

MONTENEGRO

Information for the preparation of the thematic report on racism, racial discrimination and xenophobia in the context of laws, policies and practices related to citizenship, nationality and immigration

1. Steps taken to ensure the acquisition of citizenship and naturalization on an equal basis, e.g. without discrimination based on race, colour, origin, national and ethnic origin.

The right to Montenegrin citizenship is exercised on equal basis without discrimination on grounds of race, color, origin, national and ethnic origin. The legislator has not conditioned the exercise of this right by citizenship, ethnic origin, language, or any distinction on the basis of personal characteristics, of persons applying for admission to Montenegrin citizenship. In defining the conditions for acquiring Montenegrin citizenship, the legislator did not exceed its authority for regulating this issue.

Citizenship, as a legal category, is usually defined in the theory as a relationship of public legal character between one person and one state on the basis of which that person has a status according to which, with appropriate obligations, all civil, political and economic and social rights are available to him in that state.

International law, however, does not regulate uniform rules on the acquisition and cessation of citizenship, but these issues, according to the generally accepted view, fall within the exclusive competence of each state, with the obligation to apply the basic principles established by international acts, especially in respect of human rights, on one hand and respect of the principle of non-interference in the internal affairs of the state, on the other.

Montenegro has signed and ratified the European Convention on Citizenship, by adopting the Law on the Ratification of the European Convention on Citizenship (published in the "Official Gazette of Montenegro - International Agreements", No. 2/10), thus entering the circle of countries that have understood the significance and values of the said Convention, primarily in the prevention of all forms of discrimination based on race, color, national and ethnic origin.

Furthermore, the Constitution of Montenegro stipulates that any direct or indirect discrimination on any ground (Article 8 paragraph 1) is prohibited; Montenegrin citizenship exists in Montenegro; and that Montenegro protects the rights and interests of Montenegrin citizens (Article 12 paragraph 1); that in accordance with the Constitution, the Law regulates: the manner of exercising human rights and freedoms, when necessary for their exercise (Article 16, paragraph 1), that rights and freedoms are exercised on the basis of the Constitution and ratified international agreements, and that everyone is equal before the law, regardless of any particularity or personal characteristic (Article 17 paragraphs 1 and 2); that everyone has the right to equal protection of their rights and freedoms (Article 19); that the violent assimilation of members of minority nations and other minority national communities is prohibited and that the state is obliged to protect members of minority nations and other minority national communities from all forms of violent assimilation (Article 80) and that the Law must be in conformity with the Constitution and ratified international agreements, and other regulation must be in accordance with the Constitution and law (Article 145).

In addition to the aforementioned principles on the establishment and protection of a Montenegrin citizen, the Constitution does not regulate the manner and procedure for acquiring citizenship, but gives the authority to the legislator to regulate the manner of exercising that right, in compliance with constitutional principles.

The constitutional authorization for the legal regulation of the manner of acquiring Montenegrin citizenship implies the regulation of all material and legal issues for exercising that right.

In this sense, the Law on Montenegrin Citizenship ("Official Gazette of Montenegro", No. 13/2008, 40/2010, 28/2011, 46/2011, 20/2014 and 54/2016) defines the manner and conditions for acquiring and losing Montenegrin citizenship, as well as keeping a register of Montenegrin nationals.

According to the Law, Montenegrin citizenship represents a legal connection between a natural person and Montenegro and does not indicate national and ethnic origin and is acquired by origin; by being born in the territory of Montenegro; by admission and by international treaties and agreements (Article 1, paragraph 2 and Article 4).

This approach of defining Montenegrin citizenship ensures that Montenegro is a civil state (Article 1 paragraph 2 of the Constitution of Montenegro).

The provisions of the Law do not contain the mentioned discriminatory restrictions in relation to the Constitution of Montenegro, nor in relation to international legal acts, as they make no distinction regarding the personal characteristics of persons applying for admission to Montenegrin citizenship.

2. Efforts made in combating gender discrimination affecting racial, ethnic and other minorities in terms of acquiring citizenship and nationality

Men and women in Montenegro pursuant to the provisions of Article 18 of the Constitution (the state guarantees the equality of women and men and develops a policy of equal opportunities), enjoy equality in matters of citizenship in the sense of the provisions of the Law on Montenegrin Citizenship.

The provisions of the Law, therefore, apply to every person applying for acquiring Montenegrin citizenship by admission, regardless of his / her personal characteristics, and a unique legal regime is foreseen for these persons. They cannot be questioned either in relation to the principle of general prohibition of discrimination, either direct or indirect, on any ground.

