

Analysis of Montenegrin Legal and Practical Aspects of Effective Alternative Measures to Detention in the Context of Migration



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Milena Bešić

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Ognjen Marković

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I INTRODUCTION

Migration of people, as a phenomenon, is as old as civilization. Reasons why people are opting for a change of place of living are complex and subject to frequent changes. Therefore, the migration classification is a very complex matter regulated by the international legal framework and standards guaranteeing the rights of migrants, while the right to freedom of movement and protection from persecution is limited by the sovereignty of the state as a legal, political and historical category. In the European Union where most of the internal borders are abolished, states cannot independently manage migrations. The EU's Global Approach to Migration implies creating a general framework for foreign migration policy and asylum policy, as the basic prerequisites for "conducting political dialogue and achieving co-operation with non-EU countries, which is based on clearly defined priorities and is an integral part of the overall political framework of the European Union, including development cooperation."¹ **Asylum** is the protection provided by a state to an individual seeking refuge on its territory or a place outside its territory under the control of that state. Asylum may be granted to an individual who has been forced to leave a country or was expelled from it by force, and may be granted to a collective group that is subjected to persecution on a religious, racial, national or political basis in their own country, and due to belonging to a particular social group.²

The **asylum system in Montenegro** was established within the framework of meeting the conditions for obtaining visa-free regime for the Schengen area, by adopting the **Law on Asylum**³ which ceased to have effect by the adoption of a new **Law on International and Temporary Protection of Foreigners** in 2018. Because

1 Migration and Asylum, European Union Policies, European Union Publications Office, Luxembourg, 2014, file:///C:/Users/Ultima/Downloads/migration-hr%20(1).pdf

2 International Public Law, S, Avramov, M. Krec, Belgrade 2009, p. 315

3 "Official Gazette of the Republic of Montenegro", 45/06

of its position on the so-called Balkan route, Montenegro has been struck by intensified mixed migratory flows since 2011, which is also shown by the trend of increasing number of asylum applications.

According to the Ministry of the Interior, 46 applications were filed in the period of 2006-2010; 235 in 2011; 1531 in 2012; 3554 in 2013; 2312 in 2014 and 1611 in 2015, 335 in 2016 and 849 in 2017. For the first six months of 2018, **1380 asylum applications** were filed, and during the same period **234 illegal border crossings were prevented** (121 of which outside of border crossings and 113 at border crossings), while in the **second quarter of 2018 there were 1632 registered illegal border crossings** (at the border 329 and 1303 inside the country). Most asylum seekers come from Syria, Iraq, Afghanistan, Eritrea and Somalia. The main route used by irregular migrants and refugees appearing in Montenegro and seeking refuge there includes Turkey, Greece, Albania and Kosovo. Everything suggests that migrants will move to the developed and stable regions of Western Europe in the forthcoming period, using, in addition to maritime or Mediterranean migratory routes, a particularly significant land-based Balkan route mentioned above.

Countries in the region are trying to adapt to the arising circumstances of mass migration processes across their territories, each following, first of all, political decisions based on national interests. The Southeast Europe region is a *transit hub* for **smuggling, trafficking in human beings and illegal migration**, and the competent authorities of each state are to strictly adhere to and **comply with international standards and the national legal framework with regard to guaranteed rights of migrants**. One of the biggest challenges in the field of migration in the context of the increasing inflow of migrants and the unlawful crossing of border crossings and illegal stay in the territory of a state is certainly to ensure **respect for the dignity of each individual, his or her personal freedom and security**, with careful consideration of all circumstances in **limiting his or her freedom, stopping and detention**. States are required to encourage the use of **alternative measures to restricting free-**

dom of movement and detention wherever possible, in particular taking into account the special protection and the best interest of vulnerable categories of persons. For the sake of a clearer view of the current situation, in order to further promote the application of alternative measures, this document aims to analyze the legal, institutional and practical aspects of the application of effective alternative measures to detention in the context of migration in Montenegro. The analysis focuses on recognizing the current features of the systemic response to the emergence of irregular migration through the application of alternative measures, as well as defining recommendations for improving them.

It is generally concluded that international standards in the area of respect for foreigners' rights in Montenegro in the context of restricting the freedom of movement and introducing alternative measures to detention are incorporated into national legislation, but are not sufficiently elaborated, especially when speaking about diversity and standardization of a number of alternative measures prescribed by international legal documents.

In practice, Montenegro still cannot boast of the developed institutional and human resources capacities when it comes to the effective implementation of procedures for migrants through the application of standards for receiving persons seeking international protection, so it is necessary to work on strengthening these capacities and organizing as many trainings as possible for civil servants employed in various sectors in the field of asylum and migration management. Particularly, training in the field of anti-discrimination needs to be emphasized in order to increase awareness and sensitization among practitioners in procedures for migrants, especially those faced with multiple discrimination (children on the move, women, persons with disabilities and other vulnerable groups).

Certainly, it has to be noted that the determination of alternative measures to detention of foreigners is under the authority of employees in the Border Police Sector, which poses a question of risk in terms of arbitrary and insufficiently transparent decision-making and opening up room for potential misuse. Since the beginning of application

of the new **Law on Foreigners**, which entered into force in **March 2018**, until now, police have issued **six decisions on the determination of alternative measures to detention of foreigners**.

II A brief overview of the normative and strategic framework in the area of respect for migrants' rights

Article 9 of the Constitution of Montenegro⁴ regulates the status of ratified international treaties and generally accepted international law rules, i.e. general international customs, in the domestic law, **prescribing the primacy of ratified and published international treaties in relation to national legislation.** This constitutional obligation obliges national institutions to apply these treaties directly whenever a situation is regulated differently from national legislation. The right to asylum is guaranteed by Article 44 of the Constitution of Montenegro, reading: “A foreign national reasonably fearing from persecution on the grounds of his/her race, language, religion or association with a nation or a group or due to own political beliefs may request asylum in Montenegro. A foreign national shall not be expelled from Montenegro to where due to his race, religion, language or association with a nation he/she is threatened with death sentence, torture, inhuman degradation, persecution or serious violation of rights guaranteed by this Constitution. A foreign national may be expelled from Montenegro solely on the basis of a court decision and in a procedure provided for by the law.” “Article 28 of the Constitution guarantees the inviolability of the physical and psychological integrity of a man, his privacy and personal rights, while Article 29 prescribes that *everyone has the right to personal liberty*. The deprivation of liberty is permitted only for reasons and in the procedure provided by law, and a person deprived of his or her liberty must be immediately informed in his or her language or a language that he or she understands of the reasons for the deprivation of his or her liberty.

On 15 October 2007, **Montenegro** signed the **Stabilization and Association Agreement (SAA) with the European Union**, which was

4 “Official Gazette of Montenegro”, 1/2007 and 38/2013 – Amendments I-XVI

ratified by the EU member states and entered into force on 1 May 2010. The Agreement was ratified by the Parliament of Montenegro on 13 November 2007. This instrument, by many elements, contains all the features of an international treaty and its Article 72 within Chapter VI - Harmonization of Legislation, Enforcement of Laws and Competition Rules emphasizes several principles:

1. Gradual harmonization of **existing laws and future legislation of Montenegro with the *acquis communautaire* (EU)**, and ensuring adequate implementation and enforcement of existing and future legislation;
2. Harmonization commences on the date of signing the Agreement and shall gradually extend to all elements of the Community *acquis* from this Agreement by the end of the *transitional period laid down in Article 8 of this Agreement (up to 5 years)*; and
3. At an early stage, harmonization will focus on the basic elements of the *acquis* related to the internal market, including legislation in the areas of finance, justice, **freedom and security**, as well as in other areas of trade. At a later stage, Montenegro will focus on other parts of the *acquis*.

