**PROPOSAL**

**LAW**

**AMENDING THE CRIMINAL CODE OF MONTENEGRO**

**Article 1**

In the Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03 and 47/06 and the Official Gazette of Montenegro 40/08, 25/10, 32/11, 40/13, 14/15, 42/15, 44/17, 49/18, 3/20, 144/21 and 145/21) in Article 28 paragraph 1 semicolon at the end of point 2 shall be replaced by a full stop and point 3 shall be deleted.

In paragraph 2, the words: “points 1 to 3” shall be replaced by the words: “points 1 and 2”.

**Article 2**

In Article 36a paragraph 2 in the second sentence, comma after the word “hours” shall be deleted and the words “or disrupts, damages or removes monitoring device or otherwise obstructs or refuses prison sentence enforcement in the manner set forth in paragraph 1 of this Article or becomes unavailable,” shall be added.

**Article 3**

In Article 37 paragraph 1, the words: “as well as to whether the purpose of punishment has been served.” shall be replaced by the words: “within the limits of his capacity.”

**Article 4**

In Article 41, a full stop at the end of paragraph 3 shall be replaced by a comma and the following words shall be added: “unless the perpetrator of the criminal offence requests or agrees that it may last longer than sixty hours in a month.”

Paragraph 6 shall be amended to read:

“(6) If, in the execution of the imposed punishment of community service, the perpetrator fails to complete a part of or all hours of his community service, the court shall replace the community service by a prison sentence, where each eight hours of community service initiated shall be substituted by one day of prison sentence.”

After paragraph 6 a new paragraph shall be added worded as follows:

“(7) If the perpetrator fulfils all working obligations during the execution of the community service punishment, the court may reduce by one third the length of the punishment of community service imposed on him.”

**Article 5**

In Article 42a, paragraph 1 shall be amended to read:

“If the criminal offence was committed out of hatred of another person due to national or ethnic affiliation, affiliation with race or religion or due to absence of such affiliation, disability, nationality or due to differences in political or other beliefs, sex, language, the colour of skin, education, social status, social background, sexual orientation, gender identity or disability, the court shall consider such circumstance as an aggravating circumstance unless it is prescribed as an element of a basic criminal offence or an aggravated criminal offence.”

**Article 6**

Article 43 shall be amended to read:

“If the perpetrator of a criminal offence committed with criminal intent has been previously convicted of a criminal offence committed with criminal intent, the court shall take this circumstance as an aggravating circumstance, if less than five years passed from his previous conviction or from having served his punishment.”

**Article 7**

Article 44 shall be amended to read:

“For a criminal offence which was committed with criminal intent and which is punishable by a prison term, the court shall impose a punishment above the half of the range of the prescribed punishment if the perpetrator has already been convicted twice or more times of the criminal offences that are identical or of the same kind committed with criminal intent to a prison term of minimum six months.”

**Article 8**

In Article 45 paragraph 1 point 3, the words: “and it is judged that” shall be replaced by the words: “which indicate that”.

After paragraph 1 a new paragraph shall be added worded as follows:

“2) By way of exception from paragraph 1 of this Article, in the case referred to in Article 43 of this Code, the court may impose on a perpetrator a punishment below the limit laid down by law or a lighter punishment only if the conditions set out in paragraph 1 points 1 and 2 of this Article have been met.”

**Article 9**

In Article 46 paragraph 1, a new point shall be added worded as follows:

“1) if the criminal offence carries a minimum prison term of ten years or longer, the punishment may be mitigated by up to five years of prison, and if it is provided for by law that the punishment may be mitigated (Article 45 paragraph 1 point 1), the punishment may be mitigated by up to two year of prison term;”.

Previous points 1 to 7 shall become points 2 to 8.

**Article 10**

In Article 51 paragraph 1, the words “serving the supervision measure of prohibition to leave home,” shall be added after the word “detention,”.

In paragraph 4, the words “day of serving the supervision measure of prohibition to leave home,” shall be added after the words “day of detention,”.

**Article 11**

In Article 68 paragraph 6, the words: “a prison sentence or a fine” shall be replaced by the words: “suspended sentence, community service, prison sentence or a fine.”

**Article 12**

In Article 73 after paragraph 3 a new paragraph shall be added worded as follows:

“(4) The law may lay down mandatory disqualification from performing a profession, activity or duty.”

**Article 13**

In Article 76 paragraph 1, the words “(Article 43)” after the words “for good” and the words “, where he relapsed into criminal behaviour,” shall be deleted.

**Article 14**

In Article 77a paragraph 3 and Article 77b paragraph 4, the words: “upon the proposal of the sentenced person,” shall be deleted.

**Article 15**

In Article 120 after paragraph 2 a new paragraph shall be added worded as follows:

“(3) Judicial rehabilitation may be granted to a person punished by a prison term of over three years to five years if the person does not commit another criminal offence within ten years of the date the punishment had become fully served, became time-barred or was pardoned.”

In paragraph 3, the words “paragraphs 1 and 2” shall be replaced by the words “paragraphs 1, 2 and 3”.

Previous paragraphs 3 and 4 shall become points 4 and 5.

**Article 16**

Article 121 shall be amended to read:

“A person who has been punished by prison term several times may be granted rehabilitation by the court if conditions referred to in Art. 119 and 120 hereof are met with respect to each of the criminal offences that this person has been convicted of.”

**Article 17**

In Article 123a paragraph 1, the word “minors,” shall be replaced by the word “child,”.

In paragraph 7, the word “minors” shall be replaced by the word “children”.

**Article 18**

In Article 125 paragraph 3, Article 132b paragraph 1, Article 132d paragraph 1, Article 132e paragraph 1, Article 132f paragraph 1, Article 164 paragraph 3, Article 209 paragraphs 1 and 2, Article 210 paragraphs 2 and 3, article heading and Article 217, article heading and Article 219, Article 220 paragraph 3, Article 293a paragraph 4, Article 300 paragraph 4, Article 301 paragraph 2, Article 444 paragraphs 2, 3 and 8 and Article 446 paragraph 3 the word “minor” shall be replaced by the word “child”.

**Article 19**

In Article 127 paragraph 3, a comma shall be added after the word “vehicle” and the words: “and expulsion of a foreign national from the country” shall be replaced by the words: “expulsion of a foreign national from the country, restraining order and removal from the home or other living space”.

**Article 20**

In Article 129 paragraph 1, the words “Article 167,” shall be added after the words “set forth in”.

**Article 21**

In Article 132a in the introductory sentence of paragraph 1, the word “minor,” shall be replaced by the word “child,”, and in point 2 the word “minors,” shall be replaced by the word “children,”.

**Article 22**

 In Article 132c in article heading, the word “minors” shall be replaced by the word “children”.

 In paragraph 1, the word “minors” shall be replaced by the word „children“, a the word “minor” shall be replaced by the word “child”.

**Article 23**

 In Article 142 paragraph 7, the word “fourteen” shall be replaced by the word “eighteen”.

Paragraph 9 shall be deleted.

In paragraph 31, the word “spouses” shall be replaced by the word having no bearing on the English translation, and the full stop at the end of the paragraph shall be replaced by a comma and the following words shall be added: “unless otherwise laid down by this Code.”

After paragraph 32 a new paragraph shall be added worded as follows:

“(32a) For the purposes of this Code, public infrastructure device shall mean devices for utility, transport, energy and electronic communications infrastructure and other devices in accordance with the legislation regulating utility services, transport, energy, electronic communications and activities in the public interest.”

**Article 24**

In Article 149 paragraph 4, Article 205 paragraph 3, article heading and Article 206 paragraphs 1, 2 and 3, Article 207 paragraph 3 and Article 223 paragraph 2, the words “below the age of fourteen years” shall be added after the word “child”.

**Article 25**

In Article 151a after paragraph 1 three new paragraphs shall be added worded as follows:

“(2) Whoever instigates a female person to undergo the act referred to in paragraph 1 of this Article or assists her to do that,

 shall be punished by a prison term from six months to five years.

(3) Anyone who commits the offence referred to in paragraph 1 against a female child,

shall be punished by a prison term from two to ten years.

(4) Where the offence referred to in paragraph 1 of this Article resulted in the death of the female person,

the perpetrator shall be punished by a prison term from five to fifteen years.”

**Article 26**

In Article 151b paragraph 1, the words “three months to five years.” shall be replaced by the words “one to eight years.”

 After paragraph 1 two new paragraphs shall be added worded as follows:

“(2) Anyone who commits the offence referred to in paragraph 1 against a child,

shall be punished by a prison term from two to ten years.

(3) Where the offence referred to in paragraph 1 of this Article resulted in the death of the person against whom the offence was committed,

the perpetrator shall be punished by a prison term from five to fifteen years.”

**Article 27**

Article 152a shall be deleted.

**Article 28**

In Article 159 paragraph 1, the word “human” shall be deleted.

**Article 29**

 In Article 166 paragraph 1, the words: “three months” shall be replaced by the words: “six months”.

After paragraph 2 a new paragraph shall be added worded as follows:

“(3) Where the offence referred to in paragraph 2 of this Article resulted in the death of the accused,

the perpetrator shall be punished by a prison term from five to fifteen years.”

**Article 30**

In Article 166a paragraph 2, the words: “three months to three years.” shall be replaced by the words: “six months to five years.”

In paragraph 3, the words: “paragraphs 1 and 2” shall be replaced by the words: “paragraph 1”.

**Article 31**

In Article 167 paragraph 1, the words: “unlawfully punish” shall be replaced by the words: “punish him for an act he or a third person has committed or is suspected of having committed”, and the words “six months to five years.” shall be replaced by the words “one to eight years.”.

In paragraph 2, the words “one to eight years.” shall be replaced by the words “two to ten years.”.

After paragraph 2 two new paragraphs shall be added worded as follows:

“(3) Where the offence referred to in paragraph 2 of this Article resulted in the death of the injured party,

the perpetrator shall be punished by a prison term from five to fifteen years.

(4) The perpetrator of the criminal offence referred to in paragraph 2 of this Article shall, in addition to the punishment, be also imposed the measure of disqualification from performing a profession, activity or duty.”

**Article 32**

In Article 168a paragraph 2, the words: “spouse or common-law partner,” shall be replaced by the words: “spouse or common-law partner, or a partner in the life partnership of persons of the same sex,”.

In paragraph 3, the word “minor,” shall be replaced by the word “child,”.

**Article 33**

In Article 173 paragraph 1, the words: “not intended for his use” shall be deleted.

**Article 34**

After Article 175 a new article shall be added worded as follows:

**“Misuse of Someone Else's Recording, Photograph, Portrait, Audio Recording or Document with Sexually Explicit Content**

**Article 175a**

(1) Whoever makes available to a third person a video or other recording, photograph, portrait, audio recording or document with sexually explicit content, without the consent of the person to whom the document relates, or without the consent of the person shown on the recording, photograph or portrait or whose voice is recorded on audio recording,

shall be punished by a prison term up to two years.

(2) The punishment referred to in paragraph 1 of this Article shall also be imposed on whomever through a computer system or otherwise makes a new or alters an existing video or other recording, photograph, portrait, audio recording or document with sexually explicit content and uses or makes available to a third person such recording, photograph, portrait, audio recording, or document as genuine.

(3) The punishment referred to in paragraph 1 of this Article shall also be imposed on whomever threatens another to make available to a third person his video or other recording, photograph, portrait, audio recording or document with sexually explicit content.

(4) Whoever commits the offence referred to in paragraph 1 or 2 of this Article via information and communication technologies or otherwise as a result of which a video or other recording, photograph, portrait, audio recording or document with sexually explicit content has become available to a large number of persons,

shall be punished by a prison term up to three years.

(5) Where the offence referred to in paragraphs 1 to 4 of this Article was committed against a child,

the perpetrator shall be punished by a prison term from one to eight years.

(6) Where the offence referred to in paragraphs 1 to 5 of this Article was committed by a public official while performing his duties, he shall be punished by a prison term from three months to four years for the offence referred to in paragraphs 1, 2 and 3 of this Article, by a prison term from three months to five years for the offence referred to in paragraph 4 of this Article, and by a prison term from two to ten years for the offence referred to in paragraph 5 of this Article.

 (7) Video or other recordings, photographs, portraits, audio recordings and documents, as well as specific devices through which the criminal offence referred to in this Article was committed shall be confiscated.”

**Article 35**

In Article 202 paragraph 2, the words: “his spouse or of the person who lived with the deceased in a durable customary marriage” shall be replaced by the words: “his spouse or of the person who lived with the deceased in a durable customary marriage, or a partner in the life partnership of persons of the same sex,”.

**Article 36**

In Article 204 after paragraph 2 a new paragraph shall be added worded as follows:

 “(3) The punishment referred to in paragraph 2 of this Article shall also be imposed on whomever forces another into sexual intercourse or another act of equivalent nature with a third person by means of force or threats to directly attack the life or limb of that or of another person.”

In paragraph 3, the words “paragraph 1 or 2” shall be replaced by the words “paragraph 1, 2 or 3”.

In paragraph 4, the words “paragraph 1, 2 or 3” shall be replaced by the words “paragraph 1, 2, 3 or 4”.

In paragraph 5, the words “paragraph 1, 2 or 3” shall be replaced by the words “paragraph 1, 2, 3 or 4”, and the words “below the age of fourteen years” shall be added after the word “child”.

Previous paragraphs 3, 4 and 5 shall become paragraphs 4, 5 and 6.

**Article 37**

The heading of Article211 shall be amended to read: **“Exploiting Children for Pornography”**.

In Article 211 paragraph 1, the words “below the age of fourteen years” shall be added after the word “child”.

**Article 38**

In the heading of Article211a the word “minor” shall be replaced by the word “child”.

In Article 211a paragraph 1, the words “below the age of fourteen years” shall be added after the word “child”.

**Article 39**

In the heading of Article211b, the words “below the age of fourteen years” shall be added after the word “child”.

In Article 211b paragraph 1, the words “below the age of fourteen years” shall be added after the word “child”, and the words “of minimum ten years.” shall be replaced by the words “from five to ten years.”

**Article 40**

After Article 211b a new article shall be added worded as follows:

**“Sexual harassment**

**Article 211c**

(1) Anyone who sexually harasses another person,

shall be punished by a prison term up to six months.

(2) Anyone who sexually harasses another person to whom he is superior or who is in a dependent position in relation to the perpetrator or who is particularly vulnerable due to his age, illness, disability, dependency, pregnancy, severe physical or mental impairment,

shall be punished by a prison term up to two years.

(3) For the purposes of this Article, sexual harassment shall mean any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person or a group of persons, in particular when such conduct causes fear or creates a hostile, humiliating, intimidating, degrading or offensive environment.

 (4) Prosecution for the offence referred to in paragraph 1 of this Article shall be instituted by a private action.”

**Article 41**

Articles 213 and 214 shall be amended to read:

“**Concluding more than one marriage** **or life partnership of persons of the same sex**

**Article 213**

(1) Whoever concludes a new marriage or life partnership of persons of the same sex while being already married or in a life partnership of persons of the same sex,

shall be punished by a fine or a prison term up to two years.

(2) The punishment set out in paragraph 1 of this Article shall also be imposed on whomever marries a person or concludes a life partnership of persons of the same sex with a person knowing that person is married or in a life partnership of persons of the same sex.

 **Concluding a Void Marriage or life partnership of persons of the same sex**

**Article 214**

(1) Whoever, when concluding a marriage or life partnership of persons of the same sex, conceals from the other party a fact which makes the marriage or life partnership of persons of the same sex void or who misleads or keeps the other party mislead regarding that fact,

shall be punished by a prison term from three months to three years.”

**Article 42**

After Article 214 a new article shall be added worded as follows:

**“Forced Conclusion of Marriage, Customary Marriage or Life Partnership of Persons of the Same Sex**

**Article 214a**

(1) Whoever coerces another person, by means of force or threats, into concluding a marriage, customary marriage or life partnership of persons of the same sex,

shall be punished by a prison term from six months to five years.

(2) Whoever coerces or instigates a child into entering into a customary marriage or into concluding a marriage or life partnership of persons of the same sex or arranges for him a customary marriage or marriage or life partnership of persons of the same sex,

shall be punished by a prison term from one to five years.

(3) Whoever incites another to go abroad or takes another person abroad with the intention to commit the offence referred to in paragraphs 1 and 2 of this Article,

shall be punished by a prison term from three months to three years.“

**Article 43**

In the heading of Article215 and paragraph 1, the words “or life partnership of persons of the same sex” shall be added after the word “marriage”.

**Article 44**

In Article 216 paragraph 2, the words “or instigates him into such marriage” after the word “another” shall be deleted.

