

By virtue of Article 95 (3) of the Constitution of Montenegro I hereby adopt the

**DECREE PROMULGATING THE LAW ON INTERNATIONAL AND TEMPORARY PROTECTION OF FOREIGNERS**

I hereby promulgate the Law on International and Temporary Protection of Foreigners, adopted by the 26<sup>th</sup> Parliament of Montenegro at its fourth session of the second regular (autumn) sitting in 2016 on 29 December 2016.

Ref.no. 01-1308/2 Podgorica, 30 December 2016

President of Montenegro  
Filip Vujanovic, m.p.

By virtue of Article 82(1)(2) of the Constitution of Montenegro and Amendment IV(1) to the Constitution of Montenegro, at its fourth session of the second regular (autumn) sitting in 2016 on 29 December 2016, the 26<sup>th</sup> Parliament of Montenegro adopted the

**LAW ON INTERNATIONAL AND TEMPORARY PROTECTION OF FOREIGNERS**

**I. GENERAL PROVISION**

**Scope**

**Article 1**

This Law governs the principles, conditions, and procedures for granting international and temporary protection to a foreigner seeking international protection; the rights and duties of a foreigner seeking international protection, an asylee, a foreigner granted subsidiary protection, a foreigner granted temporary protection; as well as the conditions and the procedure for the withdrawal and cessation of asylee status, subsidiary and temporary protection.

**International protection**

**Article 2**

The international protection of a foreigner seeking international protection shall include asylum and subsidiary protection.

**Asylum**

**Article 3**

Asylum shall be granted to a foreigner seeking international protection, who is outside the country of his origin, and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

## **Subsidiary Protection**

### **Article 4**

Subsidiary protection shall be granted to a foreigner seeking international protection, who does not qualify for asylum, if substantial grounds have been shown for believing that, if returned to the country of origin, he would face a real risk of suffering serious harm, and who is unable, or, owing to such risk, unwilling to avail himself of the protection of that country.

## **Temporary protection**

### **Article 5**

Temporary protection shall be granted to a third-country national and a stateless person in the event of a mass influx or imminent mass influx of persons from third countries who are unable to return to their country of origin, in particular if there is a risk that the system for granting international protection cannot be efficient due to this mass influx, in the interests of the persons concerned and other persons requesting international protection.

## **A Foreigner Seeking International Protection**

### **Article 6**

A foreigner seeking international protection, or an applicant who has lodged an application for international protection, means a third-country national or a stateless person who has stated his intention to lodge an application for international protection.

## **Family Members**

### **Article 7**

A family member of a foreigner seeking international protection, an asylee, a foreigner granted subsidiary protection or a foreigner granted temporary protection is deemed to be:

- the spouse or the common-law spouse, under the laws of Montenegro, as well as the person considered to be the civil partner;
- the common minor child of spouses or common-law spouses, their common minor adoptive child, the minor child and the minor adoptive child of one of the spouses or common-law spouses or the civil partner who has custody over that child;
- the adult child of a foreigner seeking international protection, an asylee, a foreigner granted protection or a foreigner granted temporary protection, who is not married, and who due to his medical condition is unable to take care of himself;
- the parent or other legal guardian of a minor a foreigner seeking international protection, an asylee, a foreigner granted subsidiary protection or a foreigner granted temporary protection;
- a first-degree relative in the direct ascending line who lived in the common household with a foreigner seeking international protection, an asylee, a foreigner granted subsidiary protection or a foreigner granted temporary protection, if found to be dependent on the assistance of such person.

## **Decision-Making and Accommodation Responsibilities**

### **Article 8**

The procedure upon an application for international protection, as well as the reception and accommodation of a foreigner seeking international protection shall be conducted by the state administration authority responsible for internal affairs (hereinafter: the Ministry).

The tasks regarding the accommodation and reception of a foreigner referred to in para 1 above shall be carried out by the Ministry through its unit for providing accommodation to foreigners seeking international protection (hereinafter: the Reception Centre).

The tasks regarding the accommodation of asylees, foreigners granted subsidiary protection and foreigners granted temporary protection shall be carried out by the state administration authority responsible for labour and social welfare.

## **Gender-Sensitive Language**

### **Article 9**

The terms used in this Law in the masculine gender in reference to natural persons shall imply the same terms in the feminine gender.

## **Definition of Terms**

### **Article 10**

For the purpose of this Law:

1) **asylee** means a foreign national who has been granted asylum under this law, as well as a foreign national who has been granted a refugee status under the previous legislation;

2) **foreigner granted subsidiary protection** means a third-country national and a stateless person enjoying subsidiary protection;

3) **foreigner granted temporary protection** means a third-country national and a stateless person enjoying temporary protection;

4) **applicant in transfer** means a third country national and a stateless person who is in the process of transferral to the state responsible for examining the application for international protection;

5) **country of origin** means the country whose nationality is held by a third-country national or the country in which a stateless person previously had habitual residence, and if the third-country national has more than one nationality, each of the countries whose national he is shall be considered his country of origin;

6) **third country** means a non-EU Member State;

7) **state responsible for examination of the application for international protection** means an EU Member State whose competence in examining the application for international protection is established under Regulation (EU) 604/2013 of the European Parliament and the Council from 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one Member State by a third-country national or a stateless person (hereinafter: Regulation (EU) 604/2013);

8) **vulnerable groups** means persons deprived of their legal capacity, minors, unaccompanied minors, elderly and infirm persons, persons with serious illnesses, disabled people, pregnant women, single parents with minor children, persons with mental disorders, victims of human trafficking, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence (such as victims of female genital mutilation);

9) **unaccompanied minor** means a third-country national or a stateless person below the age of eighteen who arrives on the territory of Montenegro unaccompanied by an adult who takes care of him or a minor left unaccompanied after having entered Montenegro, until he is placed under guardianship under the laws of Montenegro.

## II. PRINCIPLES

### **Prohibition of expulsion or return (*non-refoulement*)**

#### **Article 11**

It is forbidden to expel or in any way return a third-country national or a stateless person to a country:

- where his life would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion, or where he could be subjected to torture, inhuman or degrading treatment, or
- which could extradite him to another country where his life would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion, or where he could be subjected to torture, inhuman or degrading treatment.

A third-country national or a stateless person who meets the conditions for approval of international protection or who has had international protection approved may be expelled or returned to a country where the principle referred to in para 1 above would not be undermined if he constitutes a danger to national security, or has been convicted by a final judgement of a serious crime on the account of which he constitutes a danger for public order of Montenegro.

### **Extradition and surrender of a foreigner seeking international protection**

#### **Article 12**

The procedure of examining an application for international protection does not prevent the extradition or surrender of a foreigner seeking international protection for whom a European arrest warrant has been issued or a decision to extradite or surrender the applicant to a Member State of the European Union or the International Criminal Court has been made.

The European arrest warrant is a decision of judicial authorities by means of which one Member State of the European Union submits to another Member State a request for arrest and surrender of a certain person for the purpose of conducting a criminal prosecution or executing a custodial sentence.

The procedure of examining the application for international protection shall not prevent extradition or surrender to a third country of a foreigner seeking international protection for whom an international warrant has been issued, unless enforcement of the decision to extradite or surrender would undermine the prohibition of expulsion or return (the principle of *non-refoulement*).

The Ministry shall, with the consent of the administration authority responsible for the judiciary, decide that the surrender of a third-country national or a stateless person to a state responsible for examining the application for international protection shall prevail over extradition or surrender of a third-country national or a stateless person to a third country that has issued an international arrest warrant.

The procedure of examining an application for international protection shall prevent extradition or surrender of an applicant against whom an international arrest warrant has been issued and for whom a decision on extradition or surrender to the country of origin had been reached, pending the final decision on the application for international protection.

An applicant seeking international protection, who is in the process of extradition or surrender, may lodge an application for international protection within five days from the expressed intention to apply for international protection, of which the Ministry shall promptly inform the state administration authority competent for the judiciary.

## **Impunity for Illegal Entry or Stay in Montenegro**

### **Article 13**

A third-country national or a stateless person, who has entered Montenegro illegally, coming directly from the territory where he fears persecution, shall not be punished for illegal entry or stay, if he expresses his intention to apply for international protection without delay and justifies the reasons for illegal entry or stay in Montenegro.

## **Family Unity**

### **Article 14**

A foreigner seeking international protection, an asylee, a foreigner granted subsidiary protection and a foreigner granted temporary protection shall be entitled to family unity.

To ensure the enjoyment of family unity benefits, in the process of reunification of family members with an asylee, a foreigner granted subsidiary protection or a foreigner granted temporary protection, a diplomatic or consular mission of Montenegro abroad shall, at the proposal of the Ministry, issue a visa to the family members of such person, and if no conditions are met for visa issuance, they shall issue a travel document for foreigners.

## **The Best Interests of a Minor**

### **Article 15**

In the procedures conducted under this Law, due consideration shall be given to the best interests of a minor, taking into account:

- 1) the minor's well-being and social development and his origin;
- 2) the minor's safety and security, in particular where there is a risk of the minor being a victim of human trafficking;
- 3) the views of the minor, in accordance with his age and maturity, and
- 4) family reunification possibilities.

In pursuing the best interests of an unaccompanied minor, the minor's guardian shall undertake all the necessary actions, including contacts and interactions with state authorities, state administration bodies, foreign bodies, international and nongovernmental organisations in order to reunite the minor with his family, if that is in the best interest of the minor.

## **Cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR)**

### **Article 16**

The Ministry and other state administration bodies shall cooperate with the Office of the United Nations High Commissioner for Refugees (hereinafter: the UNHCR) on issues relating to foreigners seeking international protections, asylees, foreigners granted subsidiary protection and foreigners granted temporary protection.

The Ministry shall, at the request of the UNHCR, supply information on:

- 1) foreigners seeking international protection, asylees, foreigners granted subsidiary protection and foreigners granted temporary protection;
- 2) the implementation of the 1951 Convention relating to the Status of Refugees and other international instruments concerning the protection of refugees or asylees, and
- 3) laws and other regulations in the field of international protection of applicants seeking such protection, as well as any regulations intended for adoption in this field.

The Ministry shall, with the consent of the foreigner seeking international protection, provide the UNHCR access to information relating to his application for international protection, the course of the proceeding and the decision taken with regard to the application.

### **Exclusion of the public**

#### **Article 17**

The public shall be excluded from the process of granting international protection.

Notwithstanding paragraph 1 above, the interview under Art 42 of this Law may be attended by a representative of the UNHCR or other organisations dealing with the protection of human rights and the rights of refugees, or asylees, if the foreigner seeking international protection does not object to that.

### **Language and Script Used in the Procedure**

#### **Article 18**

The procedure of examining the application for international protection shall be conducted in Montenegrin language.

When a foreigner seeking international protection does not understand Montenegrin language, he shall be provided with an interpreter for the language he is reasonably assumed to understand and in which he can communicate.

A foreigner seeking international protection shall be provided with an interpreter, *ex officio* or at his request, if feasible of the same sex, when this is necessary in order to fully explain the application for international protection or for other legitimate reasons.