Also, in **Article 82, the Agreement** emphasizes the obligations of the Parties regarding visa liberalization, **border management, asylum and migration**, stipulating that the Parties will cooperate in these areas and establish a framework for cooperation in these areas, including regional cooperation. Cooperation on these issues is based on mutual consultations and close co-ordination between the Parties and has to include both technical and administrative assistance in:

- a. Exchange of information on legislation and practice;
- b. Preparation of legislation;

- c. Increasing the efficiency of institutions;
- d. Staff training o;
- e. Protection of travel documents and detection of false documents;
- f. Border management,

and in particular focus on: 1. **the area of asylum and the application of domestic legislation** to meet the standards of the **Refugee Status Convention adopted at Geneva** on 28 July 1951 and the **Protocol on the Status of Refugees adopted in New York** on 31 January 1967, and ensuring respect for the principles **prohibition of refoulement**, as well as other rights of asylum seekers and refugees, and 2. **the area of legal migration and rules of entry**, as well as on the rights and status of persons who have been granted entry.

In relation to migration, the Parties agreed to ensure a correct treatment of nationals of other countries legally residing in their territory and to promote integration policy in order to secure rights and obligations comparable to the rights and obligations of their nationals.

Certainly, it should be noted that the **Action Plan for Negotiating Chapter 24 - Justice, Freedom and Security**, within the framework of the accession process of Montenegro to the European Union, provides for a set of measures aimed at ensuring the free movement of people, while guaranteeing their security. Five objectives are defined, which will be the basis for action in the process of asylum negotiations, namely:

1. Full harmonization of national legislation with the *acquis* and practice of the European Union in the area of asylum, **including impact assessment of administrative capacity, training needs** and budget;
2. Preparing an analysis of what is necessary to meet the technical requirements for cooperation in the context of EURO-DAC (Directive No. 2725/2000/EC on the establishment of

EURODAC for fingerprint comparison) and the Dublin Convention and to establish **harmonized databases both with the EURODAC system** and with the Dublin Convention;

3. **Strengthening administrative capacity** to deal with asylum applications, in particular as regards the determination of origin, asylum seeker analysis, **translation and interpretation**, as well as in terms of monitoring voluntary departure;
4. Putting into operation the **Center for Asylum Seekers (Reception Center)** and **establishing a mechanism for regular monitoring of the Center's capacity** to meet requirements in the light of variable pressures over time;

The Parliament of Montenegro adopted a new **Foreigners Law**⁵ that has been in effect since 3 March 2018. This Law better regulates issues of entry, exit, movement, stay and work of foreigners in Montenegro in accordance with the EU acquis, focusing on the implementation of Directive **2008/115/EC on common standards and procedures to be applied in Member States for returning illegally staying third-country nationals**. Pursuant to the provisions of the Foreigners Law, it is planned to adopt approximately 15 bylaws for its implementation. Four bylaws were issued and published in the Official Gazette of Montenegro, namely: Rulebook on detailed practice and procedure for forced expulsion of foreign nationals⁶, Rulebook on entering the prohibition of entry and cancellation of stay of foreign nationals in foreign travel documents⁷, Rulebook on detailed conditions for issuing certificates on registered employment of foreign nationals and application forms for employment registration and certificates on registered employment of foreign nationals⁸, and

5 "Official Gazette of Montenegro", 12/18

6 "Official Gazette of Montenegro", 43/2018

7 "Official Gazette of Montenegro", 43/2018

8 "Official Gazette of Montenegro", 43/2018

the Rulebook on rules of residence and house rules at the shelter for foreigners (immigration detention)⁹. There three Rulebooks are in the process of harmonizing with the Secretariat for Legislation, while others are prepared in the form of a draft.

The Law on International and Temporary Protection of Foreigners¹⁰ stipulates the principles, conditions and procedure for granting international and temporary protection of foreign nationals seeking international protection, the rights and obligations of foreign nationals seeking international protection, asylum seekers, foreign nationals under subsidiary protection, foreign nationals under temporary protection, and the conditions and procedure for annulment and termination of asylum, subsidiary and temporary protection.

The aim of the Law was to **eliminate any formal and substantial legal deficiencies in order to comply with the standards of international law and, in particular, the EU acquis**, regarding migration policy and asylum policy. The Law on International and Temporary Protection of Foreigners started to apply from 1 January 2018. The main point was its harmonization in the field of procedures and **qualifications for international protection of different categories of persons in accordance with Directive 2013/32/EU** on common procedures for granting and cancelling international protection and **Directive 2011/95/EU** on qualification standards for third country nationals or stateless persons to be granted international protection, for the unique status of refugees or persons who fulfill the conditions for subsidiary protection and the content of the protection granted. These standards are applied in procedures under the requirements of international protection in Montenegro. In accordance with the Law on International and Temporary Protection, new Rulebook were also adopted: Rulebook on detailed procedure for taking fingerprints and photographs of foreign nationals declaring the intention to apply for international protection¹¹, Rulebook on the layout and content of

9 “Official Gazette of Montenegro”, 53/2018

10 “Official Gazette of Montenegro”, br. 2/17

11 “Official Gazette of Montenegro”, 61/2017

forms and the procedure for issuing documents for foreign nationals who have applied for international protection, asylum seekers and foreign nationals under subsidiary protection¹², and the Rulebook on rules of stay and house rules at the Reception Center.¹³

In addition to these two most important laws that are key in the field of asylum and migration management, the rights of migrants are protected, inter alia, by other positive regulations: Criminal Code, the Border Control Law, the Law on Foreign Affairs, the Law on Health Care, the Law on Health Insurance, Misdemeanors Law, Criminal Procedure Code, the Law on Treatment of Juveniles in Criminal Proceedings, the Law on Education and other legislation.

The Strategy for Integrated Migration Management in Montenegro for the period 2017-2020, with the Action Plans for the Strategy implementation, was adopted with the aim of full harmonization and establishment of the legal framework, additional strengthening of the institutional framework that enabled effective implementation of the migration control policy in accordance with the *acquis communautaire* rules and standards, and the establishment of a system for monitoring the Strategy and implementation of the Action Plans.

One of the specific objectives of the Strategy is to ensure equal access to migrants' rights, by improving the regulations that stimulate integration of migrants into the Montenegrin society, prevention of discrimination, intolerance and the overall social marginalization of particular migration groups, all in line with best practices and EU standards. Also, the Strategy includes measures and activities related to training of employees in the process of integrated migration management, as well as their technical equipment and training. Timely information, adequate material and technical equipment of competent bodies, and adequate training of employees are very important for migration management, and greatly affect the fight against illegal migration.

12 "Official Gazette of Montenegro", 72/2017

13 "Official Gazette of Montenegro", 61/2017

Structure of the **Reintegration Strategy for Persons Returned based on the Readmission Agreement for the period 2016-2020** is designed to include the legal and institutional framework in Montenegro, the international legal and institutional framework, an analysis of all issues of relevance for the reintegration of returnees, a review of recent results in the field of application of the readmission agreement with the EU, and guidelines for establishing an effective monitoring system. Annual Action Plans are defining strategic objectives, measures and activities that are necessary for their implementation, as well as clearly assigned competences for all bodies responsible for implementation of anticipated activities. The main goal of the Strategy is to create preconditions for an adequate approach to the process of return and reintegration at all levels through additional strengthening of the institutional framework, efficient process of assistance, education and monitoring system for following the Strategy and implementation of the Action Plans.