**Article 45**

Article 220 shall be amended to read:

“(1) Whoever inflicts light bodily injury on a member of his family or family community or endangers his safety by threatening to attack his life or limb or that of a person close to him,

shall be punished by a prison term from six months to five years.

(2) The punishment referred to in paragraph 1 of this Article shall also be imposed on a person who ill-treats a member of his family or family community or treats him in a manner offensive to human dignity.

(3) The punishment referred to in paragraph 1 of this Article shall also be imposed on a person who has otherwise, more than once, used violence, threatened or by insolent or ruthless behaviour endangered or violated physical or mental integrity of a member of his family or family community.

(4) Where the offence referred to in paragraphs 1, 2 and 3 of this Article was committed by means of weapons, dangerous tools or other instruments suitable for inflicting serious bodily injury or seriously impairing one’s health or where the offence was committed in the presence of a child,

the perpetrator shall be punished by a prison term from one to five years.

(5) Where the offences referred to in paragraphs 1 to 4 of this Article resulted in serious bodily injury or harm to one’s health or where such an offence was committed against a child,

the perpetrator shall be punished by a prison term from one to eight years.

(6) Where the offence referred to in paragraphs 1 to 5 of this Article resulted in the death of a member of the family or family community,

the perpetrator shall be punished by a prison term from five to fifteen years.

(7) Whoever violates the protection measures against domestic violence imposed on him by court or another state authority under law,

shall be punished by a fine or a prison term up to one year.

(8) For the purposes of this Article, members of a family or family community shall mean spouse or common-law partner, or a partner in the life partnership of persons of the same sex, their joint children and children of every one of them, blood relatives and relatives by adoption in the direct line without restriction, and in a collateral line up to the fourth degree inclusive, relatives by marriage up to the second degree inclusive, partner in an intimate relationship, persons who live in the same household and persons who share a child or whose child is on the way, even where such persons have never shared a household. Members of a family or family community shall mean former spouse or common-law partner, former partner in the life partnership of persons of the same sex, former relatives by marriage up to the second degree inclusive and a former partner in an intimate relationship.”

**Article 46**

In Article 234 after paragraph 3 a new paragraph shall be added worded as follows:

“(4) Where the offence referred to in paragraphs 1 and 2 of this Article results in material benefit exceeding thirty thousand euro,

the perpetrator shall be punished by a prison term from one to eight years.“

Previous paragraph 4 shall become paragraph 5.

**Article 47**

In Article 240 after paragraph 2 a new paragraph shall be added worded as follows:

„(3) The punishment referred to in paragraph 1 of this Article shall also be imposed on the perpetrator of theft if, irrespective of the value, a stolen article constitutes a public infrastructure device or parts thereof.“

Previous paragraph 3 shall become paragraph 4.

**Article 48**

In Article 242 paragraph 4, the word “three” shall be replaced by the word “five”.

**Article 49**

In Article 245 after paragraph 3 a new paragraph shall be added worded as follows:

“(4) Where the offence referred to in paragraph 1 of this Article was committed to the detriment of the financial interests of the European Union, the perpetrator shall be punished by the punishment prescribed for that offence.”

**Article 50**

In Article 256 paragraph 1, the words “or that property constitutes a public infrastructure device or parts thereof” shall be added after the word “exchange”.

In paragraph 3, the words “or the article is a cultural good” shall be added after the word “euro”.

**Article 51**

In Article 257, Article 385 paragraph 3, Article 386 paragraph 3 and Article 387 paragraph 5, the words “a spouse, a person with whom the offender lives in a durable customary marriage” shall be replaced by the words “a spouse, a person with whom the perpetrator lives in a durable customary marriage, or a partner in a life partnership of persons of the same sex”.

**Article 52**

In Article 268 paragraph 7, the words “as well as property in digital or electronic form,” shall be added after the word “kind,”.

**Article 53**

Article 271 shall be amended to read:

“**Unauthorized Use of a Someone Else’s Trade Name or Trademark**

**Article 271**

Whoever, without authorisation, uses someone else’s company, subsidiary or entrepreneur name, someone else’s geographical indication of origin, someone else’s trademark or proprietary mark, or someone else’s special commodity mark, or enters particular features of these marks into his trade name, trademark or proprietary mark, or into his special commodity mark,

shall be punished by a fine or a prison term up to three years.”

**Article 54**

 After Article 272 four new articles shall be added worded as follows:

**“Fraud in the Performance of Business Operations**

**Article 272a**

(1) Whoever in the performance of business operations misleads another person or keeps him misled by false representation or concealment of facts, inducing him thereby to act or refrain from acting to the detriment of the property of a business entity for which or in which he works or of another legal person, with the intention to obtain unlawful material benefit for himself or another,

shall be punished by a prison term from six months to five years and a fine.

(2) Where the offence referred to in paragraph 1 of this Article results in material benefit or causes damage exceeding three thousand euro,

the perpetrator shall be punished by a prison term from one to eight years and a fine.

(3) Where the offence referred to in paragraph 1 of this Article results in material benefit or causes damage exceeding thirty thousand euro,

the perpetrator shall be punished by a prison term from two to ten years and a fine.

(4) Where the offence referred to in paragraph 1 of this Article was committed to the detriment of the financial interests of the European Union, the perpetrator shall be punished by the punishment prescribed for that offence.

**Insurance Fraud**

**Article 272b**

(1) Whoever destroys, damages or hides an insured thing, and then reports the damage, with the intention to collect the agreed sum from an insurance company,

shall be punished by a prison term from three months to three years.

(2) The punishment referred to in paragraph 1 of this Article shall also be imposed on whomever, with the intention to collect the agreed sum from an insurance company in case of bodily damage, bodily injury or health impairment, causes such damage, injury or health impairment to himself, and then submits a claim to the insurance company.

(3) Where the offence referred to in paragraphs 1 and 2 of this Article results in material benefit or causes damage exceeding three thousand euro,

the perpetrator shall be punished by a prison term from one to eight years.

(4) Where the offence referred to in paragraphs 1 and 2 of this Article results in material benefit or causes damage exceeding thirty thousand euro,

the perpetrator shall be punished by a prison term from two to ten years.

**Misuse Related to Public Procurement**

**Article 272c**

(1) Whoever, in relation to public procurement, submits a bid based on false data or, in violation of the law, colludes with other bidders or undertakes other unlawful actions with the intention to influence the decision-making of the contracting authority,

shall be punished by a prison term from six months to five years.

(2) The punishment referred to in paragraph 1 of this Article shall also be imposed on a person who, at the contracting authority, violates the law or other regulations on public procurement by misusing his position or authority, overstepping the limits of his authority or refraining from performing his duty, and thereby causes damage to public funds.

(3) The punishment referred to in paragraph 1 of this Article shall also be imposed on a person who adjusts the conditions of public procurement to an entity or concludes a contract with a bidder whose bid is contrary to the conditions set out in the tender documentation.

(4) The punishment referred to in paragraph 1 of this Article shall also be imposed on a person who by misusing his position or authority, overstepping the limits of his authority or refraining from performing his duty, gives, takes over or contracts jobs for his activity or the activity of a person in relation to whom there is a conflict of interest.

 (5) Where the offence referred to in paragraphs 1 to 4 of this Article was committed in relation to public procurement the value of which exceeds one hundred thousand euro,

the perpetrator shall be punished by a prison term from one to ten years.

(6) Where the offence referred to in paragraphs 1 to 4 of this Article was committed to the detriment of the financial interests of the European Union,

the perpetrator shall be punished by the punishment prescribed for that offence.

(7) The perpetrator referred to in paragraph 1 of this Article who voluntarily reveals that the bid is based on false data or on collusion with other bidders or that he has undertaken other actions with the intention to influence the decision-making of the contracting authority before the public procurement contract is concluded, may be released from punishment.

**Misuse in Privatisation Process**

**Article 272d**

(1) Whoever, in the privatisation process, by submitting an offer based on false data or by unlawfully colluding with other participants in the process or by undertaking other unlawful actions influences the course of the process or decision-making by the authority in charge of implementation of the privatisation process,

shall be punished by a prison term from six months to five years.

(2) The punishment referred to in paragraph 1 of this Article shall also be imposed on an official who by misusing his position or authority, overstepping the limits of his authority or refraining from performing his duty violates the law or other regulations on privatisation and thereby causes damage to the capital or impairs the assets which are the subject of privatization.

(3) Where the offence referred to in paragraphs 1 and 2 of this Article was committed in relation to privatisation the estimated value of which exceeds one million euro,

the perpetrator shall be punished by a prison term from one to ten years.”

**Article 55**

After Article 276b a new article shall be added worded as follows:

**“Passive and Active Bribery in Bankruptcy Process**

**Article 276c**

(1) A creditor or a member of the committee of creditors who, for himself or for another, solicits or receives a bribe or accepts the offer or promise of a bribe to vote in a certain way or not to vote or to undertake other action in order to cause damage to any of the creditors in the bankruptcy proceedings,

shall be punished by a prison term from one to eight years.

(2) If the offence referred to in paragraph 1 of this Article was committed by a bankruptcy administrator, bankruptcy judge or expert witness,

the perpetrator shall be punished by a prison term from two to ten years.

(3) Whoever promises or gives a bribe to a creditor, a member of the committee of creditors, bankruptcy administrator, bankruptcy judge or expert witness in order to commit the offence referred to in paragraphs 1 and 2 of this Article,

shall be punished by a prison term from one to eight years.

(4) The perpetrator of the offence referred to in paragraph 3 of this Article who gave a bribe at the request of a creditor, a member of the committee of creditors, bankruptcy administrator, bankruptcy judge or expert witness, where he reported the offence before he learned it had been detected, may be released from punishment.

(5) The bribe given shall be confiscated.”

**Article 56**

In Article 281a paragraph 1 point 3, the word “similarly” shall be added after the word “otherwise”.

**Article 57**

In Article 294 paragraph 1 and Article 295 paragraph 3, the word “minor” shall be replaced by the word “child”.

**Article 58**

After Article 308 two new articles shall be added worded as follows:

**“Destruction of Fungi**

**Article 308a**

(1) Whoever, in violation of regulations, destroys or damages fruiting bodies of fungi or fungus mycelium to a larger extent or in a wider area,

shall be punished by a fine or a prison term up to one year.

(2) Where the offence referred to in paragraph 1 of this Article was committed against specially protected species of fungi,

the perpetrator shall be punished by a prison term from six month to five years.

(3) Where the offence referred to in paragraph 1 of this Article was committed through negligence,

the perpetrator shall be punished by a fine or a prison term up to six months.

(4) Where the offence referred to in paragraph 2 of this Article was committed through negligence,

the perpetrator shall be punished by a prison term up to three years.

(5) Whoever, without authorisation, possesses fungi that belong to a specially protected species of fungi or takes samples of such species,

shall be punished by a fine or a prison term up to one year.

**Unauthorised Exploitation and Causing Damage during the Exploitation of Alluvial Deposit**

**Article 308b**

(1) Whoever, without authorisation, exploits alluvial deposit,

shall be punished by a fine and a prison term up to three years.

(2) Whoever damages a riverbed, riverbanks or regulation facilities by exploiting alluvial deposit,

shall be punished by a prison term from one to eight years and a fine.

(3) The items used for the commission of the offence referred to in paragraphs 1 and 2 of this Article shall be confiscated.”

**Article 59**

In Article 309, paragraphs 1 and 2 shall be amended to read:

“(1) Whoever, in violation of regulations, kills, hurts, tortures or otherwise abuses an animal,

shall be punished by a fine or a prison term up to two years.

(2) Where the offence referred to in paragraph 1 of this Article resulted in the killing, torturing or hurting of a large number of animals or where the offence was committed against animals that belong to specially protected animal species,

the perpetrator shall be punished by a prison term from six months to five years.”

**Article 60**

After Article 309 a new article shall be added worded as follows:

**“Training Animals for Fighting and Organising Animal Fights**

**Article 309a**

(1) Whoever trains animals for fighting, organises or finances animal fights or fights between animals and humans out of greed, or who organises or participates in betting on such fights,

shall be punished by a fine and a prison term from six months to three years.

 (2) Whoever attends such fights or enables the attendance of a child,

shall be punished by a fine and a prison term up to one year.

(3) Whoever raises, keeps, sells or hands over to another person an animal for the purpose referred to in paragraph 1 of this Article,

shall be punished by a fine and a prison term from six months to two years.

(4) The animal referred to in paragraphs 1 and 3 of this Article shall be confiscated, unless it belongs to a person who is not associated with the offence referred to in paragraphs 1, 2 and 3 of this Article.”

**Article 61**

After Article 312 a new article shall be added worded as follows:

**“Introduction and Spread of Invasive Alien Species**

**Article 312a**

(1) Whoever, in violation of regulations, introduces, spreads, grows, reproduces, transports, uses, exchanges or places on the market invasive alien species from the list of invasive alien species determined by the competent authority in Montenegro,

 shall be punished by a fine or a prison term up to one year.

(2) Where the offence referred to in paragraph 1 of this Article was committed through negligence, the perpetrator shall be punished by a fine or a prison term up to six months.”

**Article 62**

In Article 323 paragraph 1 the words: “or a prison sentence for a term not exceeding one year.” shall be replaced by the words: “and a prison sentence up to three years.”.

In Article 323 paragraph 2 the words: “three months to three years” shall be replaced by the words: “one to five years.”

After paragraph 2 a new paragraph shall be added worded as follows:

“(3) The objects which were used for the commission of the criminal offence referred to in paragraphs 1 and 2 of this Article shall be confiscated.”

**Article 63**

In Article 324 after paragraph 2 a new paragraph shall be added worded as follows:

“(3) The objects which were used for the commission of the criminal offence referred to in paragraphs 1 and 2 of this Article shall be confiscated.”

Previous paragraph 3 shall become paragraph 4.

**Article 64**

Article 327 shall be amended to read:

“Causing General Danger

**Article 327**

(1) Whoever causes danger to the life or limb of persons or property the value of which exceeds twenty thousand euro through causing fire or explosion,

shall be punished by a prison term from one to eight years.

(2) Whoever causes danger to the life or limb of persons or property the value of which exceeds twenty thousand euro through causing flood, by poison or poisonous gas, radioactive or other ionising radiation, electrical power, motor power or any other generally dangerous act or generally dangerous means,

shall be punished by a prison term from six months to five years.

(3) The punishment referred to in paragraph 2 of this Article shall be imposed on a public official or a responsible officer who fails to install the devices prescribed for protection against fires, floods, explosions, poisons or poisonous gases, radioactive or other ionising radiation, electrical power or other hazardous agents, or fails to keep these devices in proper working condition, or in case of need, fails to use them, or does not observe regulations or technical rules on safety measures at all, thereby causing danger to life or limb of persons or property the value of which exceeds twenty thousand euro.

(4) Where the offences referred to in paragraphs 1, 2 and 3 of this Article were committed in a place where people have congregated in large numbers,

the perpetrator shall be punished by a prison term from one to ten years.

(5) Where the offence referred to in paragraphs 1 to 4 of this Article was committed through negligence,

the perpetrator shall be punished by a prison term up to three years.”

**Article 65**

In Article 328 paragraph 1, the words “for water supply, heating, gas, electrical or other energy or telecommunications system devices or another public device” shall be replaced by the words “or parts of those devices,”.

**Article 66**

In Article 338 paragraph 1, the words “paragraphs 1 to 3,” shall be replaced by the words “paragraphs 1 to 4,”, and the words “one to eight years.” shall be replaced by the words “two to ten years.”

In paragraph 2, the words “paragraphs 1 to 3,” shall be replaced by the words “paragraphs 1 to 4,”, and the words “two to twelve years.” shall be replaced by the words “three to fifteen years.”

In paragraphs 3 and 4, the words “Articles 327 paragraph 4,” shall be replaced by the words “Articles 327 paragraph 5,”.

**Article 67**

In Article 370 paragraph 1, the word “language,” shall be added after the word “origin,”.

**Article 68**

Article 398 shall be amended to read:

“(1) Whoever threatens a large number of citizens to commit a criminal offence which is punishable by a prison term of five years or longer and thereby causes panic or significant disturbance of citizens,

shall be punished by a fine or a prison term up to one year.

(2) Where the offence referred to in paragraph 1 of this Article was committed using the media or other means of public information or similar means or at a public meeting,

the perpetrator shall be punished by a prison term up to three years.“

**Article 69**

Article 403 shall be amended to read:

“**Unlawful Possession and Carrying of Weapons and Explosive Substances**

**Article 403**

(1) Whoever, without authorisation, possesses firearms, their parts, ammunition or explosive substances,

shall be punished by a prison term from three months to three years.

