescribed by law, the opposite has been proved.

Statements and other documents related to the facts which are issued in compliance with the data contained in Registers are public documents.

**Data Protection**

Article 4

Data on persons (hereinafter referred to as: personal data) shall be collected, processed, stored and used for purposes defined by this Law, whereas they may be used for other purposes solely on the basis of a written consent of a Natural person (hereinafter referred to as : Person).

Public authorities, local government bodies and other users of data contained in Registers shall guarantee protection of data which they use.

**Meaning of Terms**

Article 5

Terms used in this Law shall have the following meanings:

*Foreign citizen* is a citizen of the other state or a stateless person.

*Permanent residence* means a place where a person establishes his/her habitual place of living as a focal point of his/her life interests, professional, economic, social and other connections which indicate a direct and permanent link between the person and the place where he/she resides

*Established residence* means a place where a foreign citizen establishes his/her place of living with intention to live in that place during the residence period

*Temporary residence* is a place where a person resides temporarily without the intention to live in that place
Place is inhabited area, settlement or community, and for abroad it is the state

Address is inhabited place or neighborhood, the street name, house number and number of the apartment

Household means a community of persons who declare that they live together and use their incomes jointly for serving their needs, including a person who declares that he/she resides independently in a separate housing unit or part of the housing unit and generates revenue for serving basic human needs

Facility for common dwelling means a facility intended for dwelling (single-room occupancy, student and pupils hostels, social and child protection institutions, and each other facility designed for common dwelling or performance of activities which include 24 hour residence) which is not designed to be catering facility or some other facility or area

Catering and other facilities mean a facility or area designed for accommodation, relaxation, recreation, lodging for the night and other in accordance with tourism regulations (hotel, hotel area, apartments area, bed and breakfast, camp, room to rent, apartment, vacation house, youth hotel-hostel, resort, lodging over night, marina, spa resort and convalescent home, country tourism facility and other), as well as other facilities used for either accommodation or vacation purposes

Accommodation provider means a commercial entity, entrepreneur or a person who receives fee for accommodation of persons in shared accommodation facility, catering or other kind of facility, or a person who, within the scope of his/her activities, offers temporary dwelling or residence, i.e. provides accommodation to his/her employees or members, including accommodation in closed facilities

[...]

III Register of Temporary Residence

I Individual records and their contents

Individual Records

Article 10

Register of Permanent Residence shall contain the following records of:

Permanent residence of a Montenegrin citizens
Households
Foreign citizens with temporary and habitual residence
Montenegrin citizens with habitual residence abroad
Users of data contained in the records referred to in sub-paragraphs 1 to 4 of this Paragraph

Contents of the Records

Article 11

The permanent residence records of Montenegrin citizens shall contain the following data:
citizen’s unique ID number (hereinafter referred to as: Unique ID Number), first and last name,
last name at birth, place of birth, father’s name, mother’s name, place of permanent residence,
address, citizenship, occupation, level and type of school education, marital status, father’s
unique ID number, mother’s unique ID number, or guardian’s unique ID number, unique ID
number, last name and first name of the household holder and kinship with him/her and approval
or prohibition to transmit data to users who do not have legal grounds for data use.

Records of households contain data about the household members and it is compiled on the basis
of data about Montenegrin citizens found in the records referred to in Paragraph 1 of this Article.

Records of foreign citizens with permanent and habitual residence shall, in addition to the data
referred to in Paragraph 1 of this Article, also contain: date since when foreign citizen resides,
number and date of decision on approved residence, and temporary residence period.

The records of Montenegrin citizens with habitual residence abroad shall contain the following
data: citizen’s unique ID number, last name and first name, last name at birth, place of birth,
place of habitual residence, father’s name, mother’s name, place and address in Montenegro.
Records of users of data referred to in Paragraphs 1 to 4 of this Article shall contain the following
data: legal basis for the use of data contained in the records, name of the user, degree of access
and purpose of data use, last name and first name of persons responsible for access to records and
persons with the authority to use data.

2. Supplementing the Data in Records

1. Filing Application for Registration and Cancellation of Residence

Obligation to File Application for Registration and Cancellation

Article 12

Montenegrin Citizens and foreign citizens shall file application for the change of permanent
residence or established residence and change of address within eight days from the day when the
change occurred and file application for cancellation of permanent residence in the event of
moving outside Montenegro.
Citizens of Montenegro without registered permanent residence in Montenegro, shall register their permanent residence if they reside in Montenegro within eight days from the day of establishing their residence.

Parent or guardian shall file application for registration and cancellation from Paragraphs 1 and 2 of this Article on behalf of persons without capacities to exercise their rights. If parents are separated, application for registration and cancellation shall be filed by a parent who has been assigned to take care of child’s education and personality development.