III Institutional Framework for the Implementation of Migrant Procedures

The Ministry of the Interior is the state administration body competent for matters relating to migration and asylum management. The Ministry includes the **Directorate for Civil Status and Identity Documents**, which has a special organizational units – Division for Foreigners, Migration and Readmission, Division for Asylum and Division for reception and accommodation of foreigners seeking international protection.

In the **Division for Foreigners, Migration and Readmission** tasks are related to: implementation of established policies, laws and other regulations and international documents in the field of migration, foreigners, readmission; preparation of draft laws and other regulations in these areas; conducting proceedings on requests for permanent residence of foreigners; issuing work and residence permits for foreigners; conducting proceedings on appeals against first instance decisions of regional units and branches; conducting surveillance in the field of migration and readmission; conducting administrative supervision; directing and coordinating the work of regional units and branches; keeping prescribed records; making decisions in the first instance and second instance procedure (decisions on appeals against decisions of regional units and branches of the Ministry and the Police Administration); achieving cooperation with the National Security Agency, the Police Directorate, other bodies and international organizations; performing other activities within the scope of the Division.

The **Division for Asylum** performs tasks related to: preparation of asylum applications, conducting of procedures and decision-making on asylum applications; decision making on subsidiary protection; initiating and conducting procedures and making decisions on ter-

mination and abolition of the status of asylum seeker; conducting procedures and decision-making on the status of persons already in a recognized refugee status or status of a displaced person in accordance with the law; issuing documents to prove: identity and travel abroad, legal status and rights in accordance with regulations; preparation of draft laws and other regulations in the field of asylum; keeping prescribed records; making decisions on temporary protection; determining the identity of the person seeking asylum; hearing of the persons and taking a statements; taking biometric data; deciding on temporary seizure of documents; deciding on temporary restriction of movement; imposing measures and setting deadlines for voluntary repatriation and deportation; achieving cooperation with the National Security Agency, the Police Directorate and other bodies and international organizations; exchange of official, confidential and operational data in the field of asylum; performing other activities within the scope of the Division.

The **Division for reception and accommodation of foreigners seeking international protection** carries out the activities related to the reception and accommodation of foreigners seeking international protection; accommodation and care of foreigners seeking international protection; providing assistance in exercising the right to social protection, health care, education, humanitarian aid, legal aid, labor and other legally prescribed rights to persons seeking international protection; co-operation with the United Nations High Commissioner for Refugees, other international organizations and institutions, the Red Cross of Montenegro and other organizations and institutions involved in the protection of refugees; assistance in reunification of members of refugee families; activities related to the provision of psycho-social assistance, as well as the organization of instructive, educational and other programs.

Prior to the entry into force of the new Law on International and Temporary Protection of Foreigners, these tasks were performed by the Ministry of Labor and Social Welfare through the Refugee Manage-

ment Administration. The **Police Administration** carries out tasks related to: **surveillance and securing of the State border, border control and control of movement and residence of foreign nationals**. The Police Administration includes the **Border Police Sector** with the **Division for Foreigners, Visas and Suppression of Illegal Migration**, which, among other things, carries out activities related to **control of movement and residence of all categories of foreigners**; control of certain activities of foreigners; direct monitoring and studying the issues of movement and residence of foreign nationals and proposing appropriate measures; **suppression of illegal migration** which includes no element of being organized; participation in the planning and implementation of operational tactical measures and actions in relation to the categories of foreigners that are of concern in terms of security; proposing measures to protect the interests of foreigners during their stay in our country; **coordination of taking measures against foreigners that violate positive regulations**; keeping records of foreign nationals; **taking and deportation of foreign nationals to the shelter for foreigners or border crossings**; and taking measures for the implementation of the readmission agreement. The **Decision on restricting the freedom of movement of foreign nationals and their accommodation in the shelter** and the decision on **imposing alternative measures to detention** are made by the police.

Shelter for foreigners - In order to create the conditions for controlling movement and stay of foreigners in accordance with the EU standards and recommendations, as well as more effective prevention of illegal migration, the Police Administration opened a Shelter for Foreigners in Montenegro, ready to accommodate 46 persons. The Shelter was put into operation on 13 December 2013 and until 1 January 2016 freedom of movement was restricted for 157 illegal migrants placed in the Shelter. All persons were informed of their rights and given a seven-language brochure on the right to asylum, and a brochure on the right to voluntary return on a personal request. Issues affecting the operation of the Shelter for Foreigners are related to:

- **Lack of translators for languages such as:** Urdu, Pashto, Hindu and others, which makes it difficult to authenticate the identity of accommodated persons.
- **No diplomatic and consular missions in Montenegro** of the countries of origin of most illegal migrants (Algeria, Tunisia, Morocco, Libya, Egypt, Eritrea, Sudan, Afghanistan, Pakistan, etc.), which poses difficulties in communicating when authenticating identity and issuing documents for returning migrants to their respective home countries.
- **Lack of readiness for cooperation by certain diplomatic and consular missions outside of Montenegro** to bring their citizens back to their country of origin.

The institution of the **Protector of Human Rights and Freedoms (Ombudsman)**¹⁴ as the **National Preventive Mechanism** analyzed the respect for human rights of foreign nationals in October 2014, and the Ombudsman visited accommodation facilities and reviewed other conditions at the Shelter for foreigners in Spuz, regarding the fulfillment of the recommendation to adjust the number of beds in eight-bed rooms to the actual floor area in accordance with the standards; the walking area has to be covered, to be protected from the sun and precipitation; a special room has to be provided for religious practices, and the conditions for the accommodation of persons with disabilities. On 19 September 2017 there was a follow-up visit to inspect the degree of fulfillment of the recommendations given. Based on the findings, it was noted that three recommendations were met, while the recommendation regarding the persons with disabilities remained unfulfilled.

14 Report of the National Preventive Mechanism for 2017, Protector of Human Rights and Freedoms of Montenegro http://www.ombudsman.co.me/docs/1525433591_final---npm.pdf

Reception Center - Accommodation and reception of foreigners seeking international protection is organized by the Directorate for the Reception and Accommodation of Foreigners through the Reception Center. The Center was opened on 3 February 2014, as the Center for Asylum Seekers, and was put into operation on 20 February 2014. Until the adoption of the new Law on International and Foreign Protection of Foreigners, the Center was part of the **Refugee Management Administration, a body of the Ministry of Labor and Social Welfare**. By introducing standards regarding the eligibility of third-country nationals and stateless persons for international protection, the uniform status of refugees or persons meeting the conditions for subsidiary protection, the accommodation and reception of foreigners were divided as two separate competencies. The activities related to accommodating asylum seekers, foreign nationals who are granted subsidiary protection and foreigners who are granted temporary protection are carried out by the Ministry of Labor and Social Welfare through the Refugee Management Administration, while the activities related to accommodation and reception of foreigners seeking international protection, who have been granted no status yet, are performed by the Ministry of the Interior through the Division for Reception and Accommodation of Foreigners and the Reception Center. **Moving the Reception Center to the jurisdiction of the Ministry of the Interior** has created, inter alia, the formal prerequisites for the implementation of standards concerning the taking and keeping fingerprints of foreign nationals seeking international protection in accordance with Eurodac standards and the Dublin Convention which was not possible before due to the civilian character of the Ministry of Labor and Social Welfare whose jurisdiction included the Center. According to the Dublin Convention, Europol is given the possibility to use Eurodac in cases where there is a reasonable suspicion that a person participates in the commission of a serious criminal offense or a criminal offense of terrorism, as previous analyzes found that the largest number of perpetrators of terrorist offenses were persons once placed in the asylum system.