(2) Where the object of the offence referred to in paragraph 1 of this Article is firearms, ammunition, explosive substances or substances based thereon, fragmentation or gas weapons whose manufacturing, selling, acquiring, exchanging, or possession is prohibited to the citizens, or a larger quantity of weapons, ammunition or instruments or weapons and other instruments of large destructive power,

the perpetrator shall be punished by a prison term from one to six years.

(3) Whoever, without authorisation, carries the items referred to in paragraph 1 of this Article,

 shall be punished by a prison term from one to five years.

(4) Whoever, without authorisation, carries the items referred to in paragraph 2 of this Article,

shall be punished by a prison term from one to eight years.

(5) Whoever carries the items referred to in paragraph 1 of this Article without licence, although he has a licence to acquire and possess those items,

shall be punished by a fine or a prison term up to three years.

(6) Whoever possesses the items referred to in paragraph 1 of this Article with false, obliterated, removed or altered markings,

shall be punished by a prison term from one to eight years.

(7) Whoever, without authorisation, carries the items referred to in paragraph 6 of this Article,

shall be punished by a prison term from two to ten years.

(8) Where the offence referred to in paragraphs 6 and 7 of this Article was committed in respect of the items referred to in paragraph 2 of this Article,

the perpetrator shall be punished by a prison term from three to twelve years.

(9) Weapons, their parts, ammunition and explosive substances referred to in paragraphs 1, 2, 6 and 7 of this Article shall be confiscated.”

**Article 70**

After Article 403 three new articles shall be added worded as follows:

**“Unlawful Manufacturing of Weapons and Explosive Substances**

**Article 403a**

(1)Whoever, without authorisation, manufactures firearms, their parts, ammunition or explosive substances or makes deactivated firearms usable,

 shall be punished by a prison term from one to eight years and a fine.

(2) Where the object of the offence referred to in paragraph 1 of this Article is firearms, their parts, ammunition, explosive substances or substances based thereon, fragmentation or gas weapons whose manufacturing, selling, acquiring, exchanging, or possession is prohibited, or a larger quantity of weapons, their parts, ammunition or instruments or weapons and other instruments of large destructive power,

the perpetrator shall be punished by a prison term from two to twelve years and a fine.

 (3) Weapons, their parts, ammunition or explosive substances referred to in paragraphs 1 and 2 of this Article shall be confiscated.

**Unlawful Trafficking in Weapons and Explosive Substances**

**Article 403b**

(1) Whoever, without authorisation, sells or offers for sale, or who for the purpose of selling buys, possesses, or transfers, or acts as an intermediary in the selling or buying, or otherwise, without authorisation, releases into circulation firearms, their parts, ammunition or explosive substances,

shall be punished by a prison term from one to eight years and a fine.

(2) Whoever brings into Montenegro or brings out of Montenegro or transfers across the territory of Montenegro firearms, their parts, ammunition or explosive substances with the intention to commit the offence referred to in paragraph 1 of this Article,

shall be punished by a prison term from two to ten years and a fine.

(3) Where the perpetrator of the offence referred to in paragraphs 1 and 2 of this Article organised a network of dealers or middlemen,

he shall be punished by a prison term from three to fifteen years and a fine.

(4) The punishment referred to in paragraph 3 of this Article shall be imposed on the perpetrator where the object of the offence referred to in paragraphs 1 and 2 of this Article is firearms, ammunition, explosive substances or substances based thereon, fragmentation or gas weapons whose manufacturing, selling, acquiring, exchanging, or possession is prohibited to the citizens, or a larger quantity of weapons, ammunition or instruments or weapons and other instruments of large destructive power or the weapons are unmarked or not properly marked.

 (5) Where the perpetrator of the offence referred to in paragraphs 1 to 4 of this Article reveals from whom firearms, their parts, ammunition or explosive substances were acquired, he may be released from punishment.

(6) Weapons, their parts, ammunition or explosive substances referred to in paragraphs 1, 2 and 4 of this Article shall be confiscated.

**Falsifying and Removing the Markings on Weapons and Explosive Substances**

**Article 403c**

(1) Whoever obliterates, removes, alters or puts false markings on firearms, their parts, ammunition or explosive substances,

shall be punished by a prison term from one to eight years.

(2) Where the object of the offence referred to in paragraph 1 of this Article is firearms, ammunition, explosive substances or substances based thereon, fragmentation or gas weapons whose manufacturing, selling, acquiring, exchanging, or possession is prohibited to the citizens, or a larger quantity of weapons, ammunition or instruments or weapons and other instruments of large destructive power,

the perpetrator shall be punished by a prison term from two to ten years.

(3) Weapons, their parts, ammunition and explosive substances referred to in paragraphs 1 and 2 of this Article shall be confiscated.”

**Article 71**

In Article 415 after paragraph 2 a new paragraph shall be added worded as follows:

“(3) Whoever fails to enter information about the beneficial owner in the Register of Beneficial Owners or enters incorrect information as correct, alters or deletes correct information about the beneficial owner with the intention to conceal the beneficial owner,

 shall be punished by a prison term from three months to five years.”

**Article 72**

In Article 440 after paragraph 1 a new paragraph shall be added worded as follows:

“(2) The punishment referred to in paragraph 1 of this Article shall also be imposed on a military commander or a person effectively performing that office or a superior civilian who fails to take the necessary measures to punish a subordinate who committed any of the criminal offences referred to in Articles 426 to 430, Article 432, Articles 434 to 437 and Article 439 of this Code.”

Previous paragraph 2 shall become paragraph 3.

**Article 73**

In Article 443 paragraph 3, the words “nationality, language,” shall be added after the word “disability,”.

After paragraph 3 a new paragraph shall be added worded as follows:

“(4) The punishment referred to in paragraph 3 of this Article shall be imposed on whomever stores, disseminates or otherwise makes available through a computer system the material intended for the commission of the offence referred to in paragraph 3 of this Article.”

In paragraph 4, the words “paragraphs 1 to 3” shall be replaced by the words “paragraphs 1 to 4”, and the words “paragraph 3” shall be replaced by the words “paragraphs 3 and 4”.

Previous paragraph 4 shall become paragraph 5.

**Article 74**

In Article 444 paragraphs 2, 3 and 8, the word “minor” shall be replaced by the word “child”.

After paragraph 4 a new paragraph shall be added worded as follows:

“(5) Where, due to the offence referred to in paragraph 3 of this Article, a serious bodily injury is inflicted upon the child,

the perpetrator shall be punished by a prison term of minimum five years.“

 Previous paragraphs 5 to 9 shall become paragraphs 6 to 10.

**Article 75**

In the heading of Article445 the word “minors” shall be replaced by the word “children”.

In Article 445 paragraph 1, the word “minor” shall be replaced by the word “child”.

**Article 76**

After Article 445 a new article shall be added worded as follows:

**“Sale of Children**

**Article 445a**

 Whoever offers to another, accepts or acts as an intermediary in transfer of a child for financial compensation or any other consideration,

shall be punished by a prison term from one to ten years.”

**Article 77**

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

**EXPLANATORY REPORT**

**I. CONSTITUTIONAL BASIS FOR ADOPTION OF THE LAW**

The constitutional basis for adoption of the Law Amending the Criminal Code of Montenegro is enshrined in the provision of Article 16 point 5 of the Constitution of Montenegro which stipulates that a law shall also regulate other matters of interest to Montenegro in accordance with the Constitution.

**II. REASONS FOR ADOPTION OF THE LAW**

The need to adopt a Law Amending the Criminal Code of Montenegro is based on several reasons. The most important reasons are harmonisation with the conventions of the Council of Europe and of the United Nations, legal standards of the European Court of Human Rights and other international documents. This is followed by further modernisation of general and special part of the Criminal Code based on good practice of other European criminal law systems, removing certain legal inconsistencies and further improvement of specific existing solutions.

 Although the Criminal Code is largely harmonised with the standards and acts of the European Union, the Council of Europe and the United Nations, certain documents of the European Union and of the Council of Europe, as well as the European Union *acquis* require its further harmonisation. Harmonisation is necessary not only with regard to certain documents, but also with regard to some outdated solutions that the case-law cannot successfully resolve and adapt to new circumstances alone, without the legislator's intervention.

During the drafting of this Proposal for a Law, some provisions that have been introduced recently have also been reviewed. Suggestions and proposals coming from the judiciary and professionals regarding the need for certain interventions in the Criminal Code have also found their place in the proposed law. Further improvement of specific solutions, harmonisation with other legislation and elimination of any inconsistencies is justified. Furthermore, based on completed screenings and expert missions, it became necessary to amend substantive criminal legislation further. Amendments to the Criminal Code in 2017 largely harmonised Montenegrin substantive criminal legislation with the standards of the European Union, the Council of Europe and the United Nations, but it is necessary to continue the reform that has been started.

The Ministry of Justice continuously monitors the implementation of the Criminal Code of Montenegro, follows the needs of social environment and takes into consideration the initiatives and proposals for amendments it receives. Special attention is paid to the improvement of criminal legislation in the part regarding its harmonisation with the relevant European and international standards. The representatives of the Ministry of Justice are members of numerous criminal justice committees of the CoE and the UN, and thus participate directly in the work of those committees and in defence of reports on the progress of Montenegro in this field.

In view of the remarks of the professionals and citizens of Montenegro regarding the implementation to date of certain parts of the Criminal Code of Montenegro, including also recommendations of the European Commission, recommendations of the relevant committees of the Council of Europe and of the United Nations, there are several reasons why it was necessary to amend the substantive criminal legislation so that Montenegro would have a Criminal Code which is modern and European and which will be a good basis for combating contemporary forms of crime.

**III. COMPLIANCE WITH THE EUROPEAN UNION *acquis* AND RATIFIED INTERNATIONAL CONVENTIONS**

The Proposal for a Law has been harmonised with the conventions of the Council of Europe and of the United Nations as sources of international criminal law.

The Proposal for a Law Amending the Criminal Code contains the provisions which are harmonised with the following international instruments:

* UN Convention on the Rights of the Child
* 2007 Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention);
* 2005 Council of Europe Convention on Action against Trafficking in Human Beings;
* Convention for the Protection of Human Rights and Fundamental Freedoms;
* Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention);
* Council of Europe Convention on Cybercrime;
* 2006 Convention on the Rights of Persons with Disabilities;
* 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
* UN Convention against Transnational Organized Crime
* UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (Firearms Protocol)
* 2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;

The European Union standards are contained in the founding treaties, the Charter of Fundamental Rights of the European Union and in the *acquis*. The standards contained in the secondary legislation of the European Union in this field are as follows:

* Directive (EU) 2017/1371 of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law
* Directive (EU) 2018/843 of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU

**IV. EXPLANATION OF THE BASIC LEGAL CONCEPTS**

Article 1 of the proposed law has proposed amendments to Article 28 of this Code with regard to deleting point 3 of this paragraph which relates to criminal offences committed using the media for which chief editors or persons replacing them at the time of publication of the information are held liable if at the time when the information was published there existed, and still exist, factual or legal obstacles to prosecuting the author. Deleting this point is necessary to prevent infringement of the freedom of expression. This legal provision, though, relates only to error for justified reasons (Article 28 paragraph 3 of the Criminal Code), which could be understood as an unavoidable mistake of fact. This would mean that if he acted under unavoidable mistake of fact in respect of any of those circumstances, his culpability is excluded. The question arises as to how to resolve the case when he acted under avoidable mistake of fact (that is, when he was not in error for justified reasons), which will happen more often in practice. If the chief editor or the person replacing him, acted under a mistake due to negligence, there cannot be a criminal offence with criminal intent but only a criminal offence through negligence if so provided by law. By the nature of things, criminal offences through negligence are not committed through the press and other media (however, it can be imagined: e.g. negligent disclosure of classified information – Article 369 paragraph 3), so essentially this provision comes down to that that the absence of chief editor’s awareness of the circumstances set out in points 1, 2 and 3 excludes his culpability. This solution to some extent limits the objective responsibility of the chief editor.

Article 2 of the proposed law stipulates that the court shall rule that the sentenced person imposed to serve a prison sentence in his home shall also serve the remainder of the prison sentence in the Administration for Enforcement of Criminal Sanctions in the cases when he disrupts, damages or removes monitoring device or otherwise obstructs or refuses prison sentence enforcement in this manner or becomes unavailable. The prison sentence served in the sentenced person’s home (the so-called ‘home detention) has been implemented today in many foreign laws. However, this manner of enforcement of prison sentences in practice shows that it is necessary to improve this provision.

Article 3 of the proposed law has amended Article 37 of this Code relating to parole. Namely, the condition whether the sentenced person compensated the damage he caused by his criminal offence and returned material benefit acquired through a criminal offence is supplemented by a condition relating to his capacity to do so, while the part dealing with whether the purpose of punishment has been served is deleted.

Article 4 of the proposed law has amended Article 41 of this Code relating to community service. Namely, it has been provided for that, if the perpetrator of a criminal offence who is imposed community service requests or agrees, the community service may last even longer than sixty hours in one month. It became also necessary to amend paragraph 6 of this article in terms of specifying the provision in the part relating to situations when some or all hours of the imposed sentence have not been completed. Furthermore, a new paragraph is added which relates to good conduct and the fulfilling of all obligations related to community service and the court being able to reduce the sentence by one third.

Article 5 of the proposed law brings the legislation into line with the recommendation from the Report of the European Commission against Racism and Intolerance (ECRI) on Montenegro, which states that Article 42a, according to which hate based on race, religion, national or ethnic affiliation, gender, sexual orientation or gender identity of a person is considered an aggravating circumstance for all other criminal offences, as per § 21 of GPR No. 7, complies with the requirements of GPR No. 7 § 18c but the grounds of language and nationality (citizenship) are lacking.

In accordance with the initiative of the Police Administration, Articles 6 and Article 7 of the proposed law have amended the provisions on the fixing of sentences in case of recidivism. The fact that a person has been previously convicted of a criminal offence committed with criminal intent is always taken by the court as an aggravating circumstance. As regards “regular” recidivism it has been provided that the court may not impose a punishment below the limit laid down by law or a lighter type of punishment if the perpetrator of a criminal offence committed with criminal intent has been previously convicted of a criminal offence committed with criminal intent and if less than five years passed from his previous conviction or from having served his punishment. With regard to multiple recidivism (two or more prior convictions), these amendments introduce “special” recidivism which is determined in a way that, for a criminal offence which was committed with criminal intent and which is punishable by a prison term, the court shall impose a punishment above the half of the range of the prescribed punishment if the perpetrator has already been convicted twice or more times of the criminal offences that are identical or of the same kind and committed with criminal intent to a prison term of minimum six months.

 Article 8 amends Article 45 paragraph 1 point 3 with regard to the conditions when the court may impose on a perpetrator a punishment below the limit laid down by law or a lighter type of penalty (court mitigation), thus specifying point 3 of this paragraph to eliminate diverging interpretations of the mentioned provision. Particularly mitigating circumstances are certainly not ordinary mitigating circumstances, but they are also not what should constitute a privileging circumstance as a supplementary element of the substance of the criminal offence, as a basis to provide for a lighter form of the criminal offence in the text of the law. Furthermore, it should be borne in mind that broad interpretation would be even less in line with the meaning and purpose of mitigating of the punishment, which should represent an exceptional manner of fixing the sentence and which is used in judicial practice more extensively than was intended by the legislator. Furthermore an exception has been added in the part relating to Article 43, namely, if the law provides that the punishment may be mitigated or if the law provides that the perpetrator may be released from punishment, but the court does not release him from punishment.

Article 9 of the proposed law has made necessary intervention in the part relating to the limits of mitigation of punishment. A new point was added which raised the limit up to which the punishment can be reduced in the case of the most serious crimes. If the conditions for mitigating the punishment set out in Article 45 of this Code have been met, where the criminal offence carries a minimum prison term of ten years or longer, the punishment may be mitigated by up to five years of prison, and if it is provided for by law that the punishment may be mitigated (Article 45 paragraph 1 point 1), the punishment may be mitigated by up to two years of prison.

 Article 10 made interventions regarding the counting of detention and earlier sentences, in the way that it has been specified that the time spent serving the supervision measure of prohibition to leave home shall also be included in the imposed prison sentence, youth custody sentence, community service, and a fine.

 Articles 11, 12 and 13 of the proposed law have made amendments concerning security measures. Namely, it is stipulated that mandatory disqualification from performing a profession, activity or duty may be laid down by the law. Furthermore, amendment has been made regarding the measure of Restraining Order and the security measure of Removal from Home or Other Living Space, specifying that those measures may be imposed in addition to the suspended sentence, community service, as well as prison sentence or a fine. As regards the security measure of Expulsion of a Foreign National from the Country, the part relating to the condition that the person concerned must be a recurring offender, i.e. that he relapsed into criminal behaviour, is deleted.