Through the process of gender-sensitive policies, applying gender equality attitudes to the planning, formulation and implementation of all measures, regulations and laws, gender equality principles are systemically respected, significantly reducing social tensions and producing respect for differences at all levels of society. Gender-sensitive policy is a normatively formulated policy that guarantees equality, equal rights and the right to diversity for all women and men in society.

3. Efforts made to eliminate barriers in naturalization of persons with permanent residence belonging to ethnic and racial minorities and other groups, including stateless persons

In the procedure of acquiring Montenegrin citizenship by admission in accordance with the Law in force, it is determined whether a person has a citizenship or not. If the person has not been

registered based on origin, i.e. based on the citizenship of the parents in that procedure, evidence on this fact is required as well. If in the above mentioned procedure the person meets the other requirements stipulated by the Law, he acquires Montenegrin citizenship by admission. There were no cases of rejecting the application for admission of a person who does not have citizenship, and who was born and legally and continuously lives in Montenegro.

The Law on Montenegrin Citizenship does not have discriminatory provisions on any grounds, thus the conditions for acquiring Montenegrin citizenship prescribed by this Law apply without exception to all applicants for obtaining Montenegrin citizenship on some of the prescribed grounds, it excludes discrimination on any basis (sex, religion, race, skin colour or national and ethnic origin) with the incorporated principle that statelessness should be avoided. Also, this Law provides for equality among its citizens, regardless of whether the Montenegrin citizenship has been acquired based on origin or admission.

Thus, the provision of Article 14 of the Law stipulates that a stateless person may acquire Montenegrin citizenship by admission if they meet the requirements of Article 8, paragraph 1, item. 1) he/she has reached 18 years of age; 3) he/she has lawfully and uninterruptedly resided in Montenegro for 10 years before submitting a request for admission to Montenegrin citizenship, 5) he/she has not been legally convicted in Montenegro and another state with a non-suspended sentence of imprisonment longer than one year for a criminal offense prosecuted ex officio or the legal consequences of sentencing have ceased, 7) there are no obstacles regarding the security and defense of Montenegro, and 8) he/she has settled the due tax and other legal obligations under this Law.

4. Steps taken to regulate the status of a citizen of the predecessor state?

For citizens of the former Yugoslav republics who had registered permanent residence in Montenegro before June 3, 2006 the Law on Montenegrin Citizenship has provided a privileged approach for the acquisition of Montenegrin citizenship by admission, in order to avoid the situation where those persons who had permanent residence in Montenegro, and who until submitting a request for acquiring Montenegrin citizenship, did not deregister their residence in Montenegro, would be left without Montenegrin citizenship. Article 41 of the Law stipulates that a person who had registered permanent residence in Montenegro before June 3, 2006 may acquire Montenegrin citizenship by admission, if he / she does not have the citizenship of another state or if he / she has been released from the citizenship of another state, and meets the other requirements prescribed by the Law.

This legal norm had a temporal character and was applied until July 31 2012 which is also the validity deadline of an ID card issued on an earlier form in accordance with the previous regulations on the identity card, because the new Law on Identity Card (Official Gazette of Montenegro, No. 12/07) prescribes that the ID card is a personal identification document issued to a Montenegrin citizen with permanent residence in Montenegro.

Also, the temporal norm (from September 24 2011 to January 31 2012), the provision of Article 41v, paragraph 1 of the Law, prescribes that, exceptionally from Article 41 of this Law, a citizen of the Republic of the former SFRY who has had a registered permanent residence in Montenegro at least two years before June 3, 2006 and an ID card issued in accordance with the Law on Identity Card that was in force at the time of issuance, may acquire Montenegrin

citizenship by admission, without release from the citizenship of another state, if he meets the requirements of Article 8, paragraph 1, item 4, 5, 7 and 8 of this law, if he did not deregister the permanent residence from Montenegro up to the submission of the application. Paragraph 2 of the same Article stipulates that the child of persons referred to in paragraph 1 of this Article who does not have an issued ID card shall be entitled to Montenegrin citizenship under the conditions referred to in paragraph 1 of this Article.

Thus, a norm has been incorporated in Montenegro that a person who has acquired Montenegrin citizenship in accordance with the regulations, and has not been registered in the records on citizens of Montenegro, could register within one year from the date of start of application of the Law on Montenegrin Citizenship. However, the Montenegrin citizens who have acquired this right as our citizens have not used this right, but they have sought admission to Montenegrin citizenship, with evidence that they have not been registered in the citizens registers, and they were entitled to this right based on origin. Also, a Montenegrin citizen who on June 03 2006 had also the citizenship of another state, has the right to keep Montenegrin citizenship (Article 12 of the Constitutional Law on the Implementation of the Constitution of Montenegro).