The Reception Center has capacity for accommodating 80 persons, with 65 permanent and 15 extra beds. **Accommodation, food and clothing, compensation for public transport costs** if transporta-

tion is required for participation in the process of granting international protection or exercising other rights in accordance with the law, and **financial assistance** are provided by the Reception Center. The **basic toiletries and obligatory medical examination** will be provided to foreign nationals placed at the Reception Center.

The Law stipulates that “when accommodating foreign nationals seeking international protection at the Reception Center, their sex, age, position of vulnerable groups, health and disability condition, as well as the unity of the family shall especially be taken into account. Other forms of assistance may be provided by the Red Cross of Montenegro (hereinafter: The Red Cross) and other organizations dealing with the protection of refugees or asylum seekers or humanitarian work, with the prior consent of the Ministry, through the implementation of special assistance programs at the Reception Center. A foreign national seeking international protection may stay outside the Reception Center for more than 24 hours, with the prior approval of the Reception Center’s official. The protection of persons and property at the Reception Center is provided by **police officers who wear no official uniform who are specifically trained to work with foreigners seeking international protection**. The rules of stay and house rules at the Reception Center are prescribed by the Ministry.

In October and November 2014, the Ombudsman, as the NPM¹⁵, visited the Reception Center in Spuz and alternative accommodation facilities at Vrela Ribnicka, i.e. Hotel “Start” and “Kuca Milica” in Podgorica, in order to observe the respect for human rights of asylum seekers in Montenegro. In September 2017, there was a follow-up visit to inspect the fulfillment of the given recommendations. It was found that two recommendations were met, while one was not. The Ombudsman requested the expert service of the Institute of Public Health in Podgorica to draw up a menu meeting the standards, and

15 Ibid.

the Center was ordered to provide a special room for confessing the faith. Recommendation to adjust the number of beds **in the rooms for alternative accommodation** to the floor area according to the standard, **is not met**.

However, according to the latest data from the Ministry of the Interior, activities are ongoing to increase accommodation capacities for foreigners seeking international protection in Montenegro, and mobile facilities have been installed at the Reception Center. Their reconstruction is ongoing, donated by the International Migration for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) - Office in Podgorica. Bearing in mind the current situation in the field of migration, which is certainly unforeseeable, the lack of adequate capacity for admission of migrants in Montenegro will be compensated by adaptation and reconstruction of the “Former Watch Tower Bozaj” facility, which is located on the road to the Republic of Albania, from the IPA 2018 funds and the Capital Budget of Montenegro. Adaptation of this complex will create additional accommodation capacities for migrants. Also, it is envisaged to set up a “Container Settlement” at the location of Bozaj, as a transitional solution to the facility’s reconstruction.

In order to provide as much information as possible to foreigners staying at in the Reception Center, the Ministry of the Interior has prepared an **Information Booklet for foreigners seeking international protection** in Montenegro. The Information Booklet was translated into 8 languages and published in March 2018. The Ministry of Labor and Social Welfare is preparing an **Information Booklet for persons granted international protection** in Montenegro. At the beginning of 2018, the Protocol on the Use of Common Translation Capacities in the Field of Migration and Asylum within the Migration, Asylum, Refugee Regional Initiative (MARRI) was signed.

Trainings for strengthening the capacities of officials in the Integrated Migration are **continually being implemented** with a view to raising the quality of work performed in the field of international protection of foreign nationals. Border Police Officers have undergone advanced training in international defense with an accent on assessing cred-

ibility in asylum procedures, Rome, 4-7 June 2018, organized by the Prague Process. The Ministry of the Interior, in cooperation with UNHCR, has organized a workshop for officers working on international protection of foreign nationals (procedure and admission) on the subject of the United Nations High Commissioner for Refugees' Guidelines on Gender-Related Persecution in the context of Article 1A (2) of the 1951 Convention related to the status of refugees and its 1967 Protocol," with special reference to the presentation of the recommendations contained in the UNHCR Gender-Related Persecution Guidelines. Border police officers, within the IPA II Project - Regional Support to Migration Management in the Western Balkans and Turkey, FRONTEX, IOM, UNHCR and EASO have undergone several different trainings related to interviewing, interviewing vulnerable groups, inclusion, basic human rights and freedoms, trafficking in human beings, forcible removal, etc.

IV Different Categories of Foreign Nationals in Montenegro - Qualification and Definitions

The Law on International Protection and Temporary Residence of Foreigners, Articles 2-6, provides for standards regarding the qualification of various categories of types of the protection that can be guaranteed. **International protection of foreign nationals seeking international protection includes asylum and subsidiary protection.** If a foreign national staying outside the country of origin requires international protection because of fear of persecution due to his or her race, religion, nationality, belonging to a particular social group or political opinion, for which reason he or she cannot or does not want to accept the protection of that country, **he or she will be granted asylum.** A **person seeking international protection who does not fulfill the conditions** for asylum, provided that there are justified reasons showing that after returning to the country of origin he or she will face the real risk of suffering serious injustice, and who is unable or due to such a risk does not want to accept the protection of that country, is entitled to **subsidiary protection.** **Temporary protection** is granted to **third country nationals and stateless persons in cases of mass influx or forthcoming mass influx of persons from third countries** who cannot return to their country of origin, in particular where there is a risk that, due to this mass influx, the procedure for granting international protection cannot be effectively conducted, to protect the interests of these persons and other persons seeking international protection. A foreign national seeking international protection and filing an application is a third-country national or a stateless person who expresses the intention to apply for international protection.

V General Legal Aspects of Application of International Standards in the field of Restricting Personal Freedom and Freedom of Movement and Implementation of Alternative Measures to Immigration Detention

5.1 Entry and Exit of Foreign Nationals in Montenegro

Foreign nationals must undergo a border check when entering Montenegro and leaving Montenegro, in accordance with the law regulating border control. Entry into Montenegro implies crossing the State border, i.e. border crossing at which border checks are carried out. Situations in which foreign nationals will not be allowed to enter the country are stipulated by the Foreigners Law, on which occasion the police will issue a decision on the ban on entry **without consulting the foreigner**. An **appeal** against a decision on the ban on entry may be filed through the nearest diplomatic or consular mission of Montenegro abroad, within eight days from the date of receipt of the decision. Appeals are decided by the ministry responsible for internal affairs.

- **Obligation of special consideration for persons in a dangerous or discriminatory situation**

An appeal to a decision on the ban on entry to Montenegro shall not stay its enforcement **unless the police assess that the life or freedom of a foreign national is at risk in the state of origin** because of his or her racial, religious or ethnic origin, belonging to a particular social group or political opinion, or could be subjected to torture or inhuman or degrading treatment or punishment, or punished by a death sentence, and that his or her return to another country would entail the risk of forced return to the country of origin.