 Article 14 of the proposed law has specified the provisions relating to the court being able to review the security measure of Restraining Order and the security measure of Removal from Home or Other Living Space. Namely, this amendment is necessary to regulate by the criminal procedural legislation the way in which the court acts in these cases.

Article 15 and Article 16 of the proposed law have made amendments to Articles 120 and 121 of this Code in respect of which it has been found in practice so far that they have not been stipulated clearly enough, it was thus necessary to specify those provisions to eliminate any doubts that may exist.

 In order to ensure legal certainty, Article 19 of the proposed law contains amendment relating to the statutes of limitations for execution of accessory penalties and security measures.

In Article 20 of the proposed law, the provisions of the Criminal Code of Montenegro have been harmonised with the requirements arising from the ratified international treaties and practices of CAT, CCPR, STR, ECtHR and CPT, thus, it was necessary to repeal statutory limitations for the prosecution and enforcement of punishment for the criminal offence of Torture.

 Article 23 has amended Article 142 of the Criminal Code – the article laying down definitions. Thus, the concept of a child is harmonised with Article 1 of the UN Convention on the Rights of the Child. Namely, although the practice is fully harmonised with the requirements of Article 1 of the mentioned Convention with regard to defining that a child means every human being below the age of eighteen years, this will also align the terminology in the Criminal Code of Montenegro. Amendments have also been made to the term “family members” and the term “public infrastructure devices” was defined.

In view of the amendments to Article 142 paragraphs 7 and 9 and the fact that Montenegro adopted the Law on Life Partnership of Persons of the Same Sex, the proposed law has made necessary terminology alignment in respect of the term “child” and the term “partner in a life partnership of persons of the same sex”.

Articles 25 and 26 of the proposed law made a correction with regard to the criminal offences of Female Genital Mutilation (151a) and Forced Sterilization (151b). Namely, the corrections were made at the initiative of the NGO Human Rights Action, which pointed out in its proposal submitted during the public consultation that Montenegro must harmonise its legislation with the Istanbul Convention, which provides in its article 38 paragraph 1 points 2 and 3, that Parties shall take the necessary legislative or other measures to ensure that inciting, coercing or procuring women and girls to undergo excising, infibulating or performing any other mutilation to the whole or any part of a woman’s labia majora, labia minora or clitoris are criminalised. Namely, until now the criminal offence of Female Genital Mutilation was provided for in the Criminal Code of Montenegro in only one form punishable by a prison term from one to eight years, without aggravated forms which would carry more severe punishments. As this offence can have more serious and even the most serious consequences, it is justifiable to provide for aggravated forms of the offence. In this regard, Article 151a of this Code was amended in such a way that three new paragraphs were added, i.e. paragraph 2 if someone instigated a female person to undergo the act referred to in paragraph 1 of this Article, he shall be punished by a prison term from six months to five years. Paragraph 2 is followed by paragraph 3 stipulating that if this offence was committed against a female child, the perpetrator shall be punished by a prison term from two to ten years, and if the offence resulted in the death of the female person (paragraph 4), the perpetrator shall be punished by a prison term from five to fifteen years. In the criminal offence of Forced Sterilisation (151b) the ranges of punishment for the basic form of this criminal offence were adjusted in such a way that instead of the current prison sentence of three months to five years, it was proposed that the prison sentence be stipulated in the range from one to eight years. Two aggravated forms have also been introduced, namely, if this offence was committed against a child, the perpetrator shall be punished by a prison term from two to ten years and if it resulted in death, the perpetrator shall be punished by a prison term from five to fifteen years.

Article 27 of the proposed law deleted Article 152a of this Code. Namely, the Law Amending the Criminal Code of Montenegro (Official Gazette of Montenegro 145/2021) introduced in Article 142 of this Code the concept of “tasks of public importance” relating to the performance of a profession or duty that is connected with increased risk for the safety of the person who performs it in the field of public information, healthcare and legal assistance before judicial and other state authorities, including also aggravated forms of certain criminal offences (Aggravated Murder, Serious Bodily Injury, Coercion and Endangering Safety) that exist if they have been committed against persons who perform tasks of public importance in connection with the performance of these tasks (including healthcare). Bearing in mind that the amendments made in 2021 already criminalised an attack on doctors, and in order to retain the systematics of the Criminal Code, it was necessary to delete the mentioned article to avoid problems in practice due to the existence of double criminalisation.

Article 28 made amendments to the criminal offence referred to in Article 159 of this Code at the initiative of the NGO Human Rights Action. Namely, by deleting the word "human", broader wording of "rights and freedoms" would remain, which the submitters of the initiative consider to be more appropriate because, by accepting Protocol No. 12 to the European Convention on Human Rights, Montenegro accepted the obligation to prohibit discrimination, or making of unjustified distinction between people on the grounds of personal characteristics, in respect of every right guaranteed by the State, and not only in respect of the human rights provided for by the Convention, as was the case before the adoption of Protocol No. 12.

Articles 29 and 30 of the proposed law made amendments whose aim is to make the ranges of punishment for the criminal offence of Extorting a Testimony and the criminal offence of Ill-treatment more stringent. Article 31 of the proposed law also harmonised the provisions of the Criminal Code of Montenegro with the requirements arising from ratified international treaties and practices of CAT, CCPR, STR, ECtHR and CPT. Namely, an amendment was made regarding the legal description in line with CAT. Furthermore, a prison sentence for a term from one to eight years has been proposed for the basic form of the criminal offence of Torture. The amendment to paragraph 2 of this Article made the ranges of punishment more stringent, where this criminal offence was committed by a public official in the way that the prescribed punishment has been increased to a prison term from two to ten years. This excludes the possibility of imposing a suspended sentence, and it also stipulates the obligation to impose on the public official, in addition to any punishment, the security measure of disqualification from performing a profession, activity or duty.

Article 33 of the proposed law makes corrections to the basic form of the criminal offence of Unauthorised Wiretapping and Recording. Since the object of the conduct of the criminal offence is a conversation, statement or communication, it is justifiable for the term "conversation" to include also a conversation in which the perpetrator participates if he makes audio recording of that conversation without authorisation, i.e. without the consent of the other person. The existing solution allows the person who is participating in the conversation to record that conversation or a statement by another person without the consent and knowledge of that other person, because the application is based on the premise that the condition that the conversation, statement or communication in question is not intended for his use has not been met. By omitting the condition "not intended for his use", a more complete protection is achieved under criminal law with regard to this criminal offence.

Article 34 of the proposed law introduces new criminal offence of Misuse of Someone Else's Recording, Photograph, Portrait, Audio Recording or Document with Sexually Explicit Content. In this age of social networks and the expansion of the Internet, “revenge pornography” represents a social phenomenon that is reaching large proportions and is becoming a dominant form of sexual violence, predominantly directed at women. “Revenge pornography” refers to the conduct of individuals that includes the publication of mainly private photographs or videos of intimate content, of an ex-partner following the breakup of emotional relationship. Pornography without consent is usually preceded by a voluntary sharing of intimate photographs between partners while the emotional relationship is still functioning, but solely with the intention for the intimate content to be intended for the then partner and trusting that such content will never be misused in the future. Although it is most often associated with the relationship between ex-partners, the term “revenge pornography” should be interpreted in a broader context as well, and it should be taken into consideration that the perpetrator does not necessarily have to be an ex-partner, since recordings and photographs can be made without the knowledge of the victim, by being taken in intimate situations, during sexual abuse of the victim, by hacking the victim’s device from which photo and video materials that were not intended to be sent can be downloaded, but also by using artificial intelligence, explicit images and recordings that are manipulated through software (Photoshop, deepfakes), involves publication of virtual pornography without consent, having the same devastating effects as the publication of real recordings. Therefore, although the phenomenon as such is not new, the possibilities of distributing the content via the Internet, which exist today, enable the use of the content in such a way that in a short time they become “viral”, i.e. accessible to a countless number of people, which is the reason why the range of serious consequences for the victims is so broad. “Revenge pornography” is not established as a separate criminal offence in the Montenegrin legislation, therefore, the offenders can be prosecuted solely on the basis of Article 175 of the Criminal Code which relates to unauthorised publication and showing of another person’s documents, portraits and recordings or Article 251 of this Code which sets forth blackmail. However, due to the extent to which such behaviour is spread today, and bearing in mind the severity of consequences of “revenge pornography” for victims, as well as the need to point out to potential perpetrators that “revenge pornography” is socially unacceptable, the described phenomenon should be provided for as a separate criminal offence. Therefore, Article 34 of the proposed law seeks to criminalise behaviour with an effective, proportionate and dissuading punishment system, taking into account in particular the seriousness of such behaviour. Namely, the punishments that are currently laid down for the criminal offence of Unauthorised Publication and Showing of Another Person’s Documents, Portraits and Recordings can be considered inadequate, taking into account the explicit content, and in particular considering the possibility to impose fines. The State must make its penal policy stricter in view of international and regional recommendations pointing out that criminal offences involving sexual violence should be punished more severely. Separate criminalisation with punishments that are stricter than those for the criminal offence referred to in Article 175 of this Code should indicate the seriousness of this criminal offence and thus influence the courts to implement a stricter penal policy in their practice in respect of this type of conduct. By ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence, Montenegro undertook, *inter alia*, to take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats is criminalised.

Article 204 of this Code was amended by adding another form of the criminal offence of Rape. Bearing in mind that Article 36 (1)(c) of the Istanbul Convention covers conduct in respect of which there is a dispute in theory and case-law as to whether it can be brought under the basic form of the criminal offence of Rape, it was necessary to explicitly criminalise in a new form the case when the perpetrator uses coercion, not to perform a sexual act himself, but for it to be performed by a third party (Article 36 (1)(c)). This provision of the Convention covers cases where the perpetrator is not the person who performs the sexual act, but the person who causes the victim to engage in a sexual act with a third person, for example as part of control and abuse in an intimate partnership. The scope of intent is wider than that of aiding and instigation. Conduct with criminal intent covered by Article 36 (1)(c) of the Convention aims to cover not only instigation or aiding in a criminal offence, but also conduct that prevents the sexual self-determination of the person at whom such conduct is directed.

Article 37 of the proposed law amended the heading of Article 211 of this Code which relates to Child Pornography. Thus this criminal offence is now named Exploiting Children for Pornography, and alignment of terminology in paragraph 1 of this Article was also made with regard to the term “child”.

 Article 39 of the proposed law has amended Article 211b of this Code with regard to the prescribed range of punishment. The correction is necessary as this is preparatory conduct for the commission of criminal offences referred to under Title Eighteen, which cannot be punishable by a punishment harsher than that for the completed criminal offence.

 Article 40 of the proposed law introduces new criminal offence, i.e. Article 211c of the proposed law introduces into the criminal legislation the criminal offence of Sexual Harassment. Apart from the basic form of this criminal offence which is prosecuted upon a private action, it has been proposed to introduce an aggravated form which exists when a person sexually harasses another person to whom he is superior or who is in a dependent position in relation to the perpetrator or who is particularly vulnerable due to his age, illness, disability, dependency, pregnancy, severe physical or mental impairment. The criminal offence of Sexual Harassment defined by Article 40 of the Istanbul Convention covers unwanted conduct of a sexual nature which affects or may affect the dignity of a person. Sexual harassment is not limited to the workplace or the family and can occur in several contexts. Accordingly, the context or setting in which it occurs does not constitute an element of the criminal offence as defined by the Convention. Until now, the criminal offence of Sexual Harassment did not exist in the Montenegrin legislation. Instead, the approach was related to “other legal sanction” as stated in Article 40 of the Istanbul Convention.

Article 41 of the proposed law made amendments in such a way that the aggravated forms that existed under the criminal offence of Concluding a Void Marriage have now been made into a separate criminal offence. Considering this amendment to be necessary in order to unambiguously prevent the conclusion of such marriages or life partnerships of persons of the same sex, it has been proposed for the criminal offence to exist when someone coerces another person, by means of force or threats, into concluding a marriage or life partnership of persons of the same sex, which is punishable by a prison term from six months to five years. An aggravated form of this criminal offence will exist when coercing or instigating a child into entering into a customary marriage or into concluding a marriage or life partnership or arranging for him a marriage or customary marriage or life partnership. This criminal offence is punishable by a prison term from one to five years. Whoever incites another to go abroad or takes another person abroad with the intention to commit these criminal offences shall be punished by a prison term from three months to three years.

In view of different regulation of the criminal offence of Forced Conclusion of Marriage or Life Partnership of Persons of the Same Sex, Article 216 paragraph 2 (Customary Marriage with a Juvenile) has been aligned accordingly.

Article 45 of the proposed law amended the criminal offence set out in Article 220 Domestic Violence. In the GREVIO’s Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), it is stated that there are no uniform criteria that are being applied consistently to distinguish between a misdemeanour offence and a criminal offence of domestic violence. It would appear from the wording of the respective legal provisions that the Criminal Code provisions are reserved for more severe cases of domestic violence perpetrated with more severe violence, while the misdemeanour offence is intended to cover psychological violence in all its forms. Information provided to GREVIO by the authorities suggests that this may have been the original intention. However, the terminology chosen in the two legal texts does not support such a precise distinction between the two. Therefore, in order to bring into line the elements of a misdemeanour offence and a criminal offence and to make a clear distinction between these unlawful behaviours, it has been proposed to solve this by fully transposing both physical and psychological violence to the elements of a criminal offence. Namely, in the way which would not create dilemmas in practice regarding the legal description of certain behaviour, the conduct under this criminal offence has been described in three paragraphs. In this regard, whoever inflicts light bodily injury on a member of his family or family community or endangers his safety by threatening to attack his life or limb or that of a person close to him shall be punished by a prison term from six months to five years. This punishment has also been prescribed if a person ill-treats a member of his family or family community or treats him in a manner offensive to human dignity. This also applies to a person who otherwise, repeatedly, uses violence, threatens or by insolent or ruthless behaviour endangers or violates physical or mental integrity of a member of his family or family community. The range of punishment has been made more stringent for the basic form, so that the ranges of punishment for other forms of this criminal offence have also been aligned accordingly. Furthermore, if the act was committed in the presence of a child, that has also been criminalised. A novelty introduced by this article is also a new definition of members of a family or family community. Namely, the definition has been harmonised with the Law on Life Partnership of Persons of the Same Sex, the concept of family members, i.e. who is considered to be a family member, has been expanded.

As regards the criminal offence of Unauthorised Use of Copyrighted Works or Objects of Related Rights, Article 46 of the proposed law adds another aggravated form of this criminal offence. Namely, where the commission of this criminal offence results in material benefit exceeding thirty thousand euro, the perpetrator shall be punished by a prison term from one to eight years.

 Article 47 of the proposed law introduces in Article 240 of this Code new aggravated form of the criminal offence of Aggravated Theft, at the initiative of the ministry responsible for traffic. The submitters of the initiative propose to prescribe severe punishment for the criminal offence in question, due to the fact that for a long period of time on the railways there have been thefts of spare parts from the railway rolling stock and of parts of the railway infrastructure necessary for safe and regular traffic. Although these are assets of small value, they are very important elements of the system, without which it is not possible to have safe and regular railway traffic. The mentioned situations often cause cancellations, traffic disruptions and, of course, financial damage to railway companies. In the case where the perpetrator is found, he cannot be convicted of aggravated theft due to the value of the property taken.

 In order to bring into line the range of punishments, Article 48 of the proposed law has made amendment to the special minimum for the criminal offence of Robbery when it was committed by a group or when a serious bodily injury was intentionally inflicted on a person. This form is punishable by a prison term from three to fifteen years but now it will be punishable by a prison term from five to fifteen years.

 Article 49 of the proposed law makes alignment with the PIF Directive. Namely, the PIF Directive represents a unique criminal law framework for combating fraud committed against the financial interests of the European Union. Having analysed this Directive, it has been established that the Criminal Code is largely harmonised with the requirements of the Directive, but that it needs to be additionally harmonised. In this regard, an aggravated form was added to the criminal offence of Ill-Founded Getting and Use of Loans and Other Facilities referred to in Article 245 of this Code if the offence was committed to the detriment of the financial interests of the European Union.

 Pursuant to Article 47 of the proposed law, it was necessary to amend the criminal offence of Concealment (Article 256) and the criminal offence of Destroying and Damaging Public Infrastructure referred to in Article 328.

 The Criminal Code of Montenegro is harmonised with the set of EU directives related to money laundering. However, bearing in mind the requirements of Directive (EU) 2018/843, it was necessary to add property in digital or electronic form to the term property referred to in paragraph 7.