A person born in the republics of former FRY, SFRY, FRY and SCG, are not stateless persons. Their children can acquire Montenegrin citizenship by origin, i.e. by the citizenship of their parents, if they submit an application for obtaining Montenegrin citizenship in accordance with the provisions of the Law on Montenegrin Citizenship.

5. Measures undertaken in order to ensure that the provisions relating to withdrawal of citizenship are in accordance with the obligations of the state referring to the provision of non-discriminatory enjoying of the right to citizenship.

In accordance with Article 15 of the Universal Declaration on Human Rights, everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Montenegrin citizenship shall be lost in the following manner:

1) upon the request of the Montenegrin citizen- by release from Montenegrin citizenship 2) by operation of law, inter alia and; 3) according to international treaties and agreements, where we would like to underline that Montenegro has no concluded and ratified international treaties and agreements with other states.

An adult Montenegrin citizen, who also has the citizenship of another state, shall lose Montenegrin citizenship by operation of law, if:

- 1) he has voluntarily obtained the citizenship of another state;
- 2) it is established that the decision on admission to Montenegrin citizenship was adopted based on a false statement or intended covering of facts or circumstances important for adopting the decision, unless the person who has obtained Montenegrin citizenship would become stateless;
- 3) he has acquired Montenegrin citizenship on the basis of a guarantee act of another state that he will lose his citizenship if he / she acquires Montenegrin citizenship and does not submit proof of loss of citizenship of the country within the deadline determined by the decision on acquiring citizenship, unless that person would become stateless;

- 4) he has been lawfully convicted for a criminal offense against humanity and other goods protected by international law;
- 5) he has been lawfully convicted for planning, organizing, financing or in any other way assisting or executing terrorist acts or providing shelter to the organizers, perpetrators or participants in terrorist activities;
- 6) he is a member of an organization whose activities are directed against the security and defense of Montenegro;
- 7) he is in voluntary service in the military forces of another state;
- 8) his behaviour seriously harms the vital interests of Montenegro.

A child who is a Montenegrin citizen, who also has the citizenship of another state, loses Montenegrin citizenship by operation of law if it is found during his minority that the conditions on the basis of which he acquired Montenegrin citizenship are no longer fulfilled.

If under paragraph 1 item 1, 2 and 3 of this Article, the parents or one of the parents has lost Montenegrin citizenship, while the other does not have this citizenship, their child also will lose Montenegrin citizenship, unless it remains stateless. The competent authority is obliged to initiate the procedure ex officio, after finding out the facts from paragraph 1 to 3 of this Article. Prior to the adoption of a decision, the competent authority shall be obliged to enable the person to state the facts and circumstances referred to in Article 24 of this Law, which citizenship he/she wishes to retain.

6. Undertaken measures in order to prevent and reduce statelessness among persons who belong to racial, national and ethnic minorities?

According to provisions of Article 79 of the Constitution of Montenegro, members of minority peoples and other minority national communities, among other things, shall be guaranteed the rights and freedoms that can be used individually and in community with others to express, preserve, develop and publicly express national, ethnic, cultural and religious specifics. In accordance with the provisions of Article 80 of the Constitution, violent assimilation of members of minority peoples and other minority national communities is prohibited, while the state is obliged to protect members of minority peoples and other minority national communities from all forms of violent assimilation.

On December 28, 2017, the Government of Montenegro established the Proposal of the new Law on Foreign Nationals. This Law in Art. 59, 60 and 64 prescribes the determination of the status and issuance of a travel document for a stateless person, as well as the issuance and extension of the temporary residence permit for stateless persons, and it is prescribed, inter alia, that the application for determining whether the applicant is a stateless person, shall be submitted personally to the Regional Unit or Branches for Civil Status and Identity Documents, in the municipal residence. After the status has been established, a stateless person can apply for the issuing of a travel document for a stateless person, which is issued with a validity period of one year and can be extended. The law proposal also stipulates that a stateless person may be granted a temporary residence permit if he meets certain conditions. A stateless person may stay in Montenegro on the basis of a travel document for a stateless person or a temporary residence permit. A person who has been granted a temporary residence permit can work with it in Montenegro, i.e. he has free access to the labor market and it can be extended.

The current Law on Foreign Nationals ("Official Gazette of Montenegro", No. 56/14, 28/15 and 16/16) also deals with the issue of "stateless persons" in Article 2 which stipulates that a stateless person is a foreign national who no country in accordance with its legislation, considers as its national.