5.2 The right to personal freedom in the context of the application of Article 5 of the European Convention on Human Rights and Fundamental Freedoms

The Constitution of Montenegro, Article 29, proclaims the principle that everyone has the right to **personal freedom**. Pursuant to this constitutional norm, **the deprivation of liberty is permitted only for reasons and in the procedure provided by law**. Article 39 of the Constitution guarantees **the right to freedom of movement and residence**, as well as the right to leave Montenegro. Freedom of movement, settlement and leaving Montenegro may be restricted if it is necessary for **conducting criminal proceedings, preventing the spread of contagious diseases or for reasons of Montenegro's security**. The Constitution prohibits any direct or indirect discrimination on any ground. It is forbidden to **induce or encourage hatred or intolerance on any ground**. Everyone has the right to a legal remedy against a decision deciding on his or her right or a legally-based interest. Everyone has the right to **legal aid**. Article 24 of the Constitution stipulates that guaranteed human rights and freedoms **may be restricted only by law**, to the extent allowed by the Constitution which is necessary to satisfy the purpose for which the restriction has been permitted in an open and free democratic society. Restrictions may not be introduced for purposes other than those for which they are prescribed. The Constitution also stipulates that the **movement and stay of foreign nationals** is regulated by law. Foreign nationals **in Montenegro are subject to criminal and misdemeanor liability** according to the legal regulations governing criminal and misdemeanor proceedings. The Criminal Procedure Code¹⁶, in several sections, addresses issues of importance for the **right to freedom and personal security**.

16 "Official Gazette of Montenegro", 57/2009, 49/2010, 47/2014 – decision of the Constitutional Court, 2/2015 - decision of the Constitutional Court, 35/2015, 58/2015 – state law and 28/2018 - decision of the Constitutional Court

5.2.1 Restriction of Personal Freedom and Detention in Criminal Proceedings

Detention is regulated under Article 30 of the Constitution of Montenegro, providing that a person for whom there is a reasonable suspicion of having committed a criminal offense may, by virtue of a decision of the competent court, **be detained and kept detained only if necessary for the conduct of the criminal proceedings**. The detained person must be served with the reasoned decision at the time of detention or at the latest within 24 hours of detention, and the detained person **has the right to appeal** against the decision on detention, which is decided by the court within 48 hours. The Constitution provides that the length of detention must be reduced to the shortest possible time. Depending on the decision of the first instance court, detention may last for three months from the day of detention, and may be extended for another three months by the decision of the higher court. If no indictment is filed by the expiry of these deadlines, the accused shall be released. **Juvenile detention** cannot last longer than 60 days.

The competent state authorities participating in the criminal proceedings are obliged to act with special urgency and decide on the cases in which detention is ordered. Legal norms lay down the basis and conditions under which detention may be ordered. The rights of persons deprived of their liberty are proclaimed in Article of general provisions of the CPC. A person deprived of his or her liberty must immediately be **informed in his or her language or a language that he or she understands about the reasons for the deprivation of his or her liberty**, and made aware that he or she has no obligation to state anything. Upon the request of a person deprived of his or her liberty, the authority shall immediately inform the person named by the detained person. The Constitution prescribes that a person deprived of his or her liberty has the right to have a self-chosen defense counsel attend the hearing.

The **detention order** must be made in writing and adequately explained. Legal norms prescribe the maximum duration of detention at various stages of criminal proceedings, with the possibility of ex-

tension in justified cases. The **Law on Treatment of Juveniles in Criminal Proceedings**¹⁷ lays down special conditions for detention of juveniles, taking into account **the best interest of the child as a principle proclaimed under the UN Convention on the Rights of the Child**.

5.2.2 Applying Alternative Measures to Detention in Criminal Proceedings

The Criminal Procedure Code, Title VIII, provides measures that can be taken against the accused to ensure his or her presence and for the unimpeded conduct of the criminal proceedings. Pursuant to the CPC, measures to ensure the presence of the accused, which are an alternative to detention and unimpeded conduct of the criminal proceedings are: **call, apprehension, surveillance measures, and security deposit**.

- ***Obligation to consider alternatives measures to detention***

Pursuant to the CPC, the competent court shall **abide by the conditions imposed for the application of particular measures**, taking into account that **no stricter measure is applied if the same purpose can be achieved by a milder measure**. Measures to ensure the presence of an accused and unimpeded conduct of the criminal proceedings shall be suspended ex officio when the reasons for which they have been taken cease to exist or upon appeal, or replaced by another milder measure when the conditions are met.

17 “Official Gazette of Montenegro”, 64/2011

5.3 Restricting the Freedom of Movement of Foreign Nationals¹⁸

The movement of foreign nationals in a specific area of Montenegro will be restricted or prohibited if required due to national, or internal security or public health reasons, in accordance with the law. It is stipulated under Article 124 of the Foreigners that **a foreign national may be deprived of his or her liberty, apprehended and detained, for a maximum of 24 hours**, only if it is necessary to **secure his or her presence in the procedure of termination of stay of up to 90 days and the procedure for annulment of the temporary deferral of forced expulsion**. However, for the purpose of forced expulsion, a foreign national can be deprived of his or her liberty, apprehended and detained for a maximum of 48 hours. The police issue a decision to deprive the foreign national of his or her liberty. Immediately after the deprivation of his or her liberty, the foreign national shall be informed of the reasons for the deprivation of his or her liberty and that he or she may request that the **diplomatic and consular mission** of the country of his nationality be informed of the deprivation of his or her liberty, unless otherwise stipulated by an international treaty.

Articles 62 and 63 of the Law on International and Temporary Protection of Foreigners define, inter alia, the reasons why a foreigner seeking international protection may restrict freedom of movement, as well as measures that may be imposed on restricting the freedom of movement.

Deprivation of liberty of a **foreign unaccompanied minor** shall be immediately notified to the **competent Center for Social Work and diplomatic and consular mission of his or her country of citizenship**. Foreign nationals can file a **complaint** against this decision to the **Administrative Court** before which the proceedings shall be urgent. Foreign nationals will be released immediately when reasons for deprivation of his or her liberty and detention cease, and no later than after the expiration of the deadline prescribed by law,

18 Article 124 of the Foreigners Law

unless action is taken to enforce forced expulsion or a decision on accommodation at the Shelter for foreign nationals has been issued.

- **Obligation to consider alternative measures to detention**

It is stipulated under Article 13 of the Foreigners Law that the **police may limit the freedom of movement** to a foreign national only if that person **cannot be expelled by force or his or her return cannot be provided by applying milder measures**.

5.3.1 Immigration Detention – Shelter for Foreign Nationals¹⁹

The police may limit the freedom of movement of foreign nationals by **placing them in the shelter for foreigners**, and especially if there is a risk of **avoiding the obligation to leave Montenegro** or if a foreign national **prevents the execution of forced expulsion and return**. Circumstances indicating the existence of the risk of avoiding the obligation are that a foreigner:

- 1) Did not leave Montenegro within the time limit set by the decision;
- 2) Entered Montenegro before the expiry of the ban on entry and stay;
- 3) Does not possess or has destroyed the identity document;
- 4) Used a falsified or other person's document;
- 5) Declared that he or she would not comply with the obligation to leave Montenegro;
- 6) Does not have sufficient financial resources;
- 7) Has no accommodation provided;
- 8) Has been sentenced for a criminal offense.

19 Articles 125 to 131 of the Foreigners Law

It is considered that a foreign national has prevented the execution of forced expulsion and return if he or she:

1) Failed to comply with the obligations imposed by the decision on the application of milder measures;

2) Refused to give his or her personal information and documents required for forced expulsion or gave false information.