Article 53 of the proposed law amends the criminal offence of Unauthorised Use of a Someone Else’s Trade Name or Trademark in Article 271. The proposed criminalisation is in line with the Decision of the Court of Justice of the European Union (C-206/01 Arsenal Football Club Plc v Matthew Reed). Namely, in the Report of the European Commission's expert visit it was recommended to amend this Article. Experts believe that establishing the intent to deceive is one of the reasons why the number of criminal investigations concerning intellectual property in Montenegro is extremely low.

 Article 54 of the proposed law introduces new criminal offences against payment transactions and commercial activity. Namely, it has become necessary to introduce new criminal offences which are aimed primarily at protecting against certain occurrences in business operations. This includes introducing the criminal offence of Fraud in the Performance of Business Operations, whose conduct consists of the performance of business operations with the intention to obtain unlawful material benefit for himself or another, misleading another person or keeping him misled by false representation or concealment of facts, inducing him thereby to act or refrain from acting to the detriment of the property of a business entity for which or in which he works or of another legal person. The basic form is punishable by a prison term from six months to five years and a fine. This criminal offence has its aggravated forms, namely, if the material benefit obtained or damage caused exceeds three thousand euro, the perpetrator shall be punished by a prison term from one to eight years and a fine. Where the material benefit obtained or damage caused exceeds thirty thousand euro, the perpetrator shall be punished by a prison term from two to ten years and a fine. An important aspect of this criminal offence is the existence of an aggravated form which exists where the offence was committed to the detriment of the financial interests of the European Union, and in that case the perpetrator shall be punished by the punishment prescribed for that offence. Such legal description ensures harmonisation with Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198/29, 28.7.2017) or the so-called PIF Directive.

Furthermore, as a special segment of business operations, it has become necessary to ensure protection against insurance fraud, so, to that end, a new criminal offence of Insurance Fraud was introduced. Namely, it is laid down that whoever destroys, damages or hides an insured thing, and then reports the damage, with the intention to collect the agreed sum from an insurance company, shall be punished by a prison term from three months to three years. This criminal offence also has its aggravated forms, which exist when someone, with the intention to collect the agreed sum from an insurance company in case of bodily damage, bodily injury or health impairment, causes such damage, injury or health impairment to himself, and then submits a claim to the insurance company. And where these offence resulted in the material benefit or caused damage exceeding three thousand euro, the perpetrator shall be punished by a prison term from one to eight years. Where the material benefit obtained or damage caused exceeds thirty thousand euro, the perpetrator shall be punished by a prison term from two to ten years.

At the initiative of the NGO Network for the Affirmation of the Non‑Governmental Sector – MANS, as well as the initiative of the Institute of Certified Accountants of Montenegro, three new criminal offences were introduced, namely: Misuse Related to Public Procurement, Misuse in Privatisation Process, and Passive and Active Bribery in Bankruptcy Process. Namely, the fields of ​​public procurement, privatisation and bankruptcy carry a high risk for corruption and misuse to the detriment of public funds. In cases of misuse in public procurement and privatisation procedures, damage to public funds may be caused by the conduct of a bidder and/or the conduct of a contracting authority. However, the stipulated criminal offences do not provide a sufficient basis for conducting criminal proceedings and imposing sanctions on persons committing such misuses, in particular officials on the side of the contracting authority who dispose of public funds and whose conduct therefore constitutes corruption in the public sector. Furthermore, the Criminal Code does not set forth criminal offences relating to passive and active bribery in bankruptcyproceedings, bearing in mind the sensitive nature of those proceedings.

Article 56 of the proposed law specified a provision of Article 281a with regard to the criminal offence of Manipulation in Securities Markets or Other Financial Instruments Markets.

Article 58 of the proposed law introduces new criminal offence of Destruction of Fungi. Fungi represent a separate kingdom of organisms, so it is necessary to treat them in the legislation in the same way as plants and animals. Furthermore, since 2006, 111 species of fungi have been placed under national protection (Decision on placing rare, scarce, endemic and endangered plant and animal species under protection – Official Gazette of the Republic of Montenegro 76/06); while 134 species are listed in the Preliminary Red List of Fungi of Montenegro (Perić & Perić, 2004). Based on the IUCN categories of species threatened with extinction (IUCN 2001), 13 species have been assessed at the national level as to the degree of their vulnerability: eight species are critically endangered (CR), three species are endangered (EN), while two species are vulnerable (VU) (Kasom & Ćetković, 2011a, b, 2013; Kasom & al., 2013).

Of the species internationally significant for protection which are candidates for Appendix II of the Berne Convention (Dahlberg & Croneborg, 2003), seven species have been registered in Montenegro so far. The species on the global IUCN Red List of Threatened Species (https://www.iucnredlist.org/) have been registered on the territory of Montenegro, and these species also require undertaking of certain protection measures. The Law on Nature Protection (Official Gazette of Montenegro 54/16) and the Rulebook on the detailed manner and conditions of collection, use and circulation of unprotected wild species of animals, plants and fungi that are used for commercial purposes (Official Gazette of Montenegro 62/10) define species that can be collected for commercial purposes and how to collect these species properly. The Law on Nature Protection also provides for special protection measures for fungi (Articles 73, 94, 96, 111). The introduction of this criminal offence was necessary in order to be able to implement the measures of protection of the mentioned species of fungi.

As regards the criminal offences against the environment, the proposed law introduces, as one of positive developments, a new criminal offence related to the unauthorised exploitation of alluvial deposit (sand and gravel). The Law on Waters prescribes the meaning of the term “alluvial deposit” (sand and gravel), as well as the terms “riverbed” and “riverbank”. Although the concept of a regulation facility is not explicitly defined, one article refers to these facilities. Unauthorised exploitation of alluvial deposits has not been laid down by the mentioned law as a misdemeanour, but rather some other omissions related to exploitation (failure to keep records, etc.). Therefore, it was necessary to regulate all acts of unauthorised exploitation of alluvial deposits (sand and gravel) by criminal legislation.

Animal welfare is the result of several combined factors: physiological, environmental, health, social and psychological. Today, it is generally accepted at the national, European and international levels that animal welfare is ensured by the five freedoms: Freedom from hunger and thirst (by ready access to fresh water and diet to maintain health and vigour), Freedom from discomfort (by providing an appropriate environment including shelter and a comfortable resting area), Freedom from pain, injury, or disease (by prevention or rapid diagnosis and treatment), Freedom to express normal behaviour (by providing sufficient space, proper facilities, and company of the animal’s own kind) and Freedom from fear and distress (by ensuring conditions and treatment which avoid mental suffering).

While the first three freedoms aim to protect the physical integrity of an animal, the meaning of the last two is completely different because their aim is to guarantee the quality of life of an animal. Analysis of various parts of national laws on animal protection shows that, although various provisions prohibit physical harm to animals, a very limited number of them take into account concern for their well-being. There is a need to protect the part of the public interest by introducing harsher punishments for the criminal offence of Killing and Torturing Animals, and to expand the scope of protection. Therefore, Article 59 of the proposed law supplements the basic form of this criminal offence in such a way that whoever, in violation of regulations, kills, hurts, tortures or otherwise abuses an animal shall be punished by a fine or a prison term up to two years. Furthermore, paragraph 2 of this Article has been amended in such a way that now if the offence resulted in the killing, torturing or hurting of a large number of animals or if the offence was committed against animals that belong to specially protected animal species, the perpetrator shall be punished by a prison term from six months to five years. In Montenegrin legislation, animal fighting, and in particular dog ​​fighting, is classified as a misdemeanour under the Law on the Protection of Animal Welfare. Introducing a new criminal offence into the Criminal Code of Montenegro (Article 60 of the proposed law) will strengthen the protection of the welfare of animals that are trained and used for fighting in the most brutal ways possible. Therefore, the new criminal offence criminalises conduct which consists in that whoever trains animals for fighting, organises or finances animal fights or fights between animals and humans out of greed, or who organises or participates in betting on such fights shall be punished by a fine and a prison term from six months to three years. Aggravated forms are also laid down for this criminal offence.

Article 61 of the proposed law introduces new criminal offence of Introduction and Spread of Invasive Alien Species. The existence of this criminal offence appeared necessary, bearing in mind that under Article 3(1)(p) of the Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC (the Eco-crime Directive) it is set forth as criminal offence.

Articles 62 and 63 of the proposed law introduce obligation of mandatory confiscation of the objects which were used for the commission of the criminal offences referred to in Articles 323 (Devastation of Forests) and 324 (Timber Theft).

Article 64 of the proposed law amended the criminal offence of Causing General Danger by separating causing of fire (and causing of explosion) (with criminal intent) into a distinct form of the criminal offence because of the great importance of this conduct in the criminal offence in question. Namely, because of the frequency of causing of fires, the damage this causes and the specific forms of appearance of this act of commission of criminal offence, although the consequence in the legal description of the criminal offence remained the same, it was necessary to separate it into a distinct form and prescribe a stricter punishment. This necessitated intervention in Article 338 (Serious Offences against the General Safety) as well by prescribing stricter punishments.

Article 67 of the Proposal relates to an amendment to Article 370 of this Code. Namely, in the Report of the European Commission against Racism and Intolerance (ECRI) on Montenegro, it is stated that Article 370 (1) of the Criminal Code criminalises incitement to violence as well as that hatred and incitement to discrimination is punishable under Article 443 (3), as per GPR No. 7 § 18a. While Article 443 (3) contains an open-ended list of grounds, Article 370 (1) does not mention the grounds of language. Therefore, this criminal offence has been supplemented.

Article 68 of the proposed law has fully changed the current description of the criminal offence of Causing Panic and Disorder. In addition to containing imprecise terms, the existing legal description of the criminal offence can be misused in order to limit the expression of freedom of opinion. The act of commission of the offence is formulated in the way that every expression of opinion, assessment and prediction in the form of a certain statement can be subjected to an examination of whether it is false or true, so, along with the consequence that is also unspecific in its three forms, someone can be attributed the commission of this criminal offence. That is why it is justifiable to decriminalise this criminal offence and to prescribe instead another criminal offence which protects public order not from false news and false claims, but from real threats by committing serious crimes that would result in panic and significant disturbance of citizens. To that effect, a new criminal offence with a much narrower and more precise criminal zone has been formulated in the same article (398).

 Article 69 of the proposed law has fully aligned the Criminal Code with the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (Firearms Protocol). Namely, the United Nations Office on Drugs and Crime (UNODC) prepared through its Global Firearms Programme (GFP) an analysis of harmonisation of Montenegrin legislation with theUnited Nations Convention against Transnational Organized Crime (UNTOC) and the Firearms Protocol. Montenegro ratifiedUNTOC and the Firearms Protocol and participates in their Review Mechanism. The criminal activity relating to weapons is predominantly codified in Article 403 of the Criminal Code under a heading “Unlawful Possession of Weapons and Explosive Substances”. It is the obligation of Montenegro, as a member state of the UN which has ratified the UN Firearms Protocol, to harmonise its national legislation, in particular with the criminal provisions of Article 5 of the Protocol, in conjunction with Article 3 and Article 8 of the UN Firearms Protocol. According to Article 5 of the Protocol, each State Party should adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally: a) Illicit manufacturing of firearms, their parts and components and ammunition; b) Illicit trafficking in firearms, their parts and components and ammunition; c) Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by Article 8 of this Protocol. In this connection, Article 403 of this Code was first of all amended in such a way that the acts of possession and carrying of firearms, their parts, ammunition and explosive substances have been clearly separated. Aggravated forms of these acts have also been established. In order to ensure harmonisation with the UN Firearms Protocol, three new criminal offences have been introduced. According to the definition of “Illicit manufacturing“ set out in Article 3(g) of the Protocol, there are three binding criminal offences related to the illicit manufacturing of weapons, their parts, components, and ammunition which, according to Article 5 of the Protocol, must be established as criminal offences by the State Parties in their legislation: a) Manufacturing or assembly of weapons from parts and components illicitly trafficked; b) Manufacturing or assembly of weapons without a licence or authorisation from competent authorities of the State Party where the manufacture or assembly takes place; c) Manufacturing or assembly of weapons without marking the firearms at the time of manufacture, as provided for in Article 8 of this Protocol. In view of the foregoing, new criminal offence of Unlawful Manufacturing of Weapons and Explosive Substances is introduced.

Furthermore, illicit trafficking in weapons, whose definition is set out in Article 3(e) of the Protocol introduced an obligation for the State Parties to criminalise two more criminal offences related to the illicit trafficking in weapons: a) Any international transport (from the territory of one State to that of another State) of weapons, their parts, components, and ammunition without authorisation issued in accordance with the law; b) Any international transport (from the territory of one State to that of another State) of the weapons that are not marked in accordance with Article 8 of this Protocol. Namely, under Article 3(e) of the Protocol, illicit trafficking in weapons means any import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorise it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with Article 8 of this Protocol. In view of the foregoing, new criminal offence of Unlawful Trafficking in Weapons and Explosive Substances is introduced in Article 403b.

Falsifying or illicitly obliterating, removing or altering the markings on firearms has also not been criminalised in the Criminal Code until now. Therefore, as regards Article 5(1)(c) of the Protocol – Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms, it can be concluded that the current Criminal Code does not contain a criminal offence implementing the above-mentioned provisions. In other words, there is no specific criminal offence in the Criminal Code that criminalises the acts of falsifying or illicitly obliterating, removing or altering the markings on firearms within the meaning of Article 5(1)(c) of the UN Firearms Protocol. That is why it is necessary to introduce a new criminal offence of Falsifying and Removing the Markings on Weapons and Explosive Substances.

Article 71 of the proposed law introduces new paragraph with regard to the criminal offence of Instigation to Authenticate False Content. Namely, the register of beneficial owners is an electronic database in which information about beneficial owners is maintained and stored in order to ensure the transparency of ownership structures and the implementation of measures for the prevention of money laundering and terrorist financing. In view of the foregoing, it is necessary to criminalise conduct resulting in concealment of a beneficial owner or entry of false information as true information, alteration or deletion of true information about the beneficial owner in the Register of Beneficial Owners.

Article 72 of the Proposal adds new paragraph to Article 440 of this Code. This new paragraph criminalises the failure by a military commander or a person effectively performing that office or a superior civilian who fails to take the necessary measures to punish his subordinate who committed any of the criminal offences referred to in Articles 426 to 430, Article 432, Articles 434 to 437 and Article 439 of this Code. This has supplemented the so-called command responsibility provided for in Article 28 of the Statute of the International Criminal Court which has been ratified by Montenegro.

Article 73 of the proposed law brings Article 443 of this Code into line with the recommendations from the Report of the European Commission against Racism and Intolerance (ECRI) on Montenegro. Namely, the Report states that Article 443 (3) of the Criminal Code criminalises the public expression, with a racist aim, of an ideology that claims the superiority of one group as per GPR No. 7 § 18d. While ECRI welcomes the 2013 amendments to the Criminal Code, in which the prohibited grounds were expanded to sex, disability, sexual orientation, gender identity or other personal characteristics, ECRI notes that the grounds of language and nationality (citizenship) are still missing. The amendments to paragraph 3 of this Article have been made in connection with the foregoing. Furthermore, the Report states that the Criminal Code does not have a designated provision on the prohibition of public dissemination, distribution, production and storage of racist written, pictorial and other materials, as recommended in GPR No. 7 § 18f, despite the fact that Montenegro has ratified the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through a computer system, thus, a new paragraph has been introduced. The new paragraph relates to the form of the criminal offence which exists when the material intended for the commission of the offence referred to in paragraph 3 of this Article is stored, disseminated or otherwise made available through a computer system. Other paragraphs have also been brought into line with the above-mentioned amendments.

In addition to the alignment of terminology concerning the term “child”, Article 74 of the proposed law adds one more aggravated form of the criminal offence referred to in Article 444 Trafficking in Persons, which will exist where, due to the offence referred to in paragraph 3 of this Article, a serious bodily injury is inflicted upon the child, while a prison term of minimum five years is laid down for the offence.

Article 76 of the proposed law introduces a new criminal offence of the Sale of Children. It is necessary to introduce this criminal offence because in its Concluding observations on the combined second and third periodic reports of Montenegro the UN Committee on the Rights of the Child stated that it urges the State party in particular to provide in domestic legislation an explicit definition of the crime of the sale of children, and ensure that it is incorporated into relevant legislation in accordance with articles 2 and 3 of the 2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Article 77 of the proposed law stipulates that the Law shall enter into force on the eighth day following that of its publication in the *Official Gazette of Montenegro*.

**V. ASSESSMENT OF FUNDS NECESSARY FOR THE IMPLEMENTATION OF THE LAW**

It is not necessary to provide additional funds in the Budget of Montenegro for the implementation of this Law.