Article 118 of the Law stipulates that the travel document for a stateless person is issued by the Ministry of the Interior, with a validity period of up to one year.

In addition, pursuant to the Law on Foreign Nationals, the Ministry of the Interior has adopted the Rulebook on the design and content of the form of a special identification document, the form of a emergency travel document for foreigners, the form and the more detailed manner of issuing a travel document for a stateless person ("Official Gazette of Montenegro", no. 22/2015), which stipulates a closer manner of issuing, a request form for issuance and the form of the travel document for a stateless person.

A total of 486 persons responded to the Public Call in 2014. The analysis which was performed after this showed that only seven (7) persons (born outside Montenegro), according to the delivered data and gathered evidence were stateless persons, while the other persons were not stateless, but that they were persons who did not use their right to register on the basis of the citizenship of their parents and be granted citizenship of the state based on the origin of their parents.

Out of these seven persons, one person acquired Montenegrin citizenship in 2016, one person acquired permanent residence, one person was issued a travel document for stateless persons, while for the remaining persons procedures are ongoing.

Out of that number (479 persons) in the meantime: 103 persons acquired Montenegrin citizenship, 150 acquired citizenship of another state, 17 persons returned to Kosovo, 67 persons do not reside in Montenegro, 3 persons died, 139 submitted requests for regulating their status in Montenegro.

7. Laws and policies that impose restrictions on immigration based on nationality

Article 2 of Protocol No. 4 to the European Convention on Human Rights and Freedoms guarantees that everyone who is lawfully on the territory of a state has, in that territory, the right to liberty of movement and the freedom to choose his residence, and that everyone is free to leave any country, including his own.

States have the right to put restrictions on leaving the country where it is justified in accordance with the Convention and as interpreted by the European Court for Human Rights (the Court).

In addition to national minorities and minority peoples, which are addressed by both international law and Montenegrin legislation in detail, special attention in Montenegro is paid to the issue of ethnic minorities, in particular Roma - RAE population. Roma - RAE population, represent a specific - *European* - ethnic minority, because they are not nationally - state constitutionally established and do not have a state of origin. As the aforementioned international legal and Montenegrin regulations foresee, the protection of minorities implies Montenegro's obligation to provide minority members with all rights enjoyed by all citizens of Montenegro, with a special obligation to provide minorities with additional rights in order to preserve their specificities - identity, language, culture, religion, tradition, lifestyle.

The Government of the Republic of Montenegro has adopted three Strategies for improvement of the position of the REA population in Montenegro, at the moment the 2016-2020 Strategy is being implemented.

In this context, the Strategy represents a set of concrete measures and activities in the next four-year period of legal, political, economic, social, urbanistic, communal, educational, cultural-informative, health and every other necessary character, their implementers, deadlines and financial costs, primarily of the bodies of the Government of Montenegro, in order to improve overall the position of the Roma population and its better integration into the social trends of Montenegro.

Bearing in mind that the Roma, Ashkali and Egyptians are recognised as the most vulnerable group affected by the lack of documentation, Montenegro pays special attention to solving the status of these persons, through its national legislation.

In order to solve status issues of internally displaced persons from Kosovo who reside or who were born in Montenegro, in the part regarding the late registration in basic registries (of birth, death, marriage) and in the registry of citizens of the Republic of Kosovo, in 2013 the Agreement was signed between the Government of Montenegro and the Government of the Republic of Kosovo on late registration of internally displaced persons from Kosovo residing in Montenegro in the basic registries and the registry of citizens of the Republic of Kosovo.

In relation to this, mobile biometric teams of Mol Kosovo and Mol of Montenegro with the full support of UNHCR, OSCE and NGO "Legal Centre" conducted interviews and verifications and received requests for issuing personal documents of the Republic of Kosovo (ID cards and passports).

Due to the specificity of this vulnerable social group, this cooperation was used by the Ministry of the Interior to supplement the applications for regulating the legal status of these persons in Montenegro, who were still in the decision-making process. With the support of UNHCR and OSCE, 15 visits of the mobile team of the Mol Kosovo to Montenegro were organized, thanks to which 1,143 persons received documents from the Republic of Kosovo. There are 158 complex cases on which the Ministries of the two countries will work in 2018. Within the framework of the Regional Housing Programme in 2017, 120 families have been moved into new apartments, while 51 apartments are being built in Konik-Podgorica for the remaining persons.