A foreigner seeking international protection is obliged to communicate the reasons for seeking international protection through an interpreter, unless the participation of a particular interpreter might lead to an incomplete and inaccurate presentation of these reasons.

In the case referred to in para 4 above, if an applicant considers that the participation of a particular interpreter could lead to an incomplete and incorrect presentation of his reasons for seeking international protection, he shall present the legitimate reasons thereof.

The legitimacy of reasons referred to in para 5 above shall be decided by the Ministry and if it estimates that the participation of a particular interpreter could lead to an incomplete and inaccurate presentation of the reasons for international protection, a foreigner seeking international protection shall be provided another interpreter.

The Ministry may allow a foreigner seeking international protection to hire at his own expense an interpreter who meets the requirements of Art 19 para 1 of this Law, within the deadline set by the Ministry.

In case an applicant should unjustifiably refuse to provide during the procedure the reasons for seeking international protection through an interpreter provided by the Ministry, and fail to hire an interpreter as envisaged in para 7 above, he shall be deemed unwilling to state the reasons to be examined in deciding whether he meets the requirements of Art 3 and 4 of this Law.

A foreigner seeking international protection is obliged to submit a certified translation of a foreign document he refers to, i.e. by which he is proving his allegations.

In case a foreigner seeking international protection does not dispose of financial means, the translation of the foreign document shall be provided by the Ministry, if based on the available information and at own discretion, it is determined that the document is relevant for the examination of the application for international protection.

## **Interpreter**

### **Article 19**

An interpreter under Article 18 of this Law may be a person who:

- 1) in addition to proficiency in Montenegrin, or English or French, has the knowledge of the language for the interpretation of which he is engaged;
- 2) has not been sentenced to an unconditional custodial sentence or no criminal proceedings are pending against him in Montenegro.

In the procedure for examining the application for international protection, the interpreter is obliged to interpret truthfully, accurately and impartially.

The interpreter is obliged to safeguard the information disclosed to him during the process of examining the application for international protection.

If for objective reasons it is not possible to provide an interpreter for a specific language, the Ministry may request the assistance of another state.

Engaging interpreters shall be done under the law governing public procurement.

In the procedure of examining an application for international protection, interpretation may be provided via telecommunication or audiovisual electronic devices.

## **Special Procedural Safeguards**

### **Article 20**

Special procedural safeguards shall be afforded to a foreigner seeking international protection who, due to personal features and circumstances (age, sex, sexual orientation, gender identity, severe illness, mental health or consequences of torture, rape or other severe forms of psychological, physical or gender-based violence), is not fully able to pursue own rights and perform duties under this Law without adequate assistance.

Appropriate support to applicants referred to in para 1 above for the purpose of pursuing rights and executing duties under this Law shall be considered as special procedural safeguards.

In the procedure from the moment of expressing intent to lodge an application for international protection until taking decision upon the application for international protection, the features and circumstances referred to in para 1 above shall be determined by trained police officers and authorised officials of the Ministry and other competent authorities, under this law.

The provisions of Art 36 and 51 of this Law shall not apply to the procedure upon the application for international protection of an applicant in need of special procedural safeguards, in particular at the request of a victim of torture, rape and other serious forms of psychological, physical or gender-based violence, unless appropriate support is provided.

## **The Principle of “*sur place*”**

### **Article 21**

A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on:

- 1) events which have taken place since the foreigner seeking international protection has left the country of origin;
- 2) activities which the foreigner seeking international protection has engaged in since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

In case an applicant seeking international protection files a subsequent application for international protection, the well-founded fear of being persecuted or a real risk of

suffering serious harm may not be based on circumstances which the applicant has created purely in order to meet the requirements for being granted international protection.

### **III. QUALIFICATION FOR INTERNATIONAL PROTECTION**

#### **Assessment of Qualification**

##### **Article 22**

The conditions relating to the grounds, the acts and the actors of persecution, or serious harm, as well as in relation to the existence of protection against persecution or serious harm in their country of origin shall be examined in the procedure upon an application for international protection.

#### **Grounds for Persecution**

##### **Article 23**

The grounds for persecution may include:

- race, which implies skin colour, origin and belonging to a particular ethnic group;
- faith, which implies theistic, non-theistic and atheistic beliefs, participation or non-participation in public or private formal religious rites, individually or in community with others, other religious ceremonies or practice of the faith, or forms of personal or communal conduct based on religious belief or resulting therefrom;
- nationality, which implies belonging to a group which is determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another country, which may also include a citizenship;
- political opinion, which implies an opinion, attitude or belief about issues related to possible actors of persecution under Art 26 of this Law, and their policies or methods, whether or not the foreigner seeking international protection acted on this opinion, attitude or belief;
- a particular social group that includes members who have common inborn traits or common background that cannot be changed, or characteristics or beliefs, to the extent relevant for their identity or conscience that those persons should not be forced to give up, and such a group has a distinct identity in the relevant country, because the society that surrounds it considers it to be distinct.

Depending on the circumstances in the country of origin, a particular social group referred to in para 1 item 5 above, can denote a group which has the common characteristics of sexual orientation, whereas acts criminalised in the legislation of Montenegro may not be regarded as sexual orientation.

The features related to gender identity, including sex, shall be taken into account when examining membership to a particular social group, referred to in para 1 item 5 above, or to determine the characteristics of such groups.

#### **Acts of Persecution**

##### **Article 24**

The acts serious enough in their nature or repeated to constitute serious violation of fundamental human rights or a set of different measures which constitute violation of human rights shall be deemed as persecution.

The acts referred to in para 1 above may include:



- 1) physical or psychological violence, including sexual violence;
- 2) legal, administrative, police and/or judicial measures that are discriminatory or are implemented in a discriminatory manner;
- 3) prosecution or punishment which is disproportionate or discriminatory;
- 4) the denial of rights in judicial proceedings that may occur due to the disproportionate or discriminatory punishment;
- 5) prosecution or punishment for refusal of military service during the conflict, if the performance of military service meant execution of offenses or actions under Art 29, para 1, item 3 and Art 30 para 1 item 1 of this Law;
- 6) the acts of persecution specifically related to sex or children.

The existence of persecution shall be determined by a connection of the acts of persecution and/or lack of protection against such acts and the grounds for persecution as referred to in Art 23 of this Law.

When assessing whether an applicant had a well-founded fear of persecution it is irrelevant whether the applicant actually has racial, religious, national, social or political features which cause persecution, provided this feature is attributed to the applicant by the actors of persecution.

### **Serious Harm Article 25**

Serious harm consists of the threat of death penalty or execution, or torture or inhuman or degrading treatment or punishment or serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

### **Actors of Persecution or Serious Harm Article 26**

The activities and actions taken by the following actors shall be deemed to be persecution and serious harm:

- 1) state authorities;
- 2) parties, national or international organisations controlling the state or a substantial part of the territory of the state;
- 3) non-state actors, if it can be determined that state authorities or parties, or national or international organisations controlling the state or a substantial part of the territory of the state are unable or unwilling to provide protection against persecution or serious harm.

### **Actors of Protection in the Country of Origin Article 27**

Protection against persecution and serious harm in the country of origin can only be provided by:

- 1) state authorities, or
- 2) parties, national or international organisations controlling the state or a substantial part of the territory of the state.

provided that they are able and willing to do so.

When assessing whether parties, national or international organisations control the state or a substantial part of the territory of the state, the data from official acts and guidance of the European Union shall be taken into account.

Protection as referred to in para 1 above implies the existence of an effective legal system for the detection, prosecution and punishment of actors of the acts constituting persecution or serious harm, as well as the possibility of exercising such protection by taking justified measures to prevent persecution or suffering serious harm on the account of which a foreigner seeks international protection.

### **Internal Resettlement and Protection**

#### **Article 28**

International protection shall not be granted if it is determined that a foreigner seeking international protection has the possibility of travelling to a part of the country of origin:

- 1) where there is no well-founded fear of persecution or suffering serious harm;
- 2) where there is access to protection against persecution or serious harm;
- 3) if he can safely and legally travel to that part of the country;
- 4) where he can gain admittance; and
- 5) if he can reasonably be expected to settle there.

### **Exclusion from the Right to Asylum**

#### **Article 29**

Asylum shall not be granted to a foreigner seeking international protection qualifying for asylum under this law if:

- 1) he enjoys protection or receives assistance from organs or agencies of the United Nations other than the UNHCR;
- 2) he has approved residence in the country which recognises, based on such residence, the same rights and obligations which are attached to the possession of the nationality of that country;
- 3) there are serious reasons for considering that he committed, incited or otherwise participated in the commission of:
  - a crime against peace, a war crime or a crime against humanity as defined in the international instruments;
  - a serious non-political crime prior to his arrival to Montenegro, if committed with an allegedly political objective;
  - particularly cruel actions, if committed with an allegedly political objective;
  - acts contrary to the purpose and principles of the United Nations.

In case the protection or assistance as referred to in para 1 above should cease from whatever reason beyond the influence of the foreigner seeking international protection, and where his status has not been finally resolved in accordance with the United Nations General Assembly instruments, asylum shall be granted.

### **Exclusion from the Right to Subsidiary Protection**

#### **Article 30**

Subsidiary protection shall not be granted to a foreigner seeking international protection qualifying for subsidiary protection under this law if:

- 1) there are serious reasons for considering that he committed, incited or otherwise participated in the commission of:
  - a crime against peace, a war crime or a crime against humanity as defined in the international instruments;
  - a serious crime;
  - acts contrary to the purpose and principles of the United Nations;

- 2) he, prior to arrival to Montenegro, has committed a crime punishable in Montenegro by imprisonment, and if he left his country of origin solely in order to avoid sanctions stipulated in that country;
- 3) he constitutes a danger for national security and public order in Montenegro.

A serious crime, within the meaning of para 1 item 2 above, is a crime punishable in Montenegro by imprisonment of five or more years.

### **Safe Country of Origin**

#### **Article 31**

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is no persecution and no risk of suffering serious harm, as determined based on the information on:

- 1) the relevant laws and regulations of the country and the manner in which they are applied;
- 2) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, as well as the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- 3) respect for the prohibition of expulsion or return (*non-refoulement*) in accordance with the 1951 Convention on the Status of Refugees;
- 4) provision for a system of effective legal remedy.

The information referred to in para 1 above shall be collected from the reports and other valid sources, particularly from the Member States to the European Union, the European Asylum Support Office (hereinafter: EASO), the UNHCR, the Council of Europe and other relevant international organisation.

Based on the information referred to in para 1 above, the Ministry, with prior opinion obtained from the state administration body responsible for foreign affairs, shall establish a list of safe countries of origin and inform the European Commission thereof.

A list of safe countries of origin shall be published in the Official Gazette Montenegro.

In examining the application for international protection, the Ministry shall, on a case-by-case basis, determine whether the applicant comes from a safe country of origin.

Any country from the list referred to in para 3 shall be considered as a safe country of origin within the meaning of para 5 above, if a foreigner seeking international protection is a national of that country or had the last residence as a stateless person in that country, and if he failed to plausibly explain why that country of origin cannot be regarded as a safe country of origin in his particular case.