The police issue the decision on placing a foreign national in the shelter, while the accommodation in the shelter can last only for the time required for forced expulsion or during the activities taken for forced expulsion and for a maximum of six months. This decision may be **appealed to the Administrative Court** within five days of the date of delivery of the decision. The proceedings before the Administrative Court are urgent. Accommodation in the shelter can be shortened or extended for a maximum of 12 months if the foreign national refuses to cooperate or is late to obtain the necessary documents from another country. The decision to shorten or extend the accommodation time at the shelter is issued by the police. The decision may be appealed to the Administrative Court within five days of the date of delivery of the decision.

It is stipulated by law that the restriction of the freedom of movement is determined in cases where there is a risk of avoiding the obligation to leave Montenegro, where as a circumstance for this situation, among other things, the **lack of financial resources and the unavailability of accommodation** is assessed. This is unjustifiably leading to a disadvantage of foreign nationals in a bad financial situation because third-country nationals often leave the country of origin for economic reasons, but above all because of long-term exposure to insecurity, inability to work and poverty, **thus limiting their freedom of movement due to the lack of financial resources and provided accommodation is unacceptable**. In addition, the police may, when applying **milder measures, provide accommodation and support for foreign nationals**, and thus much earlier contribute to avoiding the said risk.

5.3.2 Extension of accommodation at the Shelter for foreigners²⁰

Accommodation in the shelter can be shortened or extended for a maximum of 12 months if the foreign national refuses to cooperate or is late to obtain the necessary documents from another country. However, the legislator has failed in this section. Considering that the Foreigners Law, as a measure for ensuring the return, provides for **voluntary return of foreign nationals by issuing a decision** and that the **police can obtain travel documents and travel tickets and provide financial assistance to foreign nationals** for the purpose of encouraging such return, the possibility of extending accommodation in the shelter should be left only if the foreign national is not responsible for the delayed provision of documents.

5.3.3 Stricter Police Surveillance²¹

Foreign nationals staying at the shelter may be subject to **stricter police surveillance** in cases prescribed by law, which can last for a maximum of seven days. A decision on the imposition of stricter police surveillance is issued by the police which must submit to the Ministry all the case files on stricter police surveillance. The Ministry shall, at the latest on the first following working day from the date of delivery of the case, decide to abolish or extend the execution of stricter police surveillance. This decision can be **appealed to the Administrative Court** by the foreign national concerned within five days of the date of delivery, and the urgency of the proceedings before this court is guaranteed. The Ministry may decide to extend the implementation of stricter police surveillance, finding new evidence and records obtained by the police

20 Article 128 of the Foreigners Law

21 Article 128 of the Foreigners Law

5.3.4 The Procedure for Minor Children²²

Foreign unaccompanied minors and minors under the age of 14 can be placed in **an appropriate facility** only if forced expulsion cannot be provided in a different manner. Foreign minors older than 14 years of age who are accompanied by family members may be accommodated in the shelter only if the forced expulsion cannot be provided in a different manner. Accommodation is provided in premises suitable for the placement of minors, where members of the same family are placed in a separate common room within the Shelter. Stricter police surveillance may be imposed on a foreign minor child only if accompanied by a parent or a lawyer, with due regard for the child's best interests. The foreign minor child is provided with **conditions appropriate to his or her age, and the right to education in accordance with the regulations in the field of education**. If there is a serious suspicion of the foreign child's age, the age of that person may be investigated. The law, under the provisions stipulating the placement of minors in the shelter, **does not prescribe that such accommodation will last only as long as the reasons for such accommodation last**, while respecting the **best interests of the minor child** according to international standards.

5.4 Milder (Alternative) Measures to Restrict Freedom of Movement and Immigration Detention²³

For the first time, in line with the directives of the European Parliament and the Council, "milder measures" are defined actually as an alternative to placing foreign nationals at the Shelter for foreigners, which is essentially an immigration detention with the measure of restricting their freedom of movement. The Foreigners Law lays down the **obligation of the police to apply milder measures to secure**

22 Article 134 of the Foreigners Law

23 Article 126 of the Foreigners Law

the return of foreign nationals, and that the freedom of movement of foreign nationals can be restricted only if the measure of forced expulsion cannot be applied or their return cannot be provided by the application of milder measures.

Milder measures include:

- 1) Depositing travel identification documents, travel documents and travel tickets;
- 2) Depositing some financial assets;
- 3) Ban on leaving the accommodation at a specific address;
- 4) Reporting to the police at a specified time.

The decision on the application of milder measures is issued by the police in the administrative procedure, i.e. the authorized police inspector for foreigners of the Border Police Sector independently decides on the imposition of a milder measure **that lasts until the forced expulsion**.

Specified in this way, alternative measures meet the standards defined by European legal regulations, although it cannot be claimed that the legal framework is fully in line with international standards when it comes to **prescribing and other alternative measures** such as registration – recording by competent authorities, temporary residence permit, case management or support for case processing by an authorized person, alternative family-based accommodation, housing, open and semi-open accommodation centers, shelters/return centers, deposits, guarantees, insurance, and electronic surveillance applications, **which are not legalized in the Montenegrin legal system**. It is a good that the possibility for the police to provide accommodation and financial support to foreign nationals in connection with the application of milder measures is prescribed, and yet it is not stipulated that **centers for temporary accommodation and detention of foreign nationals** can be established for this purpose, which is an international standard in this area.

- **Alternative measures are subject to judicial review**

Judicial control in the lawsuit is ensured so that a decision on the imposition of milder measures may be appealed to the Administrative Court within five days of the date of delivery of the decision.

- **Provision of adequate living conditions when enforcing alternative measures**

The law provides for the possibility, but not the obligation of the competent authorities to provide adequate living conditions for foreign nationals subjected to the alternative measure of detention. During the application of milder measures, the police **can provide the alien with accommodation and subsistence, financial resources and other material benefits**, or conclude agreements related to such measures with **international organizations and non-governmental organizations**. In the case of mass influx or illegal stay in Montenegro, the decision to provide temporary accommodation of foreign nationals subjected to milder measures is taken by the Government.

5.5 Measures to Provide the Return of Foreign Nationals

In order to provide the return of foreign nationals, the police may, in addition to the restriction of the freedom of movement and detention, also implement other measures that include: **a) voluntary departure from Montenegro; b) expulsion of foreign nationals; c) ban on entry and stay; d) forced restraining measure; e) obligations of foreign nationals in the return process, and e) other measures prescribed by this Law.**

Certainly, when imposing measures, the competent authorities are obliged to take a milder measure, taking into account all the circumstances of the particular case, specifically considering and assessing whether the life or freedom of the foreign national concerned is at risk in his or her country of origin because of his or her racial, religious or ethnic affiliation, belonging to a special social group or

political opinion, or whether he or she may be subjected to torture or inhuman or degrading treatment or punishment, or subjected to a death sentence, and whether the return to another country might pose a risk of forced expulsion to the country of origin.

Foreign nationals can be expelled from Montenegro only on the basis of a decision of the competent body and in the legally prescribed procedure. Article 68 of the Criminal Code of Montenegro²⁴ stipulates that foreign nationals can be expelled from the country on the basis of a **final decision of the competent state body or court** if sentenced or under a suspended sentence as offenders. The decision to expel a foreign national who has been granted permanent residence in Montenegro, a three-year temporary residence on the basis of a family reunification with a Montenegrin citizen or a permanent resident can only be issued in exceptional cases. Also, the decision on expulsion will consider the length of stay, private or family life, economic ties and the degree of social and cultural integration of a foreign national in Montenegro, as well as his or her connections with the country of origin, with the obligation to guarantee special protection to a minor non-accompanying foreigner.