**Filing Applications for Registration and Cancellation**

Article 13

Applications for registration, cancellation and change of permanent residence and address shall be filed on standard form to the public administration body in the place where permanent residence or address are registered or where permanent residence has been cancelled and it shall contain data from Articles 11, paragraphs 1, 3 and 4 of the present law.

Applications for registration and cancellation of permanent residence or change of address shall be submitted either directly or electronically. Registration and cancellation in electronic form shall be deemed valid if they are signed by electronic signature with qualified certification.

The procedure of filing application for the registration and cancellation shall be facilitated for the elderly, sick or handicapped persons.

Public administration body shall prescribe the application form and procedure for the form submission and submission of electronic registration and cancellation.

**Responsibilities and Authorizations of Public Administration Bodies**

Article 14

Public administration body shall check the identity of a person filing application for registration, or cancellation and accuracy of the address he/she registers and issue statement about the registration and cancellation filed.

Public authority body shall check accuracy of data within 30 days in the event of reasonable suspicion in accuracy of the data.

**2.2. Determination of Temporary Residence**

Reasons for launching the procedure to determine temporary residence

Article 15
Public administration body shall launch the procedure for determining temporary residence in order to supplement records of the temporary residence register, if that person:

does not reside in the place and at the address indicated in the application for registration of residence
resides in Montenegro, but has not filed application for the registration of residence
has moved from Montenegro without having filed application for cancellation of residence

Public administration body shall launch the procedure in cases referred to in Paragraph 1 of this Article upon request of public authority or local government body.

Criteria to Determine Permanent Residence

Article 16

In cases referred to in Article 15 of the present law, public administration body shall issue decision which will determine permanent residence in place and at the address where person resides.

If permanent residence of the person may not be determined according to the Paragraph 1 of this Article, public administration body shall determine permanent residence according to:

the place of temporary residence
permanent residence of a spouse, if permanent residence may not be determined according to temporary residence,
registration with the registry of births or registry of Montenegrin citizens, if permanent residence may not be determined according to the temporary or permanent residence of a spouse,
headquarters of the authority or organization where relief is received, if permanent residence may not be determined according to sub-paragraphs 1 to 3 of this Article.

Permanent residence of underage person shall be determined according to the permanent residence of his/her parents. If parents do not have the same permanent residence or if they are not married, permanent residence shall be determined according to the permanent residence of a parent who has been assigned to take care of a child’s education and personality development.

Permanent residence of underage person without parent’s care or other person without capacity to exercise his/her rights shall be determined according to the permanent residence of guardians.

If under provisions of Paragraphs 2-4 of this Article permanent residence may not be determined or if person moved from Montenegro public administration body shall issue a decision on cancellation of permanent residence.

Changes in Records

Article 17
On the basis of final decision from Article 16 or notification from Article 6, paragraph 3 of this Law, public administration body shall insert changes in permanent residence records execute change of permanent residence or address, i.e. it shall cancel permanent residence.

IV Register of Temporary Residence

I Individual Records and their Contents

Individual Records

Article 18

Register of temporary residence shall be compiled of the following records:
temporary residence of Montenegrin citizens, and foreign citizens with temporary or habitual residence or temporary residence of 90 days and user of data from subparagraph 1 of this Paragraph.

Contents of the Records

Article 19

Records of temporary residence of Montenegrin citizens and foreign citizens with temporary and habitual residence or temporary residence of 90 days shall contain the following data: last name and first name, last name at birth, place of birth, citizenship, place of temporary residence and address, date of registration and duration of temporary residence, date of cancellation, type, number and validity period of public documents with a photograph (hereinafter referred to as: Public document): name of authority that issued public document with consent or prohibition to transmit data to the users who do not have legal grounds for data use.

For Montenegrin citizens the records shall, in addition to data contained in Paragraph 1 of this Article, also contain citizen`s unique ID number, place of permanent residence and address.

For foreign citizens with temporary and habitual residence the records shall, in addition to data from Paragraph 1 of this Article, also contain citizen`s unique ID number, permanent place of residence or established place of residence and the address.

The records of the data user shall contain data referred to in Article 11, Paragraph 5 of the present Law.

Supplementing Data in the Records

2.1. Filing Application for Registration and Cancellation

Obligation to File Application for Registration and Cancellation
Article 20

Provider of accommodation shall file application for registration or cancellation of temporary residence of a Montenegrin citizen, and foreign citizen whom he/she provides accommodation regardless of the length of temporary residence.

Applications for registration and cancellation from Paragraph 1 of this Article shall be filed to the Police in the place where temporary residence is registered within 12 hours from arrival i.e. departure of the person from Paragraph 1 of this Article. Police may set longer deadline for submission of the application for registration, i.e. cancellation.