A foreigner seeking international protection shall be duly informed that the country from which he comes is included in the list referred to in para 3 above and that he may submit reasons why, in his case, that country should not be considered as a safe country of origin.

In the case where, in the procedure upon the application for international protection, it is established that it involves a safe country of origin, the application shall be rejected.

### **Safe Third Country**

#### **Article 32**

Safe third country is a country in which a foreigner seeking international protection is safe from persecution or risk of suffering serious harm, which respects the prohibition

of expulsion or return (*non-refoulement*) and in which the possibility exists to receive international protection.

In examining the application for international protection, the Ministry shall, on a case-by-case basis, determine whether it constitutes a safe third country within the meaning of para 1 above, as well as whether there exists a connection between that country and the foreigner seeking international protection on the basis of which it would be reasonable for that person to go to that country and seek international protection, taking into account all the facts and circumstances of his application.

An applicant for international protection shall be duly informed that in his case there is a safe third country and that he may state his reasons why this country may not be regarded as a safe third country considering his personal features and circumstances.

In case when it is established in the process of assessing an application for international protection that there exists a safe third country, the application will be rejected, and the applicant shall be issued a certificate as confirmation that the merits of his application for international protection have not been examined in the procedure.

In the event that the safe third country should refuse to accept foreigner whose application was rejected pursuant to para 4 above, his application for international protection shall be re-examined in accordance with the provisions of this law.

The Ministry shall inform the European Commission regularly of the countries established to be safe third countries.

### **European Safe Third Country**

#### **Article 33**

A European safe third country is a country that has ratified and observes the provisions of the 1951 Convention relating to the Status of Refugees, without geographic limitations, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In examining the application for international protection, the Ministry shall, on a case-by-case basis, determine whether it constitutes a European safe third country within the meaning of para 1 above.

An applicant seeking international protection shall be duly informed that, in his case, there is a European safe third country and that he can submit reasons why, in his case, that country cannot be considered a European safe country of origin, given the specificity of his personal features and circumstances.

An application for international protection of foreigner who has illegally entered the territory of Montenegro from a European safe third country shall be rejected if such country adheres to the prohibition of expulsion or return (*non-refoulement*), unless there are special circumstances of humanitarian or political nature.

In the case referred to in para 4 above, the foreigner seeking international protection shall be issued a confirmation that the merits of his application for international protection have not been examined in the procedure.

In the event that the European safe third country should refuse to accept foreigner whose application was rejected pursuant to para 5 above, his application for international protection shall be re-examined in accordance with the provisions of this Law.

The Ministry shall regularly inform the European Commission about the countries which have been designated as European safe third countries.

## **IV. PROCEDURE FOR GRANTING INTERNATIONAL PROTECTION**

### **Statement of Intention to Apply for International Protection**

#### **Article 34**

A third-country national or a stateless person can express their intention to apply for international protection during the checks at the border crossing point.

The intention to apply for international protection is an oral or written statement of intention of a third-country national or a stateless person to apply for international protection in Montenegro.

If a third-country national or stateless person is already within the territory of Montenegro, the intention referred to in para 1 above shall be expressed in the organizational unit of the administration body in charge of police affairs (hereinafter: the Police) in the place where he is found or at the Reception Centre.

On the occasion of expressing the intention referred to in the paras 1 and 3 above, police officers or Reception Centre staff are obliged to collect the data concerning the identity of the foreigner who has expressed the intention to submit an application for international protection, the route taken from the country of origin to Montenegro, as well as personal features and circumstances referred to in Art 20 of this Law, so as to assess whether it is necessary to provide special procedural safeguards.

In order to determine the identity of foreigner who expresses the intention to apply for international protection, fingerprints of all fingers and a photo shall be taken.

A foreigner who expresses the intention to apply for international protection shall be obliged to enable the collection of the data referred to in para 5 above.

Should it not temporarily be possible to take fingerprints of the foreigner who expresses the intention to apply for international protection, due to medical or other reasons that he did not deliberately cause, he is obliged to enable fingerprints being taken immediately after the reasons have ceased to exist.

A police officer or a member of the Reception Centre staff receiving the statement of intention referred to in paras 1 and 3 above, shall enter the data referred to in para 5 above in the records they keep and refer the foreigner who expressed the intention to apply for international protection to report to the Ministry within three days, in order to lodge the application.

The Police shall furnish the Ministry with the data on foreigners who stated their intention to apply for international protection.

A foreigner who states the intention to apply for international protection, but fails to provide the data referred to in para 6 above or, without a justified reason, fails to report to the Ministry in compliance with para 8 above, shall be deemed to be illegally staying in Montenegro.

More detailed method for collecting the data referred to in para 5 above shall be set forth by the Ministry.

### **An Application for international protection**

#### **Article 35**

A foreigner seeking international protection is obliged to submit an application for international protection to the Ministry as soon as possible, and not later than 15 days from the statement of intention.

An application for international protection shall be lodged directly with the Ministry in the stipulated form, or verbally on the record, which marks the commencement of the procedure for granting international protection.

Notwithstanding paragraph 1 above, a foreigner seeking international protection who is placed in a healthcare institution shall be given the opportunity to apply for international protection in the healthcare institution in which he is situated.

Based on the fingerprints taken under Art 34 para 5 of this Law, the Ministry shall verify whether the fingerprints are already in the fingerprint database of the country responsible for examining the application for international protection.

The contents and the form of the application referred to in para 2 above shall be set forth by the Ministry.

### **Treatment at the Border or in a Transit Area**

#### **Article 36**

A person stating his intention to apply for international protection at the border crossing point or in the transit area of an air or sea port, who does not meet the requirements for legal entry into Montenegro, or comes from a safe country of origin, a safe third country, as well as in the event of a subsequent application for international protection, may be detained at the border crossing point or in the transit area of an air or sea port, where it would be made possible for him to lodge an application for international protection.

### **Procedure upon the Applications Lodged at the Border or in a Transit Area**

#### **Article 37**

In the case referred to in Art 36 of this Law, the procedure upon the application for international protection shall be conducted at the border crossing point or in the transit area if foreigner does not meet the requirements of Art 3 and 4 of this Law, or presents only the data that are of no relevance for the assessment of qualifications for granting international protection, or if his application may be rejected under Art 47 of this Law.

The procedure referred to in para 1 above shall be conducted in accordance with Art 42 to 53 of this Law, and in case of a subsequent application for international protection, the procedure shall be conducted in accordance with Art 49 of this Law.

In the case referred to in paras 1 and 2 above, the decision upon the application for international protection or subsequent application shall be made as soon as possible, and no later than 28 days after the day when the application was lodged.

If the decision referred to in para 3 above is not made within 28 days of the application for international protection or a subsequent application being lodged, a foreigner seeking international protection shall be granted entry into Montenegro in order to conduct the procedure of granting international protection, on which the Ministry shall issue a decision.

A foreigner shall also be granted entry into Montenegro in the case where, during the procedure referred to in para 1 above, it is determined that there exist conditions for granting international protection.

The administrative dispute can be initiated before the Administrative court against the decision referred to in para 3 above, within five days following the receipt of the decision.

The proceedings before the Administrative Court shall be urgent.

### **Reception Conditions at the Border or in a Transit Area**

#### **Article 38**

A foreigner referred to in Art 36 of this Law shall be provided with food, clothing, healthcare and counselling regarding the procedure upon an application for international protection.

The non-governmental organizations registered for providing free legal assistance to foreigners seeking international protection and organizations dealing with the protection of the rights of refugees, or asylees shall be given access to a foreigner seeking international protection at the border crossing point or in the transit area of an air or sea port.

The organizations referred to in para 2 above may be temporarily restricted access to a foreigner seeking international protection when it is necessary to protect national security and public order of Montenegro.

### **Minors**

#### **Article 39**

For a minor, the intention to lodge an application for international protection shall be stated or the application for international protection lodged by his legal representative.

A minor above 16 years of age, who is married, can autonomously state the intention and lodge an application referred to in para 1 above.

The minor and his legal representative shall take part in the procedure upon the application for international protection referred to in para 1 above.

Notwithstanding paragraph 3 of above, a minor may participate in the procedure without his legal representative if it is deemed to be in his best interests, in accordance with the regulations governing the protection of children's rights.

### **Unaccompanied Minors**

#### **Article 40**

The centre for social work shall assign to an unaccompanied minor, who states an intention to apply for international protection, a guardian trained to work with minors seeking international protection, and whose interests are not contrary to the interests of the minor.

An unaccompanied minor shall immediately be informed of the appointment of a guardian.

Notwithstanding paragraph 1 above, an unaccompanied minor above 16 years of age and married shall not be assigned a guardian.

An unaccompanied minor shall lodge the application for international protection personally in the presence of the guardian.

Notwithstanding paragraph 4 above, the application for international protection may be lodged by the guardian on behalf of the unaccompanied minor, if, in the process of return, or enforced return to their country of origin, it is considered that he is in need of international protection with regard to his personal features and circumstances.

The procedure for granting international protection to an unaccompanied minor shall be carried out by an authorized official who conducts the administrative procedure and issues an administrative act (hereinafter: authorized official) trained to work with minors seeking international protection.

The guardian is obliged to promptly prepare the unaccompanied minor for the interview and provide him with information on the meaning and consequences of the personal interview.

An unaccompanied minor is required to personally appear at the interview in the presence of a guardian.

The decision upon the application for international protection of an unaccompanied minor shall be taken urgently, while an expedited procedure may be adopted only in cases prescribed by Art 49 para 4 and Art 51 para 1 items 7 and 8 of this Law.

An unaccompanied minor may not be detained at a border crossing point or in the transit area, under Art 36 of this Law.

## **Assessing the Age of a Minor**

### **Article 41**

In case of a doubt as to the age of the minor in the procedure for granting international protection, the process of age assessment shall be conducted.

Age assessment shall be conducted on the basis of available data on the minor, the expert opinion of the officials of the Reception Centre involved in the work with the minor, as well as on the opinion of the minor's guardian.

If, on the basis of available data and opinions referred to in para 2 above, it is not possible to determine the age of the minor, a medical examination shall be conducted with the prior written consent of the minor and the guardian.

The medical examination shall be conducted by means of a physical examination, x-rays of teeth and/or of a hand, with full respect for the dignity of the minor.

A minor and his guardian must be informed in a language he is reasonably assumed to understand and in which he can communicate, on the method of examination and its possible effects on the health, possible consequences of the results of such medical examination on the assessment of the application for international protection, as well as the consequences of denial of consent referred to in para 3 above.

During the medical examination, if necessary, the minor shall be provided with an interpreter for the language he is reasonably assumed to understand and in which he is able to communicate.

The costs of the medical examination shall be borne by the Ministry.

In the case of unjustified denial of consent referred to in para 3 above, the minor shall be deemed to be an adult applicant for international protection.

An application for international protection may not be rejected solely on the ground of the denial of consent to conduct a medical examination in accordance with para 3 above.