The decision to expel a foreign national is **issued by the police** and it can also be issued without any misdemeanor proceedings against a foreign national who illegally stays in Montenegro. The law stipulates that a foreign national shall, amongst other things, be expelled from Montenegro in case he or she **assists in illegal crossing of the state border**. However, the legislator has failed to clearly state what is **considered as assistance. This is because it is unacceptable to forbid humanitarian assistance, especially if non-assistance would prevent meeting the needs that may endanger life and health, particularly of vulnerable groups of persons.**

24 “Official Gazette of Montenegro”, 40/2008, 25/2010, 32/2011, 64/2011 – state law, 40/2013, 56/2013 – corr., 14/2015, 42/2015, 58/2015 – state law, 44/2017 and 49/2018, “Official Gazette of Montenegro”, 40/2008, 25/2010, 32/2011, 64/2011 – state law, 40/2013, 56/2013 – state law 14/2015, 42/2015, 58/2015 – state law, 44/2017 and 49/2018

With regard to the **ban on entry and exit of foreign nationals**, the police may terminate or shorten the length of the ban on entry and stay if the reasons for the case cease, or if the circumstances on the basis of which a decision on expelling a foreign national have changed, as well as at the request of a foreign national for humanitarian reasons or at the request of a foreign national if he or she proves that he or she voluntarily complied with the decision on return. An appeal can be filed against the decision on the rejection of the request, which is decided by the Ministry of the Interior.

In the case of enforcing the measure of **forced expulsion**, foreign nationals are provided with police escort to leave Montenegro. In order to ensure that the fundamental human rights of the foreign national who is being expelled are respected during his or her forced expulsion, the forced expulsion **may be technically recorded and the foreign national shall be informed about the purpose of the recording**. The enforcement of forced expulsion and the taking of measures to protect the human rights and freedoms of the foreign national who is being expelled by force is monitored by the **Protector of Human Rights and Freedoms of Montenegro**, in accordance with the law. For the effective conduct of forced expulsion, the Ministry may conclude agreements with competent authorities of other States and international organizations for the purpose of implementing international agreements, as well as with non-governmental organizations.

Measures to ensure the return are carried out by the police. It is important to note that the provisions of the Foreigners Law regarding the introduction of standards and procedures of Member States for the return of illegally staying third-country nationals follow Directive 2008/115/EC of 16 December 2008.

VI Conclusions and Recommendations

Relatively frequent amendments to the legal framework in the field of asylum and migration are largely due to the requirement of transposing the EU *acquis* into the Montenegrin legislation. By adopting the new Law on International and Temporary Protection of Foreigners, Montenegro aligned its national legislation with the EU *acquis*, thus creating the conditions for the implementation of standards within the framework of the “Common European Asylum System (CEAS)”. The main objective of this Law is to establish an effective and uniform asylum system in which foreigners seeking international protection are guaranteed equal opportunities for success in the proceedings, in addition to respecting their rights. The Law introduces a standardized classification of foreign nationals, whereby a clear distinction is made between persons seeking international protection and persons who are granted protection. Persons who are granted protection enjoy all rights of Montenegrin citizens (social protection, health care, the right to education, employment, etc.). On the other hand, the Law aims to ensure full protection of persons seeking international protection, in the context of growing migration, particularly irregular migration.

The new Foreigners Law has also been aligned with international standards, in particular with regard to **Directive 2008/115/EC on common standards and procedures to be applied in Member States for returning illegally staying third-country nationals**. The Law regulates the procedures for issuing decisions on the return of foreign nationals, voluntary departure, **expulsion**, delaying expulsion, **return and expulsion of unaccompanied minors**, ban on entry, free legal aid, **detention and conditions for detention**. It has to be noted that **alternative measures to restrict the freedom of movement and enforce detention** were introduced for the first time by the Foreigners Law, **which represents a significant step forward in relation to the previous Foreigners Law**²⁵ that has ceased to apply.

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“Official Gazette of Montenegro”, 56/2014, 28/2015 and 16/2016

In order to better implement new legal solutions, it is necessary to:

1. Accelerate activities to adopt the **remaining secondary legislation**, which will completely regulate the normative framework and create the conditions for full implementation of the law;
2. Continuously organize **trainings of officers of the Ministry of the Interior and the Police Administration, in particular those working in the Reception Center, Shelter for foreigners and Border Police Sector**, in accordance with the extended description of jobs of these officers related to the treatment and admission of asylum seekers as provided for in the new **Rulebook on internal organization and systematization of job positions of the Ministry of the Interior**. Special attention has to be paid to the organization of trainings in the field of **anti-discrimination in order to increase awareness and sensitization among professionals in procedures towards migrants**, especially towards those faced with multiple discrimination (children on the move, women, persons with disabilities and other vulnerable groups);
3. Strengthen the capacity of **inspectors for foreigners** who are responsible for **issuing alternative measures to detention**, and in particular considering the complexity of their professional and executive duties that require special **expertise and independence in the work**, with a clear definition of the circumstances and procedures in cases of “justified circumstances” in the process of applying milder measures;
4. Consider the possibility of introducing **new alternative measures to detention** (especially those concerning alternative accommodation and the opening of **centers and semi-centers for the accommodation of foreign nationals**);
5. Conduct activities on **extending the accommodation facilities of the Reception Center and the Shelter for foreigners**, in particular taking into account the standards required for the **placement of unaccompanied minors with a view to protecting the child’s best interests**;

6. Define more clearly what is meant by assisting in the illegal crossing of the state border, because it is **unacceptable to prohibit assistance for humanitarian reasons**, especially if non-assistance would **prevent meeting the needs that may endanger life and health, particularly of vulnerable groups of persons**;
7. Abolish the legal possibility of **restricting the freedom of movement of foreign nationals because of the lack of financial resources or unprovided accommodation, as this unjustifiably** puts foreign nationals leaving their country of origin for economic reasons into a more unfavorable position, but above all because of their long-term exposure to insecurity, inability to work and poverty.
8. To indeble the government body that follows the implementation of the Strategy for Integrated Migration Management in Montenegro for the period 2017-2020. to **follow and periodically report on application of the milder measures and to establish Mixed-team** that would follow and monitor the migration management, consisted of state authorities (Ministry of Justice, the judiciary, the Prosecutor's Office, the MIA, the Border Police, the Protector of Human Rights and Freedoms), NGOs and international organizations such as IOM, UNHCR, Red Cross and others.

VII ANNEX - List of strategic, primary and secondary Legislation Acts in the field of alternative detention measures in the context of migration

1. *The Constitution of Montenegro (“Official Gazette of Montenegro”, 1/2007 and 38/2013 - Amendments I-XVI)*

The Constitution, inter alia, prescribes provisions relating to the primacy of ratified and published international treaties in relation to internal legal order, freedoms and rights of citizens, including the right to personal liberty and security and freedom of movement, as well as any limitation on these freedoms, the right of asylum.

<https://www.paragraf.me/propisi-crnegore/ustav-crne-gore.html>

2. *Foreigners Law (“Official Gazette of Montenegro”, 12/2018)*

This Law regulates the conditions for entry, exit, movement, stay and work of foreign nationals in Montenegro. This Law better regulates issues of entry, exit, movement, stay and work of foreign nationals in Montenegro in accordance with the EU acquis, with a focus on the implementation of Directive 2008/115/EC on common standards and procedures of the Member States for the return of illegally staying third-country nationals.