Obligation to Disclose Data

Article 21

Person who uses accommodation services shall disclose the following data to the accommodation provider: last name and first name, last name at birth, citizen`s unique ID number, day, month and year of birth if he/she does not have unique ID number, place of permanent residence and the address, duration of temporary residence, the reference number of public document, and other data where necessary.

Parent, guardian or family member of a person without capacity to exercise his/her rights and who is accommodated with him/her shall disclose data from Paragraph 1 of this Article to the accommodation provider.

Exceptionally from the provision of Paragraphs 1 and 2 of this Article during registration or cancellation of temporary residence of organized group of at least 10 persons, where their temporary residence duration does not exceed eight days, a list of group members may be submitted whereby the list contains data from Paragraph 1 of this Article for each particular person.

Provider of accommodation shall verify accuracy of data by insight with the public document and supply accurate data to the Police in the registration and cancellation of temporary residence procedure.

Records of Accommodation Providers

Article 22

Accommodation provider shall keep and accurately and timely update the records of persons whom he/she provides accommodation services. The records shall contain data referred to Article 19, Paragraphs 1 to 3 of the present Law.

Accommodation provider shall be responsible for the accuracy of data contained in the records referred to in Paragraph 1 of this Article.
Data contained in records from Paragraph 1 of this Article shall be stored for a period of one year after the day of entry.

Accommodation provider shall ensure that the Police has insight with the records from Paragraph 1 of this Article.

The contents and procedure of records keeping from Paragraph 1 of this Article and the procedure of data deletion shall be prescribed by the Public administration body.

2) Obligation to File Application for Registration and Cancellation of Person’s Residence

Article 23

The following persons shall file application to the Police for registration of temporary residence within 24 hours from coming to the place of temporary residence and file application for cancellation of temporary residence before their departure:

Montenegrin citizen with not registered permanent residence in Montenegro, if he/she intends to reside more than eight days in that place in the facility he/she owns
Montenegrin citizen with not registered permanent residence in Montenegro if he/she intends to reside in that place in the facility owned by another person longer than three days
foreign citizen with permanent or habitual residence if he/she intends to reside in that place longer than eight days
foreign citizen with up to 90 days temporary residence if he/she intends to reside in that place longer than three days

If the person fails to act in accordance with obligations referred to in Paragraph 1, sub-paragraph 2 of this Article, application for registration and cancellation of temporary residence shall be filed by the owner of the facility within 24 days from expiry of the terms referred to in Paragraph 1, sub-paragraph 2 of this Article.

3. Other Obligations of Filing Applications for Registration and Cancellation

Article 24

Commercial entity, entrepreneur and person visited by a foreign citizen with 90 days temporary residence and whom that person provides accommodation for more than 24 hours shall file to the Police the application for registration and cancellation of the temporary residence of the foreign citizen within 12 hours from the hour of foreign citizen’s arrival, i.e. departure.

Health Institution or practictioner with private practice who receive a foreign citizen onto treatment shall file to the Police the application for registration of the foreign citizen within 24 hours from the hour of foreign citizen’s placement, and and cancellation of the temporary residence upon departure.
4. Validity Period of the Registration

Article 25

Registration of temporary residence shall be valid until expiry of the period of stay indicated in the registration application.
Application for cancellation of temporary residence shall not be filed if the person leaves temporary residence upon expiry of the period of temporary residence indicated in the application for registration.

If the application for registration does not indicate the length of temporary residence, whereas application for cancellation has not been filed, registration of temporary residence shall be valid for six months, and for a foreign citizen with 90 days temporary residence registration of temporary residence shall be valid until expiry of the approved residence.

Temporary residence shall be cancelled at the expiry of the temporary residence period indicated in the registration application, i.e. upon expiry of 6 months or expiry of approved temporary residence.

5. Cases when Registration of Temporary Residence is not Obligatory

Article 26

Application for registration of temporary residence shall not be filed for a person who:

resides in public authorities’ facility
is placed in hospital or other medical care institution for the purpose of treatment, save in the event referred to in Article 24, Paragraph 2 of the present Law
placed in a public authority competent for serving imprisonment sentence or in corrections facility
is accommodated in the shelter for the victims of violence
member of the unit for protection, rescue and help if, at the call of public authorities, he/she has participated in the mitigation of consequences of natural disasters

Authority from Paragraph 1, Sub-paragraph 3 of this Article shall inform the public administration body in the place of permanent residence about the person’s serving of punishment or his/her release from the detention.

Medical care institution or some other specialized institution where a person is placed for the purpose of security measures shall fulfill the obligation referred to in Paragraph 2 of this Article.

6. Application Form for Registration and Cancellation and the Filing Procedure

Article 27
Applications for registration and cancellation of temporary residence shall be filed in prescribed application form and contain data from Article 19, Paragraphs 1 to 3 of the present Law.