If, even following the results and the report on the medical examination undertaken, there is still a doubt as to the age of the minor, the concept of the benefit of the doubt under Art 43 of this Law shall be applied.

## **Personal Interview**

### **Article 42**

Upon the application for international protection, the Ministry shall, as soon as feasible, conduct the examination procedure and allow the foreigner seeking international protection to be heard in person regarding all the facts and circumstances relevant to the procedure for granting international protection.

A foreigner seeking international protection is obliged to personally attend and participate in the interview regardless of whether he has a legal representative, a guardian and/or an attorney.

The interview with a foreigner seeking international protection referred to in para 1 above, who has an attorney, may be conducted in the absence of the attorney.

A foreigner seeking international protection is obliged to present during the interview credible and convincing reasons on which he grounded his application for international protection and to submit all the evidence which he has at disposal or is able to obtain, and which support his application, as well as to respond truthfully to all questions addressed to him.

The Ministry shall, if possible and justified, and if so requested by the foreigner seeking international protection, ensure that the procedure upon the application for international protection is conducted by an authorized official of the same sex as the applicant's.



In order to determine the facts of the case, a foreigner seeking international protection may be interviewed several times.

The interview may be omitted if:

- 1) the decision granting international protection can be taken based on the evidence submitted by the foreigner seeking international protection;
- 2) the foreigner seeking international protection is not capable or able to be interviewed because of personal features and circumstances he has no influence over;
- 3) a subsequent application is inadmissible under Art 49 of this Law.

If in the case referred to in para 7 item 2 above, the foreigner seeking international protection or a member of his family shall be given the opportunity to submit evidence and make statements relevant for deciding on the application for international protection.

### **The Benefit of the Doubt**

#### **Article 43**

The statement of a foreigner seeking international protection shall be deemed credible where a particular fact or circumstance is not supported by evidence if:

- 1) the plausibility of his statement as regards the general and specific information about the country of origin and the place he claims to have come from had been established;
- 2) he has made genuine efforts to substantiate his application for international protection;
- 3) he has submitted evidence he had on disposal, and for other evidence not in his possession, he has given a satisfactory explanation;
- 4) it was ascertained that his statement was consistent and credible, and that it was not inconsistent with the available general and specific information relevant for examining the application for international protection; and
- 5) he applied for international protection as soon as feasible, or gave justified reasons for not doing so.

### **Collection, Examination and Assessment of Facts and Circumstances**

#### **Article 44**

A foreigner seeking international protection is obliged to cooperate with the Ministry, submit all the documentation at his disposal and present true and accurate information concerning his identity, age, nationality, family, countries of previous residence, previous applications for international protection, travel routes, the documents that can be used for determining his identity and the reasons for seeking international protection.

When deciding on the merits of an application for international protection, the Ministry shall collect and examine all relevant facts and circumstances, in particular:

- 1) the statements and evidence that the foreigner seeking international protection has given, in accordance with para 1 above, in particular such information as to whether he was or may be subjected to persecution or risk of suffering serious harm;
- 2) current facts on the country of origin and, if necessary, on the countries through which he travelled, the laws and regulations of those countries and the manner in which they are enforced, based on various reports and other documents by the UNHCR and the EASO and other human rights organizations;
- 3) whether the personal features and circumstances of the foreigner seeking international protection, in particular gender and age, and the position in society, were the cause of actions or acts of persecution or suffering serious harm which he had been or may be subjected to;

4) on the activities of the foreigner seeking international protection, after leaving the country of origin, which are aimed at creating the conditions necessary for granting international protection, where it shall be assessed whether these activities may expose the foreigner to persecution or risk of suffering serious harm if he returns to that country;

5) whether the foreigner seeking international protection could get protection from the country whose nationality he could prove; and

6) whether the foreigner seeking international protection has applied for such protection within a reasonable time after his arrival in Montenegro, and if not, whether he stated reasonable grounds therefor.

If ascertained that a foreigner seeking international protection was subjected to persecution or risk of suffering serious harm, or threat of such persecution or harm, it shall be considered that there is a well-founded fear of persecution or suffering serious harm, unless there are reasonable grounds to believe that such persecution or serious harm will not be repeated.

## **Collection and Exchange of Personal and Other Data**

### **Article 45**

For the purpose of conducting a procedure upon an application for international protection, the Ministry shall collect personal and other data from the applicant.

The data referred to in para 1 above may also be collected from state authorities, state administration authorities, local self-government authorities and legal entities and natural persons in Montenegro, if it is:

- 1) in the interests of the foreigner seeking international protection;
- 2) permitted by the law or other regulations, or
- 3) necessary to verify the information on the foreigner seeking international protection.

The authorities and persons referred to in para 2 above that possess the data relating to a foreigner seeking international protection shall, at the request of the Ministry, provide the information referred to in para 1 above within 15 days.

The Ministry shall not collect the data on the foreigner seeking international protection from the country of his origin, if the collection of such data could pose a danger and/or harm to the physical integrity of the applicant and his family members who have applied for international protection with him, or to the liberty and safety of family members who live in the country of origin.

Personal and other data collected during the procedure upon the application for international protection, in particular the fact that the application has been lodged, constitute confidential information and may not be disclosed to:

- 1) the country of origin of a foreigner seeking international protection, an asylee or a foreigner granted subsidiary protection;
- 2) state authorities, state administration authorities, local self-government authorities and legal entities and natural persons in Montenegro not being part of the procedure.

Notwithstanding paragraph 5 above, the data on the first and family name, date of birth, sex, nationality, family members, documents issued by the country of origin and the last address in the country of origin, fingerprints and photos may be provided to:

- 1) the country of origin or a third country for a third country national or a stateless person whose application for international protection was rejected by a final decision, provided such country accepts him;
- 2) the authorities of a third country that has ratified and applies the 1951 Convention relating to the Status of Refugees.

The collection and the use of data referred to in para 1 above shall be done in accordance with the regulations governing personal data protection.

The data on a foreigner seeking international protection may be shared with the Member States of the European Union with the view of implementing the Regulation (EU) No. 604/2013 and Regulation (EU) No. 603/2013 of the European Parliament and the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by the Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No. 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (hereinafter: Regulation (EU) no. 603/2013).

### **Termination of Procedure**

#### **Article 46**

The procedure for granting international protection may be terminated if the foreigner seeking international protection:

- 1) abandons the application;
- 2) avoids being served the summons for a personal interview;
- 3) fails to appear when summoned for the interview, and fails to justify the non-appearance within 15 days of the scheduled interview;
- 4) leaves the place of residence for more than three days without notifying the Reception Centre thereof or fails to obtain the approval of the Reception Centre or the Ministry, except in cases of force majeure.

The decision to terminate the procedure as referred to in para 1 above shall be made by the Ministry.

In the case referred to in para 1 items 3 and 4 above, the Ministry shall reject an application for international protection if, based on determined facts and circumstances, it can be deemed that the conditions for granting international protection were not satisfied.

In case that a third-country national or a stateless person expresses his intention to apply for international protection after the final decision to terminate previously initiated procedure upon his application, such person shall not be obliged to re-lodge the application for international protection, and the terminated procedure shall be continued.

Administrative dispute may be initiated before the Administrative Court against the decision to terminate the procedure within 15 days after the receipt of the decision.

### **Rejection of Application for International Protection**

#### **Article 47**

An application for international protection shall be rejected if:

- 1) the foreigner seeking international protection has been granted international protection in a Member State of the European Union;
- 2) the foreigner seeking international protection has been granted international protection in a third country whose rights he still enjoys, and which respects the principle of *non-refoulement*, and such country will accept him again;
- 3) there is a possibility that a foreigner seeking international protection is granted international protection by a safe third country, within the meaning of Art 32 of this Law;

4) there is a possibility that a foreigner seeking international protection is granted international protection by a European safe third country, within the meaning of Art 33 of this Law;

5) the state responsible to examine the given application has been determined;

6) the foreigner seeking international protection is a national of a Member State of the European Union.

Administrative dispute may be initiated before the Administrative Court against the decision to reject the procedure within 15 days after the receipt of the decision.

### **Assessment of an Application for International Protection**

#### **Article 48**

Upon examining an application for international protection, the Ministry shall:

1) grant asylum if the foreigner seeking international protection meets the requirements for granting asylum in accordance with this Law;

2) grant subsidiary protection if the foreigner seeking international protection meets the requirements for granting subsidiary protection in accordance with this Law;

3) reject the application for international protection if the foreigner seeking international protection does not meet the requirements for asylum or subsidiary protection in accordance with this Law;

4) reject the application for international protection if the exclusion conditions under Art 9, 30 and 94 of this Law are fulfilled;

5) grant or reject the application for international protection in the expedited procedure in cases referred to in Art 51 of this Law.

The applications for international protection, which can be granted based on the available evidence, may be processed as a matter of priority.

Administrative dispute may be initiated before the Administrative Court against the decision referred to in para 1 items 2 to 5 within 15 days from receipt of the decision.

### **Assessment of a Subsequent Application for International Protection**

#### **Article 49**

A subsequent application for international protection may be submitted by a third-country national or a stateless person, within two years from the final decision:

1) rejecting the application under Art 48 para 1 items 3, 4 and 5 of this Law, or

2) terminating the procedure under Art 46 para 1 of this Law.

The subsequent application for international protection shall be submitted to the Ministry directly, verbally on the record.

The admissibility of a subsequent application referred to in para 1 above shall be decided upon by the Ministry not later than 15 days after its receipt.

Subsequent application for international protection shall be admissible if it contains facts and evidence that have arisen after the final decision was taken upon the earlier application, or facts and evidence that the foreigner seeking international protection, for justified reasons, has not stated in the earlier procedure and where those facts and evidence are of importance for determining whether the requirements for granting international protection are fulfilled.

The admissibility of a subsequent application for international protection is estimated on the basis of facts and evidence contained in the application, in conjunction with the facts and evidence already set out in previous procedure without interviewing the foreigner seeking international protection.

When subsequent application for international protection is found admissible, the application shall be re-examined.

When subsequent application for international protection is found inadmissible, the application shall be rejected.

Subsequent application for international protection of a foreigner in transfer shall be rejected by the Ministry as inadmissible.

### **Deadlines for Taking Decisions**

#### **Article 50**

The Ministry shall decide on the application for international protection within six months from the day of lodging the application for international protection, or the day of the decision on the admissibility of a subsequent application for international protection.

In the case when under Regulation (EU) 604/2013 Montenegro is designated as the responsible state for examining the application for international protection, the deadline referred to in para 1 above shall start from the day of such designation or the day of taking over the applicant.

The deadline referred to in para 1 and 2 above may be extended for additional nine months if:

- 1) the application for international protection involves identifying complex factual circumstances or clarifying a complex legal matter;
- 2) a large number of third country nationals or stateless persons lodge applications for international protection at the same time;
- 3) a foreigner seeking international protection fails to act in accordance with his duties under Art 59 of this Law.

Notwithstanding paragraph 3 above, the deadline may be extended for additional three months in order to fully examine the application for international protection.