<http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={76571A1A-8D55-4C11-B0C6-45FF904039B2}>

3. *Law on International and Temporary Protection of Foreigners (“Official Gazette of Montenegro”, 2/2017)*

This Law lays down the principles, conditions and procedures for granting international and temporary protection to foreign nationals seeking international protection, the rights and obligations of foreign nationals seeking international protection, asylum seekers, foreign nationals under subsidiary protection, foreign nationals under temporary protection, as well as the conditions and procedure for an-

nulment and termination of asylum, subsidiary and temporary protection.

<http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={4313B8EC-5E77-470D-830B-0E7350271B75}>

4. ***Law on Border Control (“Official Gazette of Montenegro”, 72/2009, 20/2011 – state law, 40/2011 – state law and 39/2013)***

Border control and international border police cooperation shall be conducted in accordance with this Law. On the day of entry into force of this Law, the Law on State Border Control (“Official Gazette of the Republic of Montenegro”, 72/05) ceased to have effect.

<https://www.paragraf.me/propisi-crnegore/zakon-o-granicnoj-kontroli.html>

5. ***Law on Internal Affairs (“Official Gazette of Montenegro”, 44/2012, 36/2013 and 1/2015)***

This Law regulates the internal affairs, powers and duties of employees of the Ministry of the Interior, as well as other matters of importance for internal affairs. On the date of entry into force of this Law, the Law on Police (“Official Gazette of the Republic of Montenegro”, 28/05 and “Official Gazette of Montenegro” 88/09) ceased to have effect.

<https://www.paragraf.me/propisi-crnegore/zakon-o-unutrasnjim-poslovima.html>

6. ***Criminal Procedure Code (“Official Gazette of Montenegro”, 57/2009, 49/2010, 47/2014 – decision of the Constitutional Court, 2/2015 - decision of the Constitutional Court, 35/2015, 58/2015 – state law and 28/2018 – decision of the Constitutional Court)***

This Code sets out the rules with a view of ensuring the fair conduct of the criminal proceedings and that no innocent person is convicted, and to impose criminal sanctions on criminal offenders under

the conditions laid down in the Criminal Code and on the basis of a legally conducted procedure.

<https://www.paragraf.me/propisi-crnegore/zakonik-o-krivicnom-postupku.html>

7. **Misdemeanor Law (“Official Gazette of Montenegro”, 1/2011, 6/2011 – state law, 39/2011, 32/2014, 43/2017 – decision of the Constitutional Court and 51/2017)**

This Law regulates the conditions for prescribing misdemeanors and misdemeanor sanctions, misdemeanor liability, misdemeanor proceedings and the procedure of enforcing misdemeanor sanctions.

<https://www.paragraf.me/propisi-crnegore/zakon-o-prekrsajima.html>

8. **Criminal Code (“Official Gazette of the Republic of Montenegro”, 70/2003, 13/2004 – state law and 47/2006, and “Official Gazette of Montenegro”, 40/2008, 25/2010, 32/2011, 64/2011 – state law, 40/2013, 56/2013 – state law, 14/2015, 42/2015, 58/2015 – state law, 44/2017 and 49/2018)**

This Code prescribes the protection of man and other basic social values and establishes the basis and limits for the determination of criminal offenses, the imposition of criminal sanctions and their application, to the extent that it is necessary for the suppression of these offenses.

<https://www.paragraf.me/propisi-crnegore/krivicni-zakonik-crne-gore.html>

9. **Law on Foreign Affairs (“Official Gazette of Montenegro”, 70/2017)**

This Law regulates the manner of conducting foreign affairs, competencies and organization of the work of the Ministry of Foreign Affairs, the establishment and operation of diplomatic and consular missions of Montenegro abroad (hereinafter: diplomatic and consular missions), diplomatic and consular offices and the conditions and

manner of their acquisition, rights and duties of diplomats and other persons employed in the Ministry of Foreign Affairs and Diplomatic-Consular Representations, as well as other matters of importance for the work of diplomatic and consular missions.

<https://www.paragraf.me/propisi-crnegore/zakon-o-vanjskim-poslovima.html>

10. Rulebook on detailed manner and procedure for forced expulsion of foreign nationals (“Official Gazette of Montenegro”, 43/2018)

This Rulebook prescribes in detail the manner and procedure for forced expulsion of foreign nationals from Montenegro.

<http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={F568BA9F-F12D-4E8D-A07C-C479D3011C9E}>

11. Rulebook on entering the prohibition of entry and termination of stay of foreign nationals in travel documents (“Official Gazette of Montenegro”, 43/2018)

This Rulebook prescribes the form and the manner of entering the prohibition of entry of foreign nationals into foreign travel documents, as well as the manner of entering the termination of stay of foreign nationals up to 90 days and the termination of stay of foreign nationals on the basis of a visa for longer stay.

<http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={2997E2BE-AA12-42E2-AC80-72432F25F1C0}>

12. Rulebook on detailed conditions for issuing certificates on registered employment of foreign nationals and application forms for employment registration and certificates on registered employment of foreign nationals (“Official Gazette of Montenegro”, 43/2018)

This Rulebook regulates in detail the conditions for issuing certificates on registered employment of foreign nationals and application

forms for employment registration and certificates on registered employment of foreign nationals.

<http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={5AD29691-EC45-4951-BD12-493232C9D29A}>

13. Rulebook on detailed procedure for taking fingerprints and photographs of foreign nationals declaring the intention to apply for international protection (“Official Gazette of Montenegro”, 61/2017)

This Rulebook regulates in detail the procedure for taking fingerprints and photographs of a foreigner declaring the intention to apply for international protection (hereinafter: a foreigner) in order to establish his or her identity.

<http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={BA6B6241-1675-4439-8915-CFE0E3556CD1}>

14. Rulebook on the layout and content of forms and the procedure for issuing documents for foreign nationals who have applied for international protection, asylum seekers and foreign nationals under subsidiary protection (“Official Gazette of Montenegro”, 72/2017)

This Rulebook prescribes the layout and content of the forms and procedure for issuing documents for foreign nationals who have applied for international protection, identity documents for asylum seekers, identity documents for foreign nationals under subsidiary protection, travel documents for asylum seekers and travel documents for foreign nationals under subsidiary protection.

<http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={B8A96327-6BCE-410B-BAE4-221C710B7BEA}>

15. **Rulebook on rules of stay and house rules at the Reception Center (“Official Gazette of Montenegro”, 61/2017)**

This Rulebook prescribes the rules of stay and house rules in the organizational unit of the Ministry of the Interior for the accommodation of foreign nationals seeking international protection.

<http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={7E78189A-1AF5-42DC-8E55-ADF1A85A5CA7}>

16. **Rulebook on rules of stay and house rules at the Shelter for foreigners (“Official Gazette of Montenegro”, 53/2018)**

This Rulebook prescribes the rules of stay and house rules at the shelter for foreign nationals.

<http://www.sluzbenilist.me/PravniAktDetalji.aspx?tag={3D916FD7-F669-4768-ADA1-7D7FD1492873}>

17. **Strategy for Integrated Migration Management in Montenegro for the period 2017-2020**

The Strategy was adopted with a view of full harmonization and establishment of the legal framework, additional strengthening of the institutional framework that provides the possibility of effective implementation of the migration control policy in accordance with the *acquis communautaire* rules and standards, and establishing a monitoring system to monitor the Strategy and implementation of the *Action Plans*.

<http://www.mup.gov.me/ResourceManager/FileDownload.aspx?rid=268000&rType=2&file=Strategija%20za%20integrisano%20upravljanje%20migracijama%20u%20Crnoj%20Gori%20za%20period%202017-2020.%20godine.pdf>