The measures of affirmative action relate to members of minorities, i.e. the domicile population, which differs from the majority according to objective criteria (language, religion, origin, culture, national affiliation), is numerically in the minority, in the non-dominant social position, whose members express the desire and solidarity to belong to this minority and to preserve their particularities. Thus, in practice the additional rights of minorities are recognized in different areas: education - guaranteed quotas for enrollment in schools and universities; the rights of political representation - guaranteed mandates in legislative bodies; economic and social issues - exclusively dealing with certain occupations; cultural rights - cultural autonomy, special cultural institutions, etc. Protection and improvement of the position of the Roma minority in Montenegro implies, above all, the undertaking of a series of measures of affirmative action, in accordance with the aforementioned standards, in particular the Law on Minority Rights and Freedoms, with the aim of fully integrating these persons into the local community.

8. Safeguards that ensure that immigration laws, policies and practices do not discriminate - in the purpose or outcome - certain non-citizen groups

Montenegro has ratified most of the international legal instruments on human rights that are part of the Montenegrin legal order and which, according to the Constitution, have legal force above the law. Montenegro has built an open society that has reduced the level of xenophobia, racism and other forms of intolerance to the minimum, and is also the advocate of social and legislative changes that contribute to the creation of a "welcoming society".

The Constitution of Montenegro, as the highest legal act, contains a whole set of provisions important for the protection of the rights of migrants. Article 44 of the Constitution, which guarantees the right to asylum, contains two important guarantees for dealing with migrants. In the first place, it is the right to seek asylum, which prescribes that "*a foreign national who has grounds for fear of persecution because of his race, language, religion or affiliation to a nation or group, or because of political convictions, may seek asylum in Montenegro.*" Then, paragraph 2 and paragraph 3, guarantee another very important postulate of international law, which is the non-refoulement. Under these provisions, a foreigner cannot be expelled from Montenegro to a place where, due to race, religion, language or nationality, he is threatened with death sentence, torture, inhumane humiliation, persecution or serious violation of the rights guaranteed by the Constitution.

Since 2008, a number of important migration directives have been adopted, in particular legislation on migrant categories in order to establish a legal migration policy in the European Union. As Montenegro is ready to share the burden and values of other European countries, in this sense, European legislation has been transposed into domestic legislation.

At the session of 14 February 2018, the Parliament of Montenegro adopted the new Law on Foreign Nationals, in which European standards in this field were implemented.

In February 2017, the Government of Montenegro adopted the Strategy for Integrated Migration Management in Montenegro 2017-2020, with the 2017 Action Plan for the implementation of the Strategy.

The main objective of the Strategy is to fully harmonize and establish a legal framework, as well as to further strengthen the institutional framework that provides for the effective implementation of the policy of controlling migration movements in accordance with the acquis communautaire rules and standards, as well as to establish a monitoring system for monitoring the Strategy and the implementation of action plans. Montenegro is determined to develop and improve the legal framework, institutions and administrative capacities, cooperate with other countries and international organizations, and the ultimate goal of the Strategy is to establish a society with an efficient system and recognizable results in the field of integrated migration management, which will contribute to the regional and overall stability in accordance with EU rules and standards.

In addition, Montenegro has adopted the Strategy for the reintegration of persons returned under the readmission agreement for the period 2016-2020. The main goal of the Strategy is to create the preconditions for adequate access to the process of return and reintegration at all levels through further strengthening of the institutional framework, efficient process of assistance, education and monitoring system of the Strategy and implementation of the Action Plan for its implementation. Montenegro is determined to use all available capacities in order

to organize a humane return and create the conditions for sustainable reintegration of returnees. The ultimate goal of the Strategy is to establish a society with an efficient system and recognizable results in the field of return and reintegration.

The development of the asylum system is a moral obligation for every society, as well as an obligation arising from our endeavour to be closer to European standards in this field. The starting point for the reform of the asylum system is undoubtedly the European framework, but it in this process the specificity of Montenegro has been taken into account as well, its constitutional-legal order, institutional and administrative capacities, as well as economic and social factors, which resulted in the adoption of a law which would avoid legal gaps or contradictory solutions.

On December 29, 2016, the Parliament of Montenegro adopted the Law on International and Temporary Protection of Foreign Nationals, which is applicable from January 1, 2018. This is one of the first laws that fully implement European standards in the field of asylum, which has been positively assessed by the European Commission and represents a significant step in the European integration of Montenegro.

This law implements standards of international humanitarian law and standards of human rights protection in the development and implementation of reception policies and the need to create a safe and dignified environment for asylum seekers, discouraging any form of abuse in the asylum system, recognizes the need to establish and apply fair and expeditious asylum procedure, in order to identify in a timely manner those in need of international protection and those for whom this is not the case, thus avoiding a long period of uncertainty for asylum seekers, discouraging the abuse of the asylum system and facilitating the overall requirements of the reception system.