Where it is reasonable to expect that a decision cannot be made within the period referred to in para 1 above, the foreigner seeking international protection shall be notified thereof in writing and, upon his request, he shall be informed of the reasons for which it is not possible to take the decision within this timeframe and the deadline within which a decision can be expected.

Where it is reasonable to expect that a decision on the application for international protection cannot be made within the period referred to in paras 2 to 4 above, for the reasons of temporarily unsafe conditions in the country of origin, the Ministry shall:

- 1) review the situation in the country of origin every six months; and
- 2) inform the foreigner seeking international protection and the European Commission within a reasonable period about the reasons for not taking the decision.

The decision referred to in para 1 above shall be adopted not later than within 21 months from the day the application for international protection was lodged.

### **An Expedited Procedure**

#### **Article 51**

The Ministry shall take the decision upon an application for international protection in an expedited procedure within two months from the day of lodging the application, if in examination of the application it is determined that:

- 1) the foreigner seeking international protection presented only the data which are irrelevant for examining the application;

2) the foreigner seeking international protection gave false information, or made available or attached documents that were not authentic or failed to provide relevant data or concealed the documents which could adversely affect the outcome of the procedure, having thus misled or could have misled the authorized officer;

3) the foreigner seeking international protection has destroyed the documents establishing his identity or nationality, and there is a possibility that it has been done with an intention to give false information about the identity or nationality;

4) the foreigner seeking international protection made inconsistent, contradictory, clearly false or improbable representations which contradict sufficiently verified country-of-origin information, thus making his application for international protection clearly unconvincing;

5) the foreigner seeking international protection already stayed in Montenegro for a while failing without any justified reason to state his intention to lodge an application earlier;

6) the foreigner seeking international protection is making an application for international protection merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his removal from Montenegro;

7) the foreigner seeking international protection constitutes a danger to the national security or the public order of Montenegro; or

8) the foreigner seeking international protection comes from a safe country of origin.

The applicant shall be informed that his application for international protection shall be processed in an expedited procedure.

When a decision cannot be taken within the deadline referred to in para 1 above, the application for international protection shall be processed within the deadlines from Art 50 of this Law.

In the case when under Regulation (EU) 604/2013 Montenegro is designated as the state responsible for examining the application, the deadline referred to in para 1 above shall start from the day of such designation.

Administrative dispute may be initiated before the Administrative Court against the decision referred to in para 1 above within 15 days from receipt of the decision.

## **Service of Documents**

### **Article 52**

The decision taken on the application for international protection shall be delivered in person to the foreigner seeking international protection or his guardian or legal representative.

In case the Ministry is not acquainted with the whereabouts of the foreigner seeking international protection, and he has no legal representative or agent to receive legal documents, the delivery shall be made by posting the decision at the notice board of the Ministry.

The documents shall be considered serviced three days after the decision was posted at the Ministry's notice board.

## **Return**

### **Article 53**

When the application for international protection or the subsequent application was rejected by a final decision, or the procedure upon his application has been terminated, or the decision was made to terminate asylum or subsidiary protection, he shall be considered to be residing illegally in Montenegro and the measures for his return shall be taken in accordance with the law governing the residence of foreigners, with preference given to voluntary return.

## **V. CESSATION, TERMINATION AND WITHDRAWAL OF INTERNATIONAL PROTECTION**

### **Cessation of International Protection Article 54**

Asylum shall cease if:

- 1) the asylee voluntarily accepts the protection of the country of his nationality;
- 2) the asylee acquires the nationality of a country whose protection he may enjoy;
- 3) the asylee voluntarily returns and settles in the country which he had left or outside of which he had stayed because of fear of persecution;
- 4) the circumstances in the asylee's country of origin on the basis of which he was granted international protection cease to exist; or
- 5) the asylee voluntarily re-acquires the nationality of the country of origin, which he had previously lost.

Subsidiary protection shall cease if the circumstances under which subsidiary protection was granted cease or transform to such an extent that further protection is no longer necessary.

When the Ministry determines that there is a permanent cessation or permanent and significant change of circumstances referred to in para 1 item 4 and para 2 above, it shall inform the asylee or foreigner granted subsidiary protection, and enable them to make a statement thereon verbally on the record.

The decision on cessation of asylum or subsidiary protection in cases referred to in paras 1 and 2 above shall be taken by the Ministry.

Administrative dispute may be initiated before the Administrative Court against the decision referred to in para 4 above within 15 days from receipt of the decision.

### **Termination of International Protection by Operation of Law Article 55**

Asylum and subsidiary protection shall terminate by operation of law:

- 1) when the asylee or foreigner granted subsidiary protection have been granted permanent residence in Montenegro or have acquired Montenegrin nationality;
- 2) upon the death of the asylee or the foreigner granted subsidiary protection.

The decision on termination of asylum or subsidiary protection in cases referred to in para 1 above shall be taken by the Ministry.

### **Withdrawal of International Protection Article 56**

Asylum or subsidiary protection shall be withdrawn pursuant to an annulment of the decision thereon if:

- 1) the existence of reasons for exclusion under Art 29 or 30 of this Law is discovered subsequently;
- 2) it is discovered that international protection had been granted on the basis of misrepresentation of facts or due to concealing facts relevant for the decision-making; or
- 3) if the beneficiary of international protection constitutes a danger for national security and public order of Montenegro, determined by a final decision of the competent authority.

In the event of determining the circumstances referred to in para 1 above, the asylee or the foreigner granted subsidiary protection shall be notified thereof and given the opportunity to make a statement on these circumstances verbally on the record.

The annulment decision referred to in para 1 above shall be issued by the Ministry.

Administrative dispute may be initiated before the Administrative Court against the decision referred to in para 3 within 15 days from receipt of the decision.

### **Return Article 57**

When the Ministry has adopted the decision referred to in Art 56 para 3 of this Law, whose enforcement has not been postponed at the request of foreigner, such foreigner shall be considered to be illegally residing in Montenegro, and measures for his return shall be taken, in accordance with the law governing the residence of foreigners.

## **VI. RIGHTS AND DUTIES**

### **1. Rights and Duties of Foreigner Seeking International Protection**

#### **Rights Article 58**

A foreigner seeking international protection shall be entitled to:

- 1) residence in Montenegro;
- 2) freedom of movement within Montenegro;
- 3) reception;
- 4) healthcare;
- 5) primary and secondary education;
- 6) information necessary for their residence and legal counselling in reference to the procedure upon the application for international protection and free legal assistance;
- 7) free legal assistance;
- 8) work;
- 9) documents in accordance with this Law;
- 10) family unity.

In the enjoyment of the rights referred to in para 1 above, due consideration shall be given to the needs of foreigner seeking international protection who need special procedural safeguards.

The rights referred to in para 1 above shall not pertain to foreigner seeking international protection retained at a border crossing point or in a transit area in accordance with Art 36 of this Law.

#### **Duties Article 59**

A foreigner seeking international protection is obliged to:

- 1) observe the Constitution and laws of Montenegro;
- 2) cooperate with the state authorities and act upon their orders and instructions;
- 3) provide the information necessary for establishing the identity and facilitate taking of photographs and fingerprints, as well as other checks needed to determine his identity;
- 4) undergo a medical examination;
- 5) comply with the rules of stay and the house rules of the Reception Centre;
- 6) lodge an application for international protection within the set timeframe;
- 7) respond to the invitation of the Ministry for a personal interview and cooperate in the procedure of granting international protection;



- 8) remain within the territory of Montenegro for the duration of the procedure upon the application for international protection;
- 9) notify the Ministry of any change of address within three days;
- 10) comply with the Ministry's orders and measures on restriction of freedom of movement.

### **Period of Enjoyment of Rights and Exercise of Duties**

#### **Article 60**

A foreigner seeking international protection may enjoy his rights and exercise his duties in accordance with this Law pending the final decision upon his application.

A foreigner in transfer shall enjoy the rights and exercise duties in accordance with this Law pending the completion of the procedure for his transfer to the responsible state.

### **Right of Residence**

#### **Article 61**

A foreigner seeking international protection shall have the right of residence in Montenegro from the day of stating the intention to apply for international protection until the decision rejecting his application has become final.

When a foreigner seeking international protection lodges a subsequent application, and when such application is found inadmissible, in accordance with Art 49 para 7 of this Law, he shall have the right of residence until the receipt of the decision rejecting the subsequent application.

If a foreigner, whose subsequent application for international protection was rejected under para 2 above, lodges a new subsequent application, he shall have no right of residence in Montenegro.

A foreigner seeking international protection, who is in the process of surrender or extradition in accordance with Art 12 paras 1, 3 and 4 of this Law, shall have no right of residence in Montenegro.

Family members of a foreigner seeking international protection, who came along with him, shall have a right of residence in accordance with para 1 above.

A foreigner in transfer shall have the right to residence in Montenegro until the completion of the procedure of transferral to the determining state.

### **Freedom of Movement**

#### **Article 62**

A foreigner seeking international protection and a foreigner in transfer shall enjoy the freedom of movement in Montenegro, which implies the choice of the place of residence, while being under the obligation to notify the Ministry of such place and address within three days after making the choice or changing the place of residence and address.

A foreigner seeking international protection may have limited freedom of movement, if, based on the facts and circumstances of his case, it is considered necessary for the following:

- 1) determining facts and circumstances on which the application for international protection is based, and which cannot be established without limitation of movement, especially if it is deemed that there is a risk of absconding based on previous wilful attempts of leaving Montenegro, earlier refusal of checks to establish his identity, concealing or providing false information on identity or nationality, a serious violation of the rules of stay and house rules of the Reception Centre, as well as the results obtained through the Eurodac fingerprint database under Regulation (EU) 603/2013;
- 2) establishing and verifying the identity or nationality;

- 3) protection of national security and public order of Montenegro;
- 4) preventing misuse of the procedure when there is reasonable suspicion that he expressed the intention to apply for international protection during the procedure in order to prevent enforced return.

The freedom of movement of a foreigner in transfer shall be limited for the purpose of transferral to the state responsible for examining the application if there is fear of absconding, in particular with a view of his objection to the transfer, as well as the circumstances referred to in para 2 item 1 above.

## **Measures to Limit the Freedom of Movement**

### **Article 63**

The following measures may be imposed on a foreigner seeking international protection or a foreigner in transfer for the purpose of limiting the freedom of movement, in cases under Art 62 paras 2 and 3 of this Law:

- 1) prohibition of movement outside the Reception Centre;
- 2) prohibition of movement outside a specified area;
- 3) prohibition of leaving accommodation at a specific address that he has reported;
- 4) mandatory stay at the Reception Centre;
- 5) temporary seizure of travel and other documents;
- 6) placement in the Detention Centre.

In the event of seizure of a travel or other document as referred to in para 1 item 5 above, such travel or other document shall be kept during the period of existence of grounds for their keeping, and a receipt shall be issued.

Placement in the Detention Centre may be imposed only if the personality assessment of the foreigner seeking international protection or a foreigner in transfer has established that other measures referred to in para 1 items 1 to 5 above would not achieve the purpose of limitation of the freedom of movement.