**OVERVIEW OF PROVISIONS OF THE CRIMINAL CODE OF MONTENEGRO**

**THAT ARE BEING AMENDED**

Liability of Chief Editors

Article 28

(1) Chief editors shall be held liable for criminal offences committed using the media, or persons replacing them at the time of publication of the information, provided that:

1) the author remains unknown until the end of the main hearing before a first instance court;

2) the information was published without the consent of the author;

3) at the time when the information was published there existed, and still exist, factual or legal obstacles to prosecuting the author.

(2) A chief editor or a person replacing him shall not be held liable if for justified reasons they were not aware of any of the circumstances set out in paragraph 1, items 1 and 3 of this Article.

House Arrest

Article 36a

(1) Where the court imposes a prison sentence on a criminal offender for a term of up to six months, the court may also rule that the sanction be served in the offender’s home, provided that the offender’s character, his antecedents, conduct following the commission of the offence, degree of culpability, as well as other circumstances of the offence constitute clear grounds to indicate that the purpose of punishment would in this way be served.

(2) The sentenced person imposed to serve a prison sentence in the manner set out in paragraph 1 of this Article may not leave his residence, except in cases laid down by the law governing enforcement of criminal sanctions. If the sentenced person leaves his residence of his own free will either once for more than six consecutive hours or twice for up to six consecutive hours, the court shall then rule that the remainder of the prison sentence be served in the Institution for Enforcement of Criminal Sanctions.

(3) A sentenced person convicted of a criminal offence against marriage and family and living with the injured party in the same household or family community may not be eligible for prison sentence enforcement in the manner set forth in paragraph 1 of this Article.

Parole

Article 37

(1) The court may release on parole a sentenced person serving a prison sentence or a long-term prison sentence who has served two thirds or, exceptionally, one half of his prison sentence or long-term prison sentence, provided that while serving time in prison he improved his behaviour to such an extent that it can be reasonably expected that he would be of good behaviour while at liberty and, in particular, that he would not reoffend during the term for which the sentence was imposed. When deciding whether to release a sentenced person on parole, the court shall give consideration to the sentenced person’s conduct and to whether he fulfilled his working obligations in line with his working ability, and particularly to whether he was subject to disciplinary sanctions while serving a prison sentence or a long-term prison sentence, to whether he compensated the damage incurred by his criminal offence and returned material benefit acquired through a criminal offence, as well as to whether the purpose of punishment has been served.

(2) The decision granting parole may order that the sentenced person has to fulfil an obligation set by law.

(3) In the case set out in paragraph 1 of this Article, the prisoner shall be considered to have served his penalty provided that the parole is not revoked.

Community Service

Article 41

(1) Community service may be imposed for criminal offences punishable by a fine or a prison sentence of up to five years.

(2) Community service may not be shorter than sixty hours or longer than three hundred and sixty hours, served over a period of time not shorter than thirty days or longer than six months.

(3) This penalty shall be imposed upon prior consent of the perpetrator and may not be longer than sixty hours in a month.

(4) Community service shall be any socially useful work which does not offend human dignity, and is not performed for making profit.

(5) When imposing this penalty, the court shall give due consideration to the type of the criminal offence committed and the perpetrator’s personality.

(6) If a perpetrator fails to complete his community service, this penalty shall be replaced by a prison sentence, whereby each sixty hours of community service initiated shall be substituted by a one month prison sentence.

Special Circumstances for Fixing the Sentence for a Hate Crime

Article 42a

(1) Where a criminal offence is committed out of hatred towards another person due to his national or ethnic affiliation, race or religion or due to the lack thereof, or due to disability, sex, sexual orientation or gender identity, such a circumstance shall be taken as aggravating by the court, unless that is stipulated as an element of the basic or more serious form of that criminal offence.

(2) Where a criminal offence is committed against a person who belongs to a particularly vulnerable category of persons (children, persons with disabilities, pregnant women, elderly persons, refugees) such a circumstance shall be taken as aggravating by the court.

Recidivism

Article 43

When fixing a penalty upon an offender for a criminal offence he committed after his penalty was served, remitted, barred by the statute of limitations or after he was released from punishment, after the expiry of the time-limit for revocation of suspended sentence has expired, or after he has been imposed a judicial admonition, the court may take that circumstance as an aggravating one, while at the same time giving due consideration to the gravity of the prior offence, whether his prior offence is of the same kind as the new one, whether both offences were committed out of the same motives, the circumstances under which the offences were committed and how much time has passed since the earlier conviction, or since the penalty was imposed, remitted, barred by the statute of limitations or since release from punishment, expiry of the deadline for revocation of an earlier suspended sentence or since the judicial admonition imposed.

Multiple Recidivism

Article 44

(1) The court may impose a more severe penalty than the prescribed one for a criminal offence committed with criminal intent and punishable by a prison sentence, under the following conditions:

1) where the perpetrator has already been convicted twice or more times for criminal offences committed with criminal intent to a prison sentence for a minimum term of one year, and he has a propensity for committing offences;

2) where less than five years passed from the offender's release from service of the previously imposed penalty until the commission of the new criminal offence.

(2) A more severe penalty may not exceed the double of the prescribed penalty nor a twenty year prison sentence.

(3) When assessing whether to impose a more severe penalty than the prescribed one, the court shall give due consideration in particular to the number of prior convictions, relatedness between such prior criminal offences, motives out of which they were committed, circumstances under which the offences were committed, and the need to impose such penalty so as to achieve the purpose of punishment.

Mitigation of Penalty

Article 45

The court may impose on a perpetrator a penalty below the limit laid down by law or a lighter type of penalty, provided that:

1) the law provides that the perpetrator may receive a lighter sentence;

2) the law provides that the perpetrator may be released from punishment, but the court does not release him from punishment;

3) it is established that there are particularly mitigating circumstances and it is judged that a mitigated penalty will be sufficient to achieve the purpose of punishment.

Limits of Mitigation of Penalty

Article 46

(1) Where the requirements for mitigation of penalty set out in Article 45 of this Code are met, the court shall mitigate the penalty subject to the following limits:

1) if the criminal offence carries a minimum penalty of five years in prison or more, the penalty may be mitigated by up to two years in prison;

2) if the criminal offence carries a minimum penalty of three years in prison or more, the penalty may be mitigated by up to one year in prison;

3) if the criminal offence carries a minimum penalty of two years in prison, the penalty may be mitigated by up to six months in prison;

4) if the criminal offence carries a minimum penalty of one year in prison, the penalty may be mitigated by up to three months in prison;

5) if the criminal offence carries a minimum penalty of less than one year in prison, the penalty may be mitigated by up to thirty days in prison;

6) if the criminal offence carries a prison sentence whose minimum term is not specified, the prison sentence may be replaced by a fine;

7) if the criminal offence carries a fine whose lowest amount is specified, the penalty may be mitigated by up to six hundred euro.

(2) Where the court is authorized to release the offender from punishment, the court may mitigate his penalty, without taking into consideration the limits prescribed for mitigation of penalty.

Time of Detention and Earlier Penalty Included

Article 51

(1) The time spent in detention, as well as any other deprivation of liberty in relation to a criminal offence shall be included into the imposed prison sentence, youth custody sentence, community service, or a fine.

(2) Where a criminal proceeding was conducted for several concurrent criminal offences and detention was not ordered for each of them, the time spent in detention shall be included into the imposed prison sentence, youth custody sentence, community service, or a fine for the criminal offence on account of which the accused person was convicted.

(3) The prison sentence or the fine that the sentenced person served or paid respectively for a misdemeanour or economic offence, as well as the penalty or disciplinary measure of deprivation of liberty which he served for violation of military discipline shall be included into the penalty imposed for a criminal offence whose elements include the elements of a misdemeanour, economic offence, or violation of military discipline.

(4) When including an earlier penalty, equivalence shall apply among each day of detention, day of deprivation of liberty, day of youth custody sentence, day of prison sentence, eight hours of community service and the fine amounting to twenty-five euro.

Imposition of Security Measures

Article 68

(1) The court may impose one or more security measures against a criminal offender provided that the requirements for their imposition as set by this Code are met.

(2) Compulsory mental health treatment and placement in a health care institution and compulsory outpatient mental health treatment shall be imposed as individual measures on a mentally incapacitated perpetrator. In addition to these measures, the court may order disqualification from performing a profession, activity or duty, prohibition against operating a motor vehicle and confiscation of objects.

(3) The measures set out in paragraph 2 of this Article may be imposed on a criminal offender whose mental capacity has been significantly diminished, provided that he has already been imposed a penalty or suspended sentence.

(4) Compulsory drug dependence treatment, compulsory treatment of alcoholism, disqualification from performing a profession, activity or duty, prohibition against operating a motor vehicle, confiscation of objects and publication of the judgment may be imposed if the offender has already been imposed a penalty, suspended sentence, judicial admonition or where the offender was released from punishment.

(5) Expulsion of a foreign national from the country may be imposed provided that the perpetrator has already been imposed a penalty or suspended sentence.

(6) Restraining order and removal from the place of residence may be imposed provided that the perpetrator has already been imposed a prison sentence or a fine.

(7) A security measure shall be imposed for concurrent criminal offences provided that it was imposed for one of the concurrent criminal offences.

Disqualification from Performing a Profession, Activity or Duty

Article 73

(1) The court may disqualify a perpetrator from a certain profession, activity, all or some of duties related to the disposition, utilization, management or handling of someone else’s property or its safekeeping, if it is reasonable to believe that his further engagement in that activity would be dangerous.

(2) The court shall determine the duration of the measure set out in paragraph 1 of this Article, which may not be shorter than one, nor longer than ten years, counting from the date on which the judgment becomes final, provided that the time spent in a prison or health care institution in which the security measure was enforced may not be included into the term of this measure.

(3) Where it imposes a suspended sentence, the court may order that the sentence be revoked if the perpetrator violates the disqualification from performing a profession, activity or duty.

Expulsion of a Foreign National from the Country

Article 76

(1) The court may expel a foreign national who committed a criminal offence from the territory of Montenegro for a term from one to ten years or, where he relapsed into criminal behaviour, he may be expelled for good (Article 43).

(2) When deciding whether to impose the measure set out in paragraph 1 of this Article, the court shall give due consideration to the nature and gravity of the offence committed, motives out of which the criminal offence was committed, manner in which it was committed, and other circumstances suggesting the advisability of not allowing foreign national’s further to stay in Montenegro.

(3) The term of expulsion shall commence on the date of final judgment, provided that the time spent in prison may not be included into the term of this measure.

(4) The measure set out in paragraph 1 of this Article may not be imposed against a perpetrator where following his expulsion to another country he may be exposed to torture or inhuman or degrading treatment, or against a perpetrator who enjoys another form of protection under ratified international treaties.

Restraining Order

Article 77a

(1) The perpetrator of an offence against sexual freedom, domestic violence, incest, or of another criminal offence threatening the life and limb of a person or of the offence of unauthorised production, possession and distribution of narcotic drugs shall be issued a restraining order by the court under which the offender is ordered not to come close to the victim or another person or a group of persons or to a specific location where there is risk that the offender may repeat in respect of such persons or such a location an identical offence or an offence of the same kind.

(2) The court shall set the duration of the measure set out in paragraph 1 of this Article which may not be shorter than one year nor longer than five years, counting from the date on which the judgment becomes final, provided that the time spent in prison may not be included into the term of this measure.

(3) Following the expiry of one year from the commencement of the measure set out in paragraph 1 of this Article, the court may act upon the proposal of the sentenced person and discontinue the measure, where it finds that the danger set out in paragraph 1 of this Article no longer exists.

(4) The organisational unit in charge of supervising paroles within the ministry competent for judicial affairs shall be notified by the court of the imposition of enforceable measure set out in paragraph 1 of this Article.

Removal from the Place of Residence

Article 77b

(1) Perpetrators of domestic violence shall be imposed by the court the measure of removal from the place of residence, where danger exists that the offender may repeat the criminal offence.

(2) The court shall set the duration of the measure set out in paragraph 1 of this Article which may not be shorter than three months nor longer than three years, counting from the date on which the judgment becomes final, provided that the time spent in prison may not be included into the term of this measure.

(3) The person subject to the measure set out in paragraph 1 of this Article shall, in the presence of a police officer and immediately after the judgment becomes final, vacate their home or another residence used by the joint household.

(4) Following the expiry of six months from the commencement of the measure set out in paragraph 1 of this Article, the court may act upon the proposal of the sentenced person and discontinue the measure, where it finds that the danger set out in paragraph 1 of this Article no longer exists.

(5) The organisational unit in charge of supervising paroles within the ministry competent for judicial affairs and the administrative authority competent for police affairs shall be notified by the court of the imposition of enforceable measure set out in paragraph 1 of this Article.

Judicial Rehabilitation

Article 120

(1) Judicial rehabilitation may be granted to a person sentenced to a prison sentence for a term from more than one year to two years, if the person does not commit another criminal offence within five years of the date on which the penalty became fully served, barred by the statute of limitations or remitted.

(2) Judicial rehabilitation may be granted to a person sentenced to a prison sentence for a term from more than two years to three years, if the person does not commit another criminal offence within eight years of the date on which the penalty became fully served, barred by the statute of limitations or remitted.

(3) In the cases set out in paragraphs 1 and 2 of this Article, the court shall grant rehabilitation where it finds that owing to his good conduct the sentenced person has deserved to be rehabilitated and where the person has compensated within the limits of his capacity for the damage inflicted by the criminal offence, whereby the court shall give due consideration to any other circumstances of relevance for granting rehabilitation, and specifically the very nature and significance of the criminal offence.

(4) Judicial rehabilitation may not be granted if an accessory penalty has not been enforced or if security measures are still in force.

Judicial Rehabilitation of Persons with Several Prior Convictions

Article 121

A person having several prior convictions may be granted rehabilitation by the court solely if conditions set out in Articles 119 and 120 of this Code are met with respect to each of the criminal offences that this person has been convicted for. When judging whether to grant rehabilitation in such a case, the court shall take into account the circumstances set out in Article 120, paragraph 3 of this Code.

**Special records**

**Article 123a**

Special records shall be kept on persons convicted of criminal offenses referred to in Arst. 204, 205, 206, 207, 208, 209, 210, 211, 211a and 211b of this Code, when committed to the detriment of minors.

Special record shall contain the following information on convicted person:

1) name and surname;

2) unique citizen's identity number;

3) residence and permanent residence address;

4) employment data;

5) data on distinctive signs;

6) data on the criminal offense and the criminal sanction imposed;

7) information on the legal consequences of the conviction.

Ministry responsible for judicial affairs shall keep special records.

Data from special records shall be kept permanently and may not be deleted.

Data from the special records may be given to the court, the state prosecutor's office and the police related to criminal proceedings conducted against the person on whom the special records are kept, that is, to the competent organizational unit of the police, when it is necessary for the performance of tasks within its jurisdiction.

Data from special records may, upon reasoned request, also be given to a state authority, business company, other organization or entrepreneur, if the legal consequences of the conviction are still pending.

State and other authorities, as well as legal entities or entrepreneurs who work with minors, are obliged to request information on whether the person applying with them, that is, work with minors, is registered in a special record.

Data from special records may also be given to foreign state bodies, in accordance with an international agreement.

The provisions of the law governing the protection of personal data and confidentiality of data shall be applied accordingly to the data contained in the special records, if the provisions of this Code do not prescribe otherwise.

Running and Interruption of Statute of Limitations for Prosecution

Article 125

(1) Statute of limitations for prosecution shall start to run from the date of commission of a criminal offence. If a consequence of a criminal offence occurs at a later time, statute of limitations for prosecution shall start to run from the date on which the consequence occurred.

(2) Statute of limitations shall not run for the time period in which prosecution may not commence or be resumed under law.

(3) Statute of limitations for prosecution for an offence committed against a minor shall not start to run until that person has reached eighteen years of age.

(4) Statute of limitations shall be interrupted by each procedural action taken in view of detecting a criminal offence or exposing and prosecuting an offender for a criminal offence committed.

(5) Statute of limitations shall also be interrupted when an offender commits an equally serious or a more serious criminal offence while the period of statute of limitations is running.

(6) After each interruption, statutory limitations shall start to run anew.

(7) Statute of limitations for prosecution shall take effect in any case upon expiration of twice the time required under law for statute of limitations for prosecution.

Statutes of Limitations for Execution of Accessory Penalties and Security Measures

Article 127

(1) The statute of limitations for enforcement of a fine as an accessory penalty shall take effect after expiration of two years from the date of finality of judgment imposing that penalty.

(2) The statute of limitations for enforcement of security measures of compulsory outpatient mental health treatment, compulsory drug dependence treatment, compulsory treatment of alcoholism and confiscation of objects shall take effect after expiration of five years from the date of finality of the decision ordering such measures.

(3) The statute of limitations for enforcement of security measures of disqualification from performing a profession, activity or duty, prohibition against operating a motor vehicle and expulsion of a foreign national from the country shall take effect after expiration of the time period for which these measures were imposed.

(4) Statutory limitations shall not be applicable to enforcement of the security measure of compulsory mental health treatment and placement in a health care institution; however, where more than five years expired from the date of finality of the judgment imposing the security measure, and where its enforcement has not yet commenced, the court shall examine whether enforcement of this measure is still necessary.

Non-Applicability of Statutory Limitations to Prosecution and Execution of Penalties

Article 129

Statutory limitations shall not be applicable to criminal prosecution and execution of penalties for criminal offences set forth in Articles 264 to 276b, 401, 401a, 422 to 424 and 426 to 431 of this Code, nor to criminal offences which may not be subject to statutes of limitations under ratified international treaties.

**Special supervision measures**

**Article 132a**

Against the perpetrator of the criminal offense referred to in Arts. 204, 205, 206, 207, 208, 209, 210, 211, 211a and 211b of this Code, after serving a prison sentence or a long-term prison sentence, special supervision measures are implemented, namely:

1) mandatory reporting to the competent organizational unit of the police;

2) ban on visiting places where minors gather, especially kindergartens, schools and yards of these institutions, playgrounds and the like;

3) mandatory visits to professional counselling centres and institutions;

4) mandatory notification of change place of residence, permanent residence or workplace;

5) mandatory notification of travel abroad.

The measures of special supervision referred to in paragraph 1 of this article shall be implemented 20 years after the execution of the prison sentence or long-term prison sentence, with the possibility of cancellation.

After expiration of every four years from the beginning of the application of the special supervision measures referred to in paragraph 1 of this article, the court issuing the first-instance verdict shall decide ex officio on the need for further implementation of the special supervision measures.

A request for review of the need for further implementation of special supervision measures may be submitted by the person to whom special supervision applies, but not before the expiration of two years from the beginning of application, that is, from the last review by the court, which is carried out ex officio.

**Mandatory reporting to the competent organizational unit of the police**

**Article 132b**

The measure of mandatory reporting to the competent organizational unit of the police consists of the duty of the perpetrator of the criminal offense referred to in Art. 204, 205, 206, 207, 208, 209, 210, 211, 211a and 211b of this Code against a minor, to report in person to the organizational unit of the police in the place of his residence or stay, in the manner prescribed by the by-law.

**Prohibition of visiting places where minors gather**

**Article 132c**

The measure forbidding visiting places where minors gather consists of the duty of the perpetrator of the criminal offense referred to in Art. 204, 205, 206, 207, 208, 209, 210, 211, 211a and 211b of this Code over a minor, not to visit places where minors gather, such as kindergartens, kindergarten yards, schools, school yards, playgrounds and the like.

**Mandatory visits to professional counselling centres and institutions**

**Article 132d**

The measure of mandatory visits to professional counselling centres and institutions consists in the duty of the perpetrator of the criminal offense, Art. 204, 205, 206, 207, 208, 209, 210, 211, 211a and 211b of this Code over a minor, to visit professional counselling centres and institutions according to the program determined in the manner prescribed by the by-law.

**Mandatory notification measure on change of residence, place of residence or workplace**

**Article 132e**

The measure of mandatory notification of a change of residence, place of residence or workplace consists in the duty of the perpetrator of the criminal offense from Art. 204, 205, 206, 207, 208, 209, 210, 211, 211a and 211b of this code against a minor, to personally notify the competent organizational unit of the police about the change of place residence, permanent residence or workplace within three days from the day of the change.

**Mandatory notification of travel abroad**

**Article 132f**

The measure of mandatory notification of travel abroad shall consist in obligation of the perpetrator of the criminal offense referred to in Art. 204, 205, 206, 207, 208, 209, 210, 211, 211a and 211b of this Code against a minor, to report in person to the competent organizational unit of the police no later than three days before traveling abroad.

The person referred to in paragraph 1 of this article is obliged to provide the competent organizational unit of the police with information about his/her country of destination, as well as the exact place and length of stay abroad.

DEFINITIONS

Definitions used throughout This Code

Article 142

(1) The territory of Montenegro is to be understood to mean land, coastal sea, and water areas within its borders, as well as air space above them.

(2) Criminal legislation of Montenegro is to be understood to mean this Code, and all other criminal law provisions contained in other laws of Montenegro.

(3) A public official is deemed to be:

1) a person who performs official duties in a state authority;

2) an elected, appointed or designated person in a state authority, local self-government authority or a person performing, on a permanent or temporary basis, official duties or official functions in these authorities;

3) a person in an institution, business organization or another entity who has been entrusted with the performance of public powers, a person who decides on the rights, obligations or interests of natural or legal persons or on the public interest;

4) and any other person performing official duties under a law, regulations adopted pursuant to laws, contracts or arbitration agreements, as well as a person who is effectively entrusted with the performance of certain official duties or affairs;

5) a serviceman, with the exception of provisions of Title Thirty-Six of this Code.

5a) a person performing in a foreign state legislative, executive, judicial or other public office for a foreign state, a person who performs official duties in a foreign state on the basis of laws, regulations adopted on the basis of laws, contract or arbitration agreement, a person performing official duty in an international public organisation and a person performing judicial, prosecutorial or another office in an international tribunal.

(4) A responsible officer is deemed to be the owner of a business organisation or another entity, or a person in a business organisation, institution or another entity who has been entrusted, given his office, the funds invested or his authority, with a range of duties with respect to property management, production or another activity or with activities or their supervision or has been effectively entrusted with the discharge of certain affairs. A public official shall also be deemed to be a responsible officer in cases of criminal offences perpetrated by the responsible officer, which are not laid down in the title of this Code governing criminal offences against official duty, nor as criminal offences committed by a public official.

(5) A serviceman is deemed to be: professional serviceman (soldiers under contract, non-commissioned officers, non-commissioned officers under contract, officers and officers under contract), members of the reserve forces (reserve soldiers, reserve non-commissioned officers and reserve officers), civilians performing a specific military duty and persons who are, in a state of war or emergency, subject to military service.

(6) Where a public official, a responsible officer or a serviceman is designated as a perpetrator of specific criminal offences, persons set out in paragraphs 3, 4 and 5 of this Article may be perpetrators of those offences, unless where it arises from the elements of a particular offence or a certain regulation that the perpetrator may be only one of these persons.

(7) A child is deemed to be a person who has not reached the age of fourteen.

(8) A juvenile is deemed to be a person who has reached the age of fourteen, but not the age of eighteen.

(9) A minor is deemed to be a person who has not reached the age of eighteen.

(10) An offender is deemed to be a perpetrator, accomplice, instigator and aider.

(11) A victim is a person who has suffered, by means of an unlawful act which constitutes a crime under law, physical or mental pain, or suffering, property damage or violation of human rights and freedoms.

(12) Proceeds of crime are deemed to be the material benefit obtained, directly or indirectly, through the commission of an offence, consisting of each property increase or prevention of property decrease resulting from the commission of a criminal offence, property into which proceeds of crime have been converted, intermingled or transformed, as well as all other benefits derived from proceeds of crime or from the property into which proceeds of crime have been converted or transformed, irrespective of whether it is located in or outside of the territory of Montenegro, as well as all documents evidencing title to property.

(13) Bribe, within the meaning of this Code, is a gift or another unlawful material or non-material benefit, irrespective of the value.

(14) Force is also deemed to be the use of hypnosis or stupefying agents with the purpose of bringing someone against his will into a state of unconsciousness or inability to offer resistance.

(15) Elections are deemed to be the elections for the Parliament of Montenegro, President of Montenegro, local self-government authorities and other elections called for and conducted on the basis of the Constitution and law.

(15a) Political entities are considered to be entities in accordance with the regulations governing the financing of political entities and election campaigns.

(15b) An election campaign is considered to be a campaign in accordance with the regulations governing the financing of political entities and election campaigns.

(16) Referendum is deemed to be the expression of citizens’ will whereby they decide on issues determined by the Constitution and law.

(17) Narcotic drugs are deemed to be substances and preparations declared as narcotic drugs in accordance with regulations based on law.

(18) A movable article is also deemed to be all energy generated or collected for yielding light, heat or movement, a telephone impulse, as well as computer data and computer program.

(19) A computer system is deemed to be every device or a group of mutually connected or conditioned devices, of which one or several of them, depending on the program, perform automatic data processing.

(20) A computer data is deemed to be any presentation of facts, data or concepts in a form that is suitable for processing in a computer system, including programs through which a computer system performs its functions.

(21) A computer program is deemed to be a set of ordered computer data on the basis of which a computer system performs its functions.

(22) A computer virus is a computer program which threatens or alters the functions of a computer system and alters, jeopardizes or uses computer data without authorization.

(23) Computer traffic data are deemed to be all computer data generated by computer systems, which make a chain of communication between two mutually communicating computer systems, including themselves.

(24) Protected natural asset is also deemed to be an asset which enjoys provisional protection under regulations on protection of natural assets.

(25) A cultural good is also deemed to be a good which enjoys previous protection under regulations on the protection of cultural goods, a part of a cultural good and the protected surroundings of an immovable cultural good.

(26) Money is coins and banknotes or money made of some other material which is under law in circulation in Montenegro or in a foreign country.

(27) Tokens of value are also deemed to be foreign tokens of value.

(28) A motor vehicle is deemed to be every engine powered means of transport used in road, waterborne and air transport.

(29) A document is deemed to be any item which is suitable or designated to serve as evidence of a specific fact of relevance to legal relations, as well as computer data.

(30) A file, letter, parcel and a document may also be in an electronic form.

(31) Members of a family or family community are also deemed to be former spouses, blood relatives and relatives by full adoption in the direct line of descent without restriction, and in a collateral line up to the fourth degree inclusive, relatives by simple adoption, relatives by marriage up to the second degree inclusive, persons who live in the same household and persons that parent a child or whose child is on the way, even where such persons have never shared a household.

(32) Performance of a profession or duty associated with an increased risk for the safety of the person performing such job in the field of public information, health care and legal assistance before courts and other state authorities shall be considered a public interest job.

 (33) The expression “shall not be punished” means that there exists no criminal offence in that case.

(34) When an imperfective verb is used to define the action of a criminal offence, the offence shall be understood to have been committed, provided that the action was committed once or more times.

Instigation to Suicide and Assisted Suicide

Article 149

(1) Whoever instigates another person to suicide or assists him in committing suicide, where such suicide is completed or attempted, shall be punished by a prison sentence for a term from one to five years.

(2) Whoever assists another person in committing suicide under the conditions set out in Article 147 of this Code, where such suicide is completed or attempted, shall be punished by a prison sentence for a term from three months to three years.

(3) Whoever commits the offence set forth in paragraph 1 of this Article against a juvenile or a person in a state of significantly reduced mental capacity shall be punished by a prison sentence for a term from two to ten years.

(4) Where the offence set forth in paragraph 1 of this Article is committed against a child or a mentally incapacitated person the perpetrator shall be punished under Article 144 of this Code.

(5) Whoever treats a person who is his subordinate or dependent in a cruel or inhuman manner, where due to such treatment the person concerned commits or attempts suicide, and where such suicide may be attributed to perpetrator’s negligence, shall be punished by a prison sentence for a term from six months to five years.

Female Genital Mutilation

Article 151a

(1) Whoever mutilates external parts of female genitals shall be punished by a prison sentence for a term from one to eight years.

Forced Sterilization

Article 151b

Whoever, by means of force or threats, commits sterilization of another person with a view to make his reproduction impossible shall be punished by a prison sentence for a term from three months to five years.

Violation of Equality

Article 159

(1) Whoever, due to national or ethnic affiliation, race or religion or due to the lack thereof, or due to the differences in terms of political or any other belief, sex, language, education, social position, social origin, sexual orientation, gender identity, disability, financial standing or any other personal characteristic, denies or restricts to another human rights and freedoms enshrined in the Constitution, laws or other regulations or general acts or ratified international treaties, or provides to another privileges or benefits based on such differences, shall be punished by a prison sentence for a term not exceeding three years.

(2) Where the offence set forth in paragraph 1 of this Article was committed out of hatred towards a member of a group defined by virtue of race, skin colour, religion, origin, nationality or ethnic affiliation, the perpetrator shall be punished by a prison sentence for a term from three months to five years.

(3) Where the offence set forth in paragraph 2 of this Article was committed by a public official while performing his duties, the perpetrator shall be punished by a prison sentence for a term from one to eight years.

Abduction

Article 164

(1) Whoever, by use of force, threat, deception or in other manner takes away or keeps someone with the intention to extort money or another material benefit from that person or from another or to force him or another person to act, refrain from acting, or endure something shall be punished by a prison sentence for a term from one to eight years.

(2) Whoever in view of accomplishing the aim of abduction threatens the abductee by murder or serious bodily injury shall be punished by a prison sentence for a term from two to ten years.

(3) Where the abductee is held for more than ten days or is treated with cruelty or where the abductee’s health is heavily impaired or where other grave consequences arose, or where the offence set forth in paragraph 1 of this Article is committed against a minor, the perpetrator shall be punished by a prison sentence for a term from two to twelve years.

(4) Where the offence set forth in paragraphs 1, 2 and 3 of this Article results in the death of the abductee or where the offence was committed by several persons in an organised manner, the perpetrator shall be punished by a prison sentence for a term from five to fifteen years.

Extorting a Testimony

Article 166

(1) A public official who while performing his duties uses force or threats or other inadmissible means or inadmissible manner with the intention to extort a testimony or another statement from the accused, witness, expert witness or another person shall be punished by a prison sentence for a term from three months to five years.

(2) Where the extortion of testimony or statement is accompanied by severe violence, or where extremely grave consequences occur for the accused in criminal proceedings due to extorted testimony, the offender shall be punished by a prison sentence for a term from two to ten years.

Ill-treatment

Article 166a

(1) Whoever ill-treats another or treats another in a manner that offends human dignity shall be punished by a prison sentence for a term not exceeding one year.

(2) Where the offence set forth in paragraph 1 of this Article is committed by a public official while performing his duties, he shall be punished by a prison sentence for a term from three months to three years.

(3) An attempted offence set forth in paragraphs 1 and 2 of this Article shall be subject to punishment.

Torture

Article 167

(1) Whoever inflicts severe pain or great suffering on another, whether bodily or mental, in order to obtain from him or a third party a confession or another information or in order to unlawfully punish or intimidate him, or to exert pressure over him or to intimidate or exert pressure over a third party, or does so for other reasons based on discrimination shall be punished by a prison sentence for a term from six months to five years.

(2) Where the offence set forth in paragraph 1 of this Article is committed by a public official while performing his duties or where the offence was committed under his explicit or implied consent, or where a public official incited another person to commit an offence set forth in paragraph 1 of this Article, he shall be punished for the offence set forth in paragraph 1 of this Article by a prison sentence for a term from one to eight years.

Stalking

Article 168a

(1) Whoever persistently stalks another person in a manner that may considerably endanger his life, health, body or way of life shall be punished by a fine or a prison sentence for a term not exceeding three years.

(2) Where the offence set forth in paragraph 1 of this Article is committed against a former spouse or common-law partner, the offender shall be punished by a prison sentence for a term from three months to five years.

(3) Offenders who commit the offence against a minor, a pregnant woman or a person with disability shall be punished by the sentence set out in paragraph 2 of this Article.

(4) Where the offence set forth in paragraph 1 of this Article caused danger to life, health or limb of another person or a person close to him, the perpetrator shall be punished by a prison sentence for a term from three months to five years.

(5) Where the offence set forth in paragraph 1 of this Article results in the death of another person or a person close to him, the perpetrator shall be punished by a prison sentence for a term from one to ten years.

(6) A person is deemed to be persistently stalking another person, within the meaning of this Article, where during a specific period of time:

1) he follows in an unauthorized manner or takes other actions with a view to achieving physical closeness to such a person;

2) he attempts to establish a contact with that person contrary to his will, directly, through a third party or means of communication;

3) he abuses personal data of that person in order to order goods or services;

4) he threatens the life, limb or freedom of that person or a person close to him;

5) he undertakes other similar actions towards that person.

Unauthorized Wiretapping and Recording

Article 173

(1) Whoever unauthorisedly and by using special devices wiretaps or records a conversation, statement or any other communication not intended for his use shall be punished by a fine or a prison sentence for a term not exceeding one year.

(2) The penalty set out in paragraph 1 of this Article shall also be imposed on whomever allows a third person to be informed with the conversation, statement or other communication which were unauthorisedly wiretapped or audio recorded.

(3) Where the offence set forth in paragraphs 1 and 2 of this Article was committed by a public official while performing his duties, he shall be punished by a prison sentence for a term from three months to three years.

Prosecution for Offences against Honour and Reputation

Article 202

(1) Prosecution for the offence set forth in Article 197 of this Code shall be instituted by a private action.

(2) Where the offence set forth in Article 197 of this Code was committed against a deceased person, prosecution shall be instituted by a private action of his spouse or of the person who lived with the deceased in a durable customary marriage, or of a relative in the direct line of descent, adoptive parent, adopted child, or brother or sister of the deceased person.

(3) Prosecution for the offence set forth in Article 200 of this Code shall be instituted upon approval of the Supreme Public Prosecutor of Montenegro.

Rape

Article 204

(1) Whoever forces another into sexual intercourse or another act of equivalent nature without the person’s consent shall be punished by a prison sentence for a term from one to eight years.

(2) Whoever forces another into sexual intercourse or another act of equivalent nature by means of force or threats to directly attack the life or limb of that or of another person shall be punished by a prison sentence for a term from two to ten years.

(3) Where the offence set forth in paragraphs 1 or 2 of this Article was committed under a threat of revealing information about that or another person that would harm their honour or tarnish their reputation or by a threat of committing another grave wrong, the perpetrator shall be punished by a prison sentence for a term from one to eight years.

(4) Where an offence set forth in paragraphs 1, 2 or 3 of this Article results in a serious bodily injury of a person against whom the offence was committed, or where the offence was committed by several persons or in an especially cruel or especially degrading manner, or against a juvenile, or where the offence resulted in pregnancy, the perpetrator shall be punished by a prison sentence for a term from five to fifteen years.

(5) Where an offence set forth in paragraphs 1, 2 or 3 of this Article results in the death of the person against whom the offence was committed or where the offence was committed against a child, the perpetrator shall be punished by a prison sentence for a minimum term of ten years or a long-term prison.

Forced Sexual Intercourse with a Physically Helpless Person

Article 205

(1) Whoever has a forced sexual intercourse with another or an equal act taking advantage of that person's mental illness, arrested mental development, other mental alienation, physical helplessness or some other state of that person due to which he is not capable to put up resistance, shall be punished by a prison sentence for a term from two to ten years.

(2) Where the offence set forth in paragraph 1 of this Article resulted in infliction of a serious bodily injury upon the physically helpless person, or where the offence was committed by several persons or in an especially cruel or especially degrading manner, or against a juvenile, or where the act resulted in pregnancy, the perpetrator shall be punished by a prison sentence for a term from five to fifteen years.

(3) Where an offence set forth in paragraphs 1 and 2 of this Article results in the death of the person against whom the offence was committed or where the offence was committed against a child, the perpetrator shall be punished by a prison sentence for a minimum term of ten years or a long-term prison.

Assault of a Child by Penetration

Article 206

(1) Whoever commits assault of a child by penetration or other act of equivalent nature against a child shall be punished by a prison sentence for a term from five to fifteen years.

(2) Where the offence set forth in paragraph 1 of this Article results in a serious bodily injury of the child against whom the offence was committed, or where the offence was committed by several persons or where it results in pregnancy, the perpetrator shall be punished by a prison sentence for a minimum term of ten years.

(3) Where an offence set forth in paragraphs 1 and 2 of this Article results in the child’s death, the perpetrator shall be punished by a prison sentence for a minimum term of ten years or a long-term prison.

(4) The perpetrator of the offence set forth in paragraph 1 of this Article shall not be punished provided that there is no major difference between him and the child in terms of their mental and physical development.

Forced Sexual Intercourse by Abusing a Position of Authority

Article 207

(1) Whoever abuses his position to incite another person to engage in a forced sexual intercourse or other act of equivalent nature, where that party is in a subordinate or dependent position in relation to the perpetrator shall be punished by a prison sentence for a term from three months to three years.

(2) A teacher, preschool teacher, guardian, adoptive parent, parent, stepfather, stepmother, or another person who abuses his position of powers to commit a forced sexual intercourse or other act of equivalent nature with a juvenile entrusted to him for study, education or care shall be punished by a prison sentence for a term from three to twelve years.

(3) Where the offence set forth in paragraph 2 of this Article is committed against a child, the perpetrator shall be punished by a prison sentence for a minimum term of ten years.

(4) Where the offence set forth in paragraphs 1 to 3 of this Article results in pregnancy, the perpetrator shall be punished for the offence set forth in paragraph 1 of this Article by a prison sentence for a term from six months to five years; for the offence set forth in paragraph 2 by a prison sentence for a term from five to fifteen years, and for the offence set forth in paragraph 3 by a prison sentence for a term from three to fifteen years.

(5) Where the offence set forth in paragraph 3 of this Article resulted in the child’s death, the perpetrator shall be punished by a prison sentence for a minimum term of ten years or a long-term prison.

Pandering and Making Arrangements for a Sex Act

Article 209

(1) Whoever panders a minor in view of a forced sexual intercourse, another act of the same nature, or another sex act shall be punished by a prison sentence for a term from two to ten years.

(2) Whoever makes arrangements for another to engage in a forced sexual intercourse, another act of the same nature, or some other sex act with a minor shall be punished by a prison sentence for a term from three to fifteen years.

Pandering

Article 210

(1) Whoever solicits or instigates another to prostitution or participates in procuring one person to another for prostitution or who through the media and by other similar means promotes or advertises prostitution shall be punished by a prison sentence for a term from three months to two years.

(2) Where the offence set forth in paragraph 1 of this Article is committed against a minor, or where the offence was committed by several persons in an organised manner, the perpetrator shall be punished by a prison sentence for a term from two to fifteen years.

(3) The penalty set out in paragraph 2 of this Article shall also be imposed on whomever uses the sexual services of a minor.

(4) Pandering is, within the meaning of this Article, the use of persons for sexual activities whereby money or any other form of compensation or reward is given or promised as a payment for hiring such a person to take part in sexual activities, regardless of whether the payment, promise or reward are given to that person or to a third party.

Child Pornography

Article 211

(1) Whoever sells, gifts, shows or makes accessible to a child by publicly exhibiting, via information and communication technologies or otherwise photographs, texts, audio-visual material or other items of pornographic content or who shows the child a pornographic performance shall be punished by a prison sentence for a term from two to ten years.

(2) Whoever induces or exploits a child to produce photos, audio-visual material or other items of pornographic content (child pornography) or for a pornographic performance shall be punished by a prison sentence for a term from three to ten years.

(3) The penalty set out in paragraph 2 of this Article shall be imposed on whomever unauthorisedly records, produces, offers, makes accessible, distributes, imports, exports, procures for himself or for another, sells, gives, shows, publicly displays or possesses photos, audio-visual material or other items of pornographic content (child pornography).

(4) Where the offence set forth in paragraphs 1 and 2 of this Article is committed against a juvenile, the perpetrator shall be punished by a prison sentence for a term from one to eight years.

(5) Where the offence set forth in paragraph 2 of this Article is committed by means of force or threats, the perpetrator shall be punished by a prison sentence for a term from three to fifteen years.

(6) The objects set out in paragraphs 1 to 3 of this Article shall be confiscated and destroyed.

(7) Child pornography, within the meaning of this Article, is deemed to be any material that visually depicts a child engaged in real or simulated sexually explicit conduct and any depiction of a child's sexual organs for primarily sexual purposes.

Incitement of a Minor to Observe Criminal Offences against Sexual Freedom

Article 211a

(1) Whoever incites a child to observe rape, forced sexual intercourse or another act of equivalent nature, or other unlawful sex act shall be punished by a prison sentence for a term from one to five years.

(2) Where the offence set forth in paragraph 1 of this Article is committed against a juvenile by means of force or threats, the perpetrator shall be punished by a prison sentence for a term from two to eight years.

(3) Where the offence set forth in paragraph 1 of this Article is committed by means of force or threats, the perpetrator shall be punished by a prison sentence for a term from three to ten years.

Luring a Child for Criminal Offences against Sexual Freedom

Article 211b

An adult who with the intention to commit criminal offences set forth in Article 204, paragraph 5, Article 205, paragraph 3, Article 206, Article 207, paragraph 3, Article 208, paragraph 1, Article 209, Article 210, paragraph 1, and Article 211, paragraphs 1 and 4 of this Code by using information-communication technologies or otherwise arranges a meeting with a child or takes steps towards arranging such a meeting, shall be punished by a prison sentence for a minimum term of ten years.

Bigamy

Article 213

(1) Whoever concludes a new marriage while being already married shall be punished by a fine or a prison sentence for a term not exceeding two years.

(2) The penalty set out in paragraph 1 of this Article shall also be imposed on whomever marries a person knowing that person to be married.

Concluding a Void Marriage

Article 214

(1) Whoever, when concluding a marriage, conceals from the other party a fact which makes the marriage void or who misleads or keeps the other party mislead regarding that fact shall be punished by a prison sentence for a term from three months to three years.

(2) Whoever coerces another person, by means of force or threats, into concluding a marriage shall be punished by a prison sentence for a term from six months to five years.

(3) Whoever incites another to go abroad or takes another person abroad with the intention to commit the criminal offence set forth in paragraph 2 of this Article, shall be punished by a prison sentence for a term from three months to three years.

(4) Prosecution for the offence set forth in paragraphs 1 and 2 of this Article may be undertaken only if the marriage thus concluded has been declared void.

Enabling the Conclusion of a Forbidden Marriage

Article 215

Where a public official authorized to conclude marriages knowingly allows while performing his duties the conclusion of a marriage which is prohibited or void under law, he shall be punished by a prison sentence for a term from three months to three years.

Customary Marriage with a Juvenile

Article 216

(1) An adult person who cohabitates in a customary marriage with a juvenile shall be punished by a prison sentence for a term from three months to three years.

(2) A parent, adoptive parent or a guardian who allows a juvenile to cohabitate in a customary marriage with another or instigates him into such marriage shall be punished by the penalty set out in paragraph 1 of this Article.

(3) Where the offence set forth in paragraph 2 of this Article is committed by means of force, threats or out of greed, the perpetrator shall be punished by a prison sentence for a term from six months to five years.

(4) Where marriage is concluded, prosecution shall not be instituted, and where it has been instituted, it shall be discontinued.

Abduction of a Minor

Article 217

(1) Whoever unlawfully takes possession of or abducts a minor from his parent, adoptive parent, guardian, or other person or institution entrusted with the care of the minor or who prevents enforcement of a decision entrusting the care of a minor to a specific individual shall be punished by a fine or a prison sentence for a term not exceeding two years.

(2) Whoever prevents enforcement of a decision made by a competent authority stipulating the manner in which the minor will maintain a personal relationship with his parent or other relative shall be punished by a fine or a prison sentence for a term not exceeding one year.

(3) Where the offence set forth in paragraph 1 of this Article was committed out of greed or other base motives or where it resulted in a serious threat to the health, upbringing or education of the minor the perpetrator shall be punished by a prison sentence for a term from three months to five years.

(4) Where a perpetrator of the offences set forth in paragraphs 1 and 3 of this Article voluntarily surrenders a minor to a person or institution entrusted with the care of the minor or allows for enforcement of the decision giving custody of the minor, he may be released from punishment by the court.

(5) Where the court imposes a suspended sentence for the offence set forth in paragraphs 1 to 3 of this Article, the court may order the perpetrator to surrender the minor within a specified term to the person or institution entrusted with the care of the minor or to enable enforcement of the decision giving custody of the minor to a person or institution or of the decision stipulating the manner in which the minor will maintain personal relationships with his parent or another relative.

Neglecting or Ill-treating a Minor

Article 219

(1) A parent, adoptive parent, guardian or other person who grossly neglects his duty to provide care and education to a minor for whom he has to take care of shall be punished by a prison sentence for a term not exceeding three years.

(2) A parent, adoptive parent, guardian or other person who abuses a minor or forces him into excessive labour or labour not appropriate to his age or to beggary, or who instigates him out of greed to perform other acts that are detrimental to his development shall be punished by a prison sentence for a term from three months to five years.

Domestic Violence

Article 220

(1) Whoever uses gross violence to violate bodily or mental integrity of his family member or member of a family community shall be punished by a fine or a prison sentence for a term not exceeding two years.

(2) Where the offence set forth in paragraph 1 of this Article was committed by means of weapons, dangerous tools or other instruments suitable for inflicting serious bodily injury or seriously impairing one’s health the perpetrator shall be punished by a prison sentence for a term from three months to three years.

(3) Where an offence set forth in paragraphs 1 and 2 of this Article resulted in a serious bodily injury or serious impairment of health or where they are committed against a minor, the perpetrator shall be punished by a prison sentence for a term from one to five years.

(4) Where an offence set forth in paragraphs 1, 2 and 3 of this Article results in the death of a member of a family or family community, the perpetrator shall be punished by a prison sentence for a term from three to twelve years.

(5) Whoever violates the protection measures against domestic violence imposed on him by court or another state authority under law shall be punished by a fine or a prison sentence for a term not exceeding one year.

Incest

Article 223

 (1) An adult who performs a sexual intercourse or another act of equivalent nature over a minor direct blood relative or over a minor brother or sister

shall be punished by a prison sentence for a minimum term of five years.

(2) Where the offence set forth in paragraph 1 of this Article is committed against a child,

the perpetrator shall be punished by a prison sentence for a minimum term of ten years.

Unauthorized Use of Copyrighted Works or Objects of Related Rights

Article 234

(1) Whoever unauthorisedly publicizes, records, duplicates or otherwise communicates to the public or makes available, in whole or in part, a copyrighted work, performance, phonogram, videogram, show or database, shall be punished by a prison sentence for a term not exceeding three years.

(2) The penalty set out in paragraph 1 of this Article shall also be imposed on whomever releases into circulation, or with the intention of releasing into circulation, possesses copies of copyrighted works, performances, phonograms, videograms, shows or databases that have been unauthorisedly duplicated or released into circulation.

(3) Where the offence set forth in paragraphs 1 and 2 of this Article was committed with the intention to acquire material benefit for himself or another, the perpetrator shall be punished by a prison sentence for a term from three months to five years.

(4) Objects of the criminal offence and items used for or intended for the commission of a criminal offence set forth in paragraphs 1 and 2 of this Article shall be confiscated and objects of the criminal offence shall be destroyed.

Aggravated Theft

Article 240

(1) The perpetrator of theft (Article 239) shall be punished by a prison sentence for a term from one to eight years where the theft was committed:

1) by unlawfully breaking and entering into locked buildings, rooms, cash desks, cabinets or other locked areas, or by overcoming of other major obstacles;

2) by several persons who conspired to commit thefts;

3) in a particularly dangerous or particularly impudent manner;

4) by a person who had on him a weapon or dangerous tool for attack or defence;

5) during a fire, flood, earthquake or another accident;

6) by taking advantage of physical helplessness or other distress of another person.

(2) The penalty set out in paragraph 1 of this Article shall also be imposed on a person who commits theft, where the value of stolen articles exceeds three thousand euro or where a stolen article constitutes a cultural good or a natural asset.

(3) Where the value of stolen property exceeds thirty thousand euro, the perpetrator shall be punished by a prison sentence for a term from two to ten years.

Robbery

Article 242

(1) Whoever exerts force against another or threats of imminent attack on the life or limb of another to deprive another of their movable article with the intention to obtain for himself or for another unlawful material benefit through its appropriation shall be punished by a prison sentence for a term from two to ten years.

(2) Where the value of articles deprived exceeds the amount of three thousand euro, the perpetrator shall be punished by a prison sentence for a term from two to twelve years.

(3) Where the value of articles deprived exceeds the amount of thirty thousand euro the perpetrator shall be punished by a prison sentence for a term from three to fifteen years.

(4) Where the offence set forth in paragraphs 1 to 3 of this Article was committed by a group or where a serious bodily injury was inflicted on another with criminal intent the perpetrator shall be punished by a prison sentence for a term from three to fifteen years.

(5) Where during the commission of offence set forth in paragraphs 1 to 3 of this Article a person was killed with intent, the perpetrator shall be punished by a prison sentence for a minimum term of ten years or by a long-term prison sentence.

(6) Where the value of stolen property set out in paragraph 1 of this Article does not exceed the amount of one hundred and fifty euro, and the perpetrator intended to acquire small-scale material benefit, the perpetrator shall be punished by a prison sentence for a term of up to three years.

(7) An attempted offence set forth in paragraph 6 of this Article shall be subject to punishment.

Ill-Founded Getting and Use of Loans and Other Facilities

Article 245

(1) Whoever falsely represents or conceals facts to get for himself or another person a loan, subsidy or other facility, even though he does not meet the prescribed requirements therefor, shall