Applications for registration and cancellation of temporary residence filed by the accommodation provider shall in addition to the data referred to in Paragraph 1 of this Article also contain: name and headquarters, i.e. last name and first name and address of accommodation provider, reference number of entry, i.e. accommodation provider’s unique ID number and address where the person registers or cancels his/her temporary residence. Accommodation provider may file applications for registration and cancellation in application form, by magnet media, by e-mail, direct computer connecting or in some other manner.

Provisions of Article 13, Paragraphs 2 and 3 of the present Law shall apply to the registration and cancellation of the temporary residence.

Public administration body shall prescribe application form and procedure of their submission, submission of applications for registration and cancellation by e-mail and the manner of data submission from Paragraph 2 of this Article.

V. Use and Protection of Data

Data Submission

Article 28

Data contained in the Register of Permanent Residence are submitted upon request to public authorities, local government bodies and other bodies and organizations by the public administration body in order for them to establish and keep legally prescribed records falling within their competence.

Data about the registration and cancellation of permanent residence are forwarded by public administration body to the public authorities, local government bodies and other bodies and organizations for the purpose of supplementing of records and deciding in the procedures within their competence if they are authorized by law to use that data.

Data referred to in Paragraphs 1 and 2 of this Article shall be submitted on forms by magnet media, e-mail, direct computer connection or in some other manner. The procedure of submission of data referred to in Paragraphs 1 and 2 of this Article shall be prescribed by public administration body.

Use of Data by the Public Administration Body, Police, other Bodies and Persons

Article 29

Public administration body may use data contained in the Register of Permanent Residence for connecting and keeping of prescribed records and performance of other affairs falling within its competence.
Police may use data contained in the Register of permanent residence and Register of temporary residence in performance of legally prescribed police operations.

Data contained in the Registers may be used for statistical, scientific, research and other purposes without indication of the person who these data refer to.

Data contained in the Register may upon request used by the person these data refer to.

**Right to Correction and Annulment of Data**

Article 30

Person shall have the right to receive information about data processed about him/her, about who is processing them, for what purposes and on what grounds are they processed and who may use his/her personal data and on what grounds within 30 days from the day of filing the request.

Person shall have the right to require correction of inaccurate or outdated data referring to him/her and to require annulment of data which are kept against Law.

In cases referred to in Paragraphs 1 and 2 of this Article no fees or administrative charges shall be paid.

**Data Protection**

Article 31

Authorities referred to in Article 28, Paragraphs 1 and 2 and Article 29 of the present Law shall guarantee protection of used data against incidental or unauthorized access, use and processing.

Protection of data in Registers shall be prescribed by the Government of Montenegro.

**VI SUPERVISION**

Article 32

Supervision over implementation of the provisions of the present Law regarding registration and cancellation of temporary residence and permanent residence and records keeping by accommodation provider shall be conducted by the Police.

**VII Penalties**

Article 33

Legal entity or entrepreneur shall be fined ten to sixty times the amount of the minimum wage in Montenegro if he/she:

- fails to file application for registration and cancellation of temporary residence for a person whom he/she provides accommodation services (Article 20, Paragraphs 1 and 2)
- does not verify accuracy of data supplied by the person whom he/she providers accommodation services (Article 21, Paragraph 4)
fails to keep and accurately and timely update the records of persons whom he/she provides accommodation services (Article 22, Paragraph 1)
- fails to store data contained in the records for a prescribed period of time (Article 22, Paragraph 3)
- does not ensure insight in the records to the Police (Article 22, Paragraph 4)
- does not file or does not file in prescribed period of time application for registration or cancellation of temporary residence of a foreign citizen who came for a visit or medical treatment (Article 24, Paragraphs 1 and 2)

For violation of Paragraph 1 of this Article responsible person in the legal person shall be fined two to six times the amount of the minimum wage in Montenegro.

For violation of Paragraph 1 of this Article natural person who provides accommodation services shall be fined five times to fifteen times the amount of the minimum wage in Montenegro.

Article 34
Natural person shall be fined one to six times the amount of the minimum wage in Montenegro for violation if:
- he/she fails to file application for registration of permanent residence or change of permanent residence or address or cancellation of permanent residence within prescribed period of time (Article 12, Paragraphs 1 and 2)
- he/she fails to file application for registration of permanent residence or change of permanent residence or change of address or cancellation of permanent residence of person without capacity to exercise his/her rights (Article 12, Paragraph 3)
- he/she fails to file application for registration or cancellation of temporary residence within prescribed period of time (Article 23)
- he/she fails to file application for registration or cancellation of temporary residence of a foreign citizen who has come for a visit or medical treatment (Article 24, Paragraphs 1 and 2)

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