A foreigner placed in the Detention Centre, and who expresses an intention to apply for international protection, or lodges an application for international protection, may not leave the Detention Centre pending the decision upon his application.

The placement in the Detention Centre may be imposed on a foreigner who was afforded special procedural safeguards by way of an exception only when his personal features and circumstances, or needs, in particular his health condition, allow so.

The measures referred to in para 1 above imposed on a foreigner seeking international protection may last as long as there are reasons set out in Art 62 paras 2 and 3 of this Law, and not longer than three months.

Notwithstanding paragraph 6 above, the measures referred to in para 1 above may be extended for another three months, when there are justifiable reasons therefor.

Placement of an unaccompanied minor in the Detention Centre may be imposed for a period up to 30 days.

An unaccompanied minor placed in the Detention Centre must be accommodated separately from adults.

The measures referred to in para 1 above imposed on a foreigner in transfer may last no longer than six weeks after determining the state responsible for examining the application or after the final decision to reject the application for international protection.

The decision on imposing the measure referred to in para 1 above and the duration of such measure shall be taken by the Ministry.

Administrative dispute may be initiated before the Administrative Court against the decision referred to in para 11 above within three days of receipt of such decision.

### **Reception Article 64**

A foreigner seeking international protection shall be entitled to reception, which includes: accommodation in the Reception Centre, food and clothing, public transportation allowance, if transportation is required to participate in the procedure upon the application for international protection or enjoyment of other rights in accordance with this Law, as well as financial support.

The type of accommodation at the Reception Centre shall be determined by the Ministry with regard to personal features and circumstances, or the needs of the applicant.

Financial support to a foreigner seeking international protections shall be granted by the Centre for Social Work.

The right to reception of a foreigner may be restricted or denied if he:

- 1) fails to stay at the Reception Centre he has been assigned to;
- 2) leaves the Reception Centre for more than 24 hours without permission referred to in Art 65 para 5 of this Law;
- 3) has the means to afford an adequate standard of living;
- 4) violates the rules of stay and house rules at the Reception Centre.

The decision on the restriction or deprivation of the right to reception in cases referred to in para 4 above shall be issued by the Ministry, on the basis of individual assessment of a foreigner seeking international protection, taking into account a living standard which ensures his dignity and is proportionate to the purpose pursued by the restriction or denial of the right to reception.

Administrative dispute may be initiated before the Administrative Court against the decision referred to in para 5 above within eight days from the receipt of the decision.

In the case referred to in para 4 items 3 and 4 above, the Ministry shall be entitled to require from a foreigner seeking international protection who is exercising the right to reception the reimbursement of the costs of reception referred to in para 1 above, as well as the compensation for material damages caused.

The amount of financial support referred to in para 3 above shall be set by the Government of Montenegro (hereinafter: the Government) at the proposal of the state administration authority competent for social welfare.

### **Reception Centre Article 65**

Accommodation, food and clothing, reimbursement of public transportation costs under Art 64 para 1 of this Law shall be provided for by the Reception Centre.

A foreigner accommodated at the Reception Centre shall be provided basic hygienic products and mandatory medical examination.

When accommodating a foreigner seeking international protection in the Reception Centre, due consideration shall be given to gender, age, vulnerability, health condition and disability, as well as family unity.

Other forms of assistance, through special assistance programmes delivered at the Reception Centre, may be provided by the Red Cross of Montenegro (hereinafter: the Red Cross) and other organizations dealing with the protection of rights of refugees or asylees, or with humanitarian work, with prior approval by the Ministry.

A foreigner seeking international protection may leave the Reception Centre for more than 24 hours with the prior approval of the authorized officer of the Reception Centre.

The protection of persons and property in the Reception Centre shall be provided by plain-clothes police officers specially trained to work with foreigners seeking international protection.

The rules of stay and the house rules of the Reception Centre shall be set forth by the Ministry.

## **Healthcare**

### **Article 66**

Healthcare afforded to a foreigner seeking international protection shall include emergency medical assistance, necessary treatment of diseases and serious mental disorders (diagnosis, treatment at all healthcare levels in Montenegro, and pharmaceuticals from the list of drugs that are prescribed and issued at the expense of the Health Insurance Fund of Montenegro).

Foreigners seeking international protection in need of special procedural safeguards, in particular victims of torture, rape or other serious forms of psychological, physical or sexual violence, shall be accorded the healthcare services appropriate to their specific state or consequences caused by such torture and other serious forms of violence.

The mandatory medical examination referred to in Art 65 para 2 of this Law and healthcare referred to in paras 1 and 2 above, shall be provided by a healthcare institution with which the Health Insurance Fund of Montenegro has entered into an agreement.

The costs of healthcare referred to in paras 1, 2 and 3 above shall be borne by the Health Insurance Fund of Montenegro.

## **Education**

### **Article 67**

The right to primary and secondary education shall be provided for a minor foreigner seeking international protection under the same conditions as for Montenegrin nationals, in accordance with the regulations governing primary and secondary education.

A minor foreigner seeking international protection, who began exercising the right to secondary education under para 1 above, shall be allowed to continue such education even after becoming of age, under the same conditions as a Montenegrin national.

The exercise of the right referred to in para 1 above shall be granted to a minor foreigner seeking international protection within three months from the day of application for international protection until the enforcement of the decision on return.

When a minor foreigner seeking international protection does not know Montenegrin language enough for attending school, he shall be provided preparatory and remedial teaching, including Montenegrin language classes, in order to exercise the right referred to in para 1 above, in accordance with the regulations governing education.

## **Right to Information and Counselling**

### **Article 68**

At the Reception Centre, upon the request of the foreigner seeking international protection, he shall be provided with information relevant for his residence, counselling regarding the procedure upon his application for international protection, as well as free legal assistance, in a language he is reasonably assumed to understand and in which he can communicate.

## **Free Legal Assistance**

### **Article 69**

A foreigner seeking international protection and a foreigner in transfer shall enjoy the right to free legal assistance in an administrative dispute concerning the application for international protection, at personal request, provided that:

- 1) he does not have money or valuables, and
- 2) that the complaint is not manifestly unfounded.

Free legal assistance within the meaning of para 1 above shall include:

- 1) assistance in making the complaint;
- 2) representation before the Administrative Court;
- 3) exemption from the payment of costs of the administrative dispute.

The decision on granting free legal assistance under para 1 above shall be taken by the Ministry and furnished to the Administrative Court.

A foreigner referred to in para 1 above may initiate administrative dispute before the Administrative Court against the Ministry's decision rejecting an application for free legal assistance within eight days.

The proceedings under para 4 above shall be completed within 15 days from lodging the complaint.

Based on the decision referred to in para 3 above, the Ministry shall appoint a lawyer by order from the list of lawyers which the Bar Association of Montenegro submits to the Ministry.

For the provision of free legal assistance, a lawyer referred to in para 6 above shall be entitled to compensation determined in accordance with the law governing legal aid.

The costs of free legal assistance referred to in para 2 above shall be borne by the Ministry.

A foreigner seeking international protection and a foreigner in transfer can be provided free legal assistance during the application procedure for international protection before the Ministry by non-governmental organizations providing legal aid to foreigners seeking international protection.

## **Right to Work**

### **Article 70**

A foreigner seeking international protection shall acquire the right to work nine months after the day of lodging the application for international protection, which is still pending before the Ministry.

A foreigner seeking international protection shall be entitled to work without a residence and work permit or work registration certificate until the final decision upon his application for international protection.

## **Documents**

### **Article 71**

The Ministry shall, within three days from receiving an application for international protection, issue to the foreigner seeking international protection a certificate proving that he lodged an application for international protection to serve as a residence document in Montenegro pending the final decision on the application for international protection.

The certificate issued to a foreigner seeking international protection shall be issued in a prescribed format, in accordance with this Law.

The certificate referred to in para 2 above shall contain: the coat of arms of Montenegro, the name “Montenegro”, the title “Residence Document for Foreigners Seeking International Protection”, protective elements and boxes for entering personal and other data.

The data referred to in para 3 above are: first and family name, country of origin, gender, photo, signature, document number, date of issuance, the issuing authority.

The entry of data into the certificate referred to in para 3 above shall be made by the Ministry.

The document referred to in para 1 above shall not be a proof of identity of the applicant to whom the document was issued.

Notwithstanding paragraph 1 above, the residence document shall not be issued to a foreigner seeking international protection who has applied for international protection at a border crossing point or in a transit area referred to in Art 36 of this Law.

An applicant who has been issued a document referred to in para 1 above is obliged to return the document to the Ministry for its cancellation, upon termination of the right of residence, in accordance with Art 61 of this Law or when being issued an identity document under Art 88 of the Law.

A foreigner seeking international protection and a foreigner in transfer may be issued a travel document for foreigners in accordance with the law governing the residence of foreigners.

The layout and content of the form and the method of issuing the document referred to in para 1 above shall be set forth by the Ministry.

### **Right to Family Unity**

#### **Article 72**

The right to family unity shall be exercised by a foreigner seeking international protection in accordance with Art 14 para 1 of this Law.

### **Resettlement**

#### **Article 73**

At the request of the UNHCR, third country nationals and stateless persons seeking international protection and in need of such protection may be resettled in Montenegro.

A third-country national or a stateless person who is resettled in accordance with para 1 above shall be granted international protection in accordance with the provisions of this Law.

The person referred to in para 2 above shall enjoy the rights and exercise the duties in accordance with this Law.

The decision and the resettlement programme of persons referred to in para 1 above shall be made by the Government at the proposal of the Ministry and the administrative authority responsible for foreign affairs.

### **Relocation**

#### **Article 74**

In order to share responsibilities based on the principle of solidarity within the European Union, and in accordance with the Treaty on the Functioning of the European Union, Montenegro shall accept a certain number of third-country nationals and stateless persons, determined to be in need of or already benefitting from some form of international protection.

A third-country national or a stateless person relocated in accordance with para 1 above shall be granted international protection in accordance with this Law.

The person referred to in para 2 above shall enjoy the rights and exercise the duties in accordance with this Law.

The relocation of a certain number of persons referred to in para 1 above shall be ensured by the Government through its competent authorities.

## **2. Rights and Duties of Asylees and Foreigners granted subsidiary Protection**

### **Rights and Duties**

#### **Article 75**

An asylee and a foreigner granted subsidiary protection shall be entitled to:

- 1) residence in Montenegro;
- 2) accommodation and financial support;
- 3) work;
- 4) healthcare;
- 5) education;
- 6) free legal assistance;
- 7) social protection;
- 8) family reunification;
- 9) assistance with integration;
- 10) learning the Montenegrin language, history and culture;
- 11) property;
- 12) documents in accordance with this law;
- 13) acquisition of Montenegrin nationality.

An asylee and a foreigner granted subsidiary protection is obliged to:

- 1) observe the Constitution and the laws of Montenegro;
- 2) report his residence address within 15 days from receiving the decision granting international protection;
- 3) hold on his person the personal ID referred in Art 88 of this Law and produce it at the request of persons authorised in accordance with the law.

General information about the rights and duties under paras 1 and 2 above shall be provided to an asylee or foreigner granted subsidiary protection by the Ministry within eight days of the receipt of the decision on granting international protection.

### **Right of Residence**

#### **Article 76**

An asylee and a foreigner granted subsidiary protection shall be entitled to residence in Montenegro from the date of receipt of the decision granting international protection.

The right of residence in Montenegro shall be determined by the decision granting international protection.

If an asylee or a foreigner granted subsidiary protection move from Montenegro or continuously reside in another country for more than six months, without having previously informed the Ministry, the decision referred to in para 1 above shall be revoked in the part relating to the right of residence in Montenegro.

In the event that an asylee or a foreigner granted subsidiary protection returns to Montenegro, the Ministry shall issue a new decision approving the right of residence in Montenegro.

## **Right to Accommodation and Financial Support**

### **Article 77**

An asylee and a foreigner granted subsidiary protection shall be afforded suitable accommodation and financial support for no longer than two years since the delivery of the decision granting international protection.

Notwithstanding para 1 above, in case of an asylee or a foreigner granted subsidiary protection who, due to their personal features and circumstances (age, pregnancy, serious illness, mental health or consequences of torture, rape or other serious forms of psychological, physical or gender-based violence) is not fully able to enjoy the rights and exercise the duties in accordance with this Law, without adequate assistance, the accommodation and financial support shall be extended until the personal features and circumstances of an asylee or a foreigner granted subsidiary protection are changed to the extent that that person can reasonably be expected to take care of himself.

The right to financial support shall cease before the expiry of the period referred to in para 1 above if the asylee or foreigner granted subsidiary protection gets a job.

Accommodation and financial support referred to in paras 1 and 2 above shall be provided by the state administration authority responsible for social welfare.

If an asylee or a foreigner granted subsidiary protection refuses provided accommodation without a justified reason, he shall lose the right to accommodation referred to in para 1 above.

After the period referred to in para 1 above, an asylee or a foreigner granted subsidiary protection is entitled to accommodation under the same conditions as Montenegrin nationals.

The amount of financial support shall be determined by the Government.

The accommodation conditions and the manner of providing accommodation shall be set forth by the state administration authority responsible for social welfare.

## **Right to Work**

### **Article 78**

An asylee and a foreigner granted subsidiary protection are permitted to work in Montenegro without a residence and work permit or work registration certificate within the meaning of the law governing the residence of foreign nationals.

An asylee and a foreigner granted subsidiary protection shall be entitled to adult education in relation to employment, professional development and gaining practical work experience under the same conditions as Montenegrin nationals.

## **Healthcare**

### **Article 79**

An asylee and a foreigner granted subsidiary protection shall acquire the status of an insured person in accordance with the regulations governing healthcare and health insurance under the same conditions as Montenegrin nationals.

## **Right to Education**

### **Article 80**

An asylee and a foreigner granted subsidiary protection shall be entitled to primary, secondary and higher education under the same conditions as a Montenegrin national, in accordance with the regulations governing education.

An asylee and a foreigner granted subsidiary protection shall be entitled to adult education in accordance with the regulations governing adult education under the same conditions as a Montenegrin national.



An asylee and a foreigner granted subsidiary protection shall be entitled to the recognition of foreign educational documents, in accordance with the law governing the recognition of foreign educational certificates.

For an asylee and a foreigner granted subsidiary protection who, through justified reasons, cannot provide documentary evidence of their qualification, the assessment of their prior learning will be done in accordance with specific legislation.

The decision to reject the recognition of foreign educational certificates and qualifications may not be based solely on the fact that there are no official documents proving certain foreign professional qualifications.

### **Right to Free Legal Assistance**

#### **Article 81**

An asylee and a foreigner granted subsidiary protection shall be entitled to free legal assistance equally to a Montenegrin national in accordance with the law governing legal aid.

### **Right to Social Protection**

#### **Article 82**

An asylee and a foreigner granted subsidiary protection shall be entitled to social protection in accordance with the law governing social protection, and the entitlements enjoyed on this ground may not be lesser in contents and scope than the ones accorded to a Montenegrin national.

### **Right to Family Reunification**

#### **Article 83**

An asylee and a foreigner granted subsidiary protection shall be entitled to reunification with their family members.

Family members of an asylee or a foreigner granted subsidiary protection shall, on that ground, be granted asylum or subsidiary protection, and the decision shall be taken by the Ministry.

In the procedure of granting asylum or subsidiary protection referred to in para 2 above, for a person who cannot obtain documentary evidence of the family relationship, the circumstances under which it is possible to assess whether there is such a relationship shall be taken into account.

The decision to reject the application for family reunification may not be based solely on the fact that there is no documentary evidence of the family relationship.

An asylee or a foreigner granted subsidiary protection shall not be entitled to a reunification with a family member where there are grounds for exclusion under Art 29 and 30 of this Law.

A family member of an asylee or a foreigner granted subsidiary protection lawfully residing in Montenegro shall enjoy the same rights as the asylee or the foreigner granted subsidiary protection, in accordance with this law.

### **Right to Facilitated Integration**

#### **Article 84**

An asylee and a foreigner granted subsidiary protection shall be entitled to facilitated integration for no longer than three years after being granted international protection.

Facilitated integration shall include:

- 1) developing the integration plan for an asylee or a foreigner granted subsidiary protection (hereinafter: Integration Plan), in respect to his individual needs, knowledge, abilities and skills;
- 2) assisting the asylee or a foreigner granted subsidiary protection in implementing the Integration Plan;
- 3) monitoring the Integration Plan implementation.

Facilitated integration within the meaning of para 2 above shall be provided by the state administration body responsible for social welfare.

Facilitated integration within the meaning of para 2 above may be provided by other public administration bodies and nongovernmental organizations.

In the case referred to in para 4 above, the activities related to such assistance shall be coordinated by the state administration body responsible for social welfare.

## **Learning Montenegrin Language, History and Culture**

### **Article 85**

An asylee and a foreigner granted subsidiary protection shall be provided with the possibility to learn Montenegrin language, history and culture for the purpose of better integration.

The teaching of Montenegrin language, history and culture, under specified curricula, shall be provided by the state administration authority responsible for education.

An asylee and a foreigner granted subsidiary protection are obliged to attend the course or other form of delivery for the Montenegrin language, history and culture provided.

In case of unjustified failure to attend the course or other form of delivery for the Montenegrin language, history and culture provided, an asylee and a foreigner granted subsidiary protection are obliged to reimburse the costs.

The Montenegrin language, history and culture curricula referred to in para 1 above, and the method of delivery shall be adopted by the state administration authority responsible for education.

## **Right to Property**

### **Article 86**

An asylee and a foreigner granted subsidiary protection shall be entitled to property, in accordance with special regulations, in the same way as a foreigner with permanent residence in Montenegro.

## **Documents**

### **Article 87**

The documents issued to an asylee and a foreigner granted subsidiary protection include: personal ID for an asylee, personal ID for a foreigner granted subsidiary protection, travel document for an asylee, and travel document for a foreigner granted subsidiary protection.

The documents referred to in para 1 above shall be issued by the Ministry in the stipulated format in accordance with this Law.

The document format referred to in para 2 above shall contain: the coat-of-arms of Montenegro, the name “Montenegro”, the document title, the protective elements and the boxes for entering personal and other data.

The data referred to in para 3 above shall include: first and family name, country of origin, sex, photograph, signature, number and validity of the document, the issuing authority and machine readable imprint.

The entering of the data referred to in para 3 above shall be done by the Ministry.

The layout and content of the form and method of issuing the document referred to in para 1 above shall be set forth by the Ministry,

### **Personal ID**

#### **Article 88**

Personal ID for an asylee shall be issued with the validity of five years.

Personal ID for a foreigner granted subsidiary protection shall be issued with the validity of three years.

The application for the issuance of personal IDs referred to in paras 1 and 2 above shall be lodged with the Ministry.

The application for the issuance of personal IDs referred to in paras 1 and 2 above shall be lodged by the asylee or the foreigner granted subsidiary protection above 16 years of age, and for an asylee or a foreigner granted subsidiary protection below 16 years of age the application shall be lodged by their legal representative or guardian.

An asylee and a foreigner granted subsidiary protection are obliged to return their personal IDs referred to in paras 1 and 2 above to the Ministry with their expiry or termination or withdrawal of international protection.

### **Travel Documents**

#### **Article 89**

A travel document for an asylee shall be issued for a period of five years.

A travel document for a foreigner granted subsidiary protection shall be issued for a period of three years.

The application for issuance of a travel document referred to in paras 1 and 2 above shall be lodged with the Ministry.

An application for a travel document for a minor asylee or a foreigner granted subsidiary protection shall be submitted by their legal representative or guardian.

The application for a travel document for asylee or a foreigner granted subsidiary protection shall be rejected if:

- 1) the asylee or the foreigner granted subsidiary protection are attempting to escape the enforcement of a criminal judgement;
- 2) is avoiding the payment of claims stemming from marital relationship or the relationships between parents and children, a tax liability or other material liability for which there is an enforcement document in place;
- 3) this is required for reasons of national security or public order in Montenegro.

A travel document issued to an asylee or a foreigner granted subsidiary protection shall be withdrawn if the existence of reasons referred to in para 5 above should be established.

An asylee and a foreigner granted subsidiary protection are obliged to return the travel document referred to in paras 1 and 2 above to the Ministry upon expiry of its validity, or termination or withdrawal of international protection.

### **Acquisition of Montenegrin Nationality**

#### **Article 90**

An asylee and a foreigner granted subsidiary protection may acquire Montenegrin nationality in accordance with the law governing Montenegrin nationality.

## **VII. INTERNATIONAL PROTECTION OF CITIZENS OF MEMBER STATES OF THE EUROPEAN UNION**

### **Conditions and Procedure for Acquiring the Right to International Protection**

#### **Article 91**

A national of a Member State of the European Union shall not be entitled to apply for international protection, except when the conditions set out in Protocol 24 of the Treaty of Lisbon on Amendments to the Treaty on European Union and the Treaty Establishing the European Community are met.

If the conditions referred to in para 1 above are fulfilled, such person shall be subject to the provisions of this Law relating to the general principles, conditions and procedures for granting international protection, cessation, termination and withdrawal of international protection, as well as the rights and obligations of a foreigner seeking international protection, an asylee and a foreigner granted subsidiary protection.

## **VIII. TEMPORARY PROTECTION**

### **Granting Temporary Protection**

#### **Article 92**

In the event of a mass influx or imminent mass influx of persons from third countries who are unable to return to their country of origin, if there is a risk that the international protection system will be unable to process this influx efficiently, in accordance with this Law, in the interests of the persons concerned, temporary protection for such persons (hereinafter: temporary protection) may be granted.

The foreigners referred to in para 1 above are third-country nationals and stateless persons who have had to leave their country or region of origin, or have been evacuated, and are unable to return in safe conditions because of the situation prevailing in that country, in particular if:

- 1) they have fled areas of armed conflict or endemic violence;
- 2) they are at serious risk of, or who have been the victims of, systemic or generalised violations of their human rights.

The mass influx referred to in para 1 above refers to a large number of persons who come from a specific country or geographical area, whether their arrival was spontaneous or organized.

The decision to grant temporary protection shall be made by the Government, at the proposal of the Ministry.

The decision referred to in para 4 above may be adopted by the Government even in the cases when the European Council establishes the existence of a mass influx.

### **Duration of Temporary Protection**

#### **Article 93**

The duration of temporary protection shall be one year.

Upon the expiry of the timeframe referred to in para 1 above, temporary protection may be extended by six monthly periods for a maximum of one year.

Notwithstanding para 2 above, temporary protection may be extended by the decision of the European Council by up to one year.

Temporary protection shall end:

- 1) by the expiry of the timeframe for which it was introduced, or

- 2) by the decision of the European Council.

### **Exclusion from Temporary Protection**

#### **Article 94**

Temporary protection shall not be granted to a third-country national and a stateless person if there are serious reasons for considering that:

- 1) he has committed, incited or otherwise participated in the commission of:
  - a crime against peace, a war crime or a crime against humanity, as defined in the international instruments;
  - a serious crime;
  - acts contrary to the purposes and principles of the United Nations;
- 2) he, prior to arrival to Montenegro, has committed a crime punishable in Montenegro by imprisonment, and if he left his country of origin solely in order to avoid sanctions stipulated in that country;
- 3) he constitutes a danger to national security and public order in Montenegro, or
- 4) he was convicted of a serious crime which is punishable in Montenegro by imprisonment of five or more years.

A serious crime, within the meaning of para 1 item 1 bullet point 2 above, is a crime punishable in Montenegro by imprisonment of five or more years.

### **Return**

#### **Article 95**

At the request of a foreigner granted temporary protection or a person whose temporary protection ceased, the Ministry shall take appropriate measures to facilitate the voluntarily return to their country of origin, taking due account of human dignity.

In the case of enforced return of a person referred to in para 1 above, the Ministry shall consider the relevant reports on the situation in the country of origin and take into account serious humanitarian reasons which would make the return of the individuals temporarily impossible or unreasonable, and notify the foreigner granted temporary protection thereof.

### **Rights and Duties of a Foreigner granted temporary Protection**

#### **Article 96**

A foreigner granted temporary protection shall be entitled to:

- 1) residence in Montenegro;
- 2) suitable accommodation, necessary assistance and means of subsistence;
- 3) healthcare;
- 4) primary and secondary education;
- 5) information about rights and duties;
- 6) work;
- 7) family reunification;
- 8) the document;
- 9) the right to apply for international protection.

A foreigner granted temporary protection shall have duties in accordance with Art 59 of this Law.

A foreigner granted temporary protection who, during the temporary protection, applies for international protection may not exercise the rights of a foreigner seeking international protection as long as the temporary protection lasts.

## **Right of Residence**

### **Article 97**

A foreigner granted temporary protection shall have the right to reside in Montenegro for the duration of temporary protection.

Records of foreigners granted temporary protection shall be maintained by the Ministry.

## **Right to Suitable Accommodation, Necessary Assistance and Means of Subsistence**

### **Article 98**

For the duration of temporary protection, a foreigner granted temporary protection shall be provided suitable accommodation and means of subsistence (food, clothing, hygiene, etc.), if he does not have any personal means.

Suitable accommodation, necessary assistance and means of subsistence shall also be provided to a person whose temporary protection has ceased if he does not have any personal means, while his return to the country of origin is not feasible due to serious health reasons.

## **Healthcare**

### **Article 99**

The healthcare of a foreigner granted temporary protection shall include emergency medical assistance, necessary treatment of diseases and serious mental disorders (diagnosis, treatment at all healthcare levels in Montenegro and pharmaceuticals from the list of drugs that are prescribed and issued at the expense of the Health Insurance Fond).

## **Right to Education**

### **Article 100**

A foreigner granted temporary protection shall have the right to primary and secondary education, and re-training and further training under the same conditions as a Montenegrin national.

## **Information about Rights and Duties**

### **Article 101**

A foreigner granted temporary protection shall, at his request, be provided the information necessary for residence and enjoyment of rights and exercise of duties in a language he is reasonably assumed to understand and in which he is able to communicate.

## **Right to Work**

### **Article 102**

A foreigner granted temporary protection may work in Montenegro without a residence and work permit or work registration certificate, within the meaning of the law governing the residence of foreign nationals.

A foreigner granted temporary protection shall be entitled to adult education related to employment, professional development and gaining practical work experience under the same conditions as a Montenegrin national.

## **Right to Family Reunification**

### **Article 103**

An application for family reunification shall be lodged by a foreigner granted temporary protection or a member of his family.

A family member shall be granted temporary protection on that ground, which shall be decided by the Ministry.

In cases where family members enjoy temporary protection in different countries, their best interests shall be taken into account when deciding on family reunification.

### **Document for a Foreigner granted temporary Protection**

#### **Article 104**

A foreigner granted temporary protection shall be issued a document for foreigners granted temporary protection, which shall be considered as a residence permit in Montenegro.

The document referred to in para 1 above shall be issued for the period of one year and may be extended in accordance with Art 93 paras 2 and 3 of this Law.

A foreigner granted temporary protection is obliged to return the document to the Ministry once temporary protection has ended.

### **Right to Apply for International Protection**

#### **Article 105**

A foreigner granted temporary protection may lodge an application for international protection.

The procedure upon applications referred to in para 1 above shall be conducted in accordance with this Law, and may be completed even after the temporary protection has ended.

## **IX. RECORDS**

### **Records Kept by the Ministry**

#### **Article 106**

The Ministry shall keep records on:

- 1) foreigners seeking international protection;
- 2) asylees;
- 3) foreigners granted subsidiary protection;
- 4) foreigners granted temporary protection;
- 5) documents held by foreigners seeking international protection;
- 6) identification and travel documents for asylees;
- 7) identification and travel documents for foreigners granted subsidiary protection;
- 8) identification documents for foreigners granted temporary protection;
- 9) temporarily retained travel and other documents;
- 10) fingerprints and photographs of foreigners seeking international protection;
- 11) fingerprints and photographs of foreigners granted temporary protection.

The records referred to in paragraph 1 above shall contain the following information: date of lodging the application for international protection, photograph, signature, fingerprints, family name, first name, sex, date, place and country of birth, country of origin, marital status, ethnic background, religion, educational background, occupation, mother tongue and the languages he understands, information on transit countries, information on the country of last residence, information on family members, details of identification documents that the foreigner seeking international protection and temporary protection holds, information on the place and date of entry into Montenegro, data on previous applications for international protection, date and type of decision made upon the application for international protection, the date of issue and validity of documents, ID and travel documents referred to in para 1 above, information on

temporary seizure of travel documents and other documents, data on family reunification, and the decisions upon the appeals.

### **Records Kept by the Police**

#### **Article 107**

The police shall keep the records of foreigners expressing their intention to lodge an application for international protection.

The records under para 1 above shall include the following information: a photograph, fingerprints, family name, first name, sex, date, place and country of birth, country of origin, mother tongue and languages he understands, information on transit countries, information on the country of last permanent residence, information on family members, details of identification documents that the foreigner seeking international protection holds, information on the place and date of entry into Montenegro, the date of stating the intention to lodge an application for international protection, and the information on detention at the border crossing point or in the transit area.

### **Records Kept by the Reception Centre**

#### **Article 108**

The Reception Centre shall keep records on:

- 1) foreigners expressing their intention to lodge an application for international protection;
- 2) foreigners seeking international protection.

The records under para 1 above shall include the following information: a photograph, fingerprints, family name, first name, sex, date, place and country of birth, country of origin, mother tongue and languages he understands, information on transit countries, data on the country of last permanent residence, information on family members, details of identification documents that the foreigner seeking international protection holds, information on the place and date of entry into Montenegro, the date of stating the intention to lodge an application for international protection, the date of lodging the application for international protection, and the date of being received into the Reception Centre.

### **Personal Data Protection**

#### **Article 109**

Personal data contained in the records referred to in Art 106, 107 and 108 of this Law shall be collected, kept and processed under the terms of the law governing personal data protection.

### **Record-keeping**

#### **Article 110**

The records referred to in Art 106, 107 and 108 of this Law shall be kept in an electronic form.

## **X. SUPERVISION**

### **Competence**

#### **Article 111**

The supervision over the implementation of this Law and the implementing legislation enacted under this Law shall be conducted, within the scopes of their respective competences, by the Ministry and the state administration authority responsible for social welfare.



## **XI. TRANSITIONAL AND FINAL PROVISIONS**

### **Deadline for Secondary Legislation Adoption and Application**

#### **Article 112**

The implementing legislation under this Law shall be adopted within six months from this Law entering into force.

Until the adoption of the secondary legislation referred to in para 1 above, the secondary legislation adopted pursuant to the Law on Asylum (Official Gazette of the Republic of Montenegro 45/06) shall apply, unless in contravention to this Law.

### **Handling Pending Procedures**

#### **Article 113**

The procedures initiated under the Law on Asylum (Official Gazette of the Republic of Montenegro 45/06) still pending when this Law starts to be applied shall be handled pursuant to the provisions of this Law.

### **Application of Certain Provisions**

#### **Article 114**

The following provisions of this Law shall be applied as of the day of Montenegro's accession to the European Union:

- the provisions of Art 45 para 8, Art 50 para 2, Art 51 para 4, Art 62 para 2 item 1, Art 62 para 3, and Art 63 para 10 of this Law, transposing the provisions of the Regulation (EU) 603/2013 and Regulation (EU) 604/2013;
- the provisions of Art 31 para 3, Art 32 para 6 and Art 33 para 7 of this Law concerning the obligation of notifying the European Commission of the application of conditions for granting international protection (safe country of origin, safe third country, and safe European third country);
- the provisions of Art 73 and Art 74 of this Law, concerning relocation and resettlement of a foreigner or a stateless persons, an asylee, a foreigner granted subsidiary protection or a foreigner granted temporary protection from one to another Member State to the European Union;
- the provisions of Art 92 para 6 and Art 93 paras 3 and 4 item 2 concerning temporary protection.

### **Cessation of Law**

#### **Article 115**

With the day this Law enters into force, the Law on Asylum (Official Gazette of the Republic of Montenegro 45/06) shall cease to be in effect.

### **Entry into Force**

#### **Article 116**

This Law shall enter into force on the eighth day upon its publication in the Official Gazette of Montenegro, and shall become effective as of 01 January 2018.

Ref.no. 24-4/16-2/4

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In Podgorica, on 29 December 2016

**The 26<sup>th</sup> Parliament of Montenegro**  
**Ivan Brajovic, m.p.**  
**Speaker**

*\*This Law transposes the following: Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212 , 7.8.2001.); Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003.); Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (revised) (OJ L 337, 20.12.2011.); Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ L 180, 29.6.2013.); Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of foreigners seeking international protection (revised) (OJ L 180/96, 29.06.2013.), Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222, 5.9.2003.); Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013.); Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 06.29.2013.); Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222, 5.9.2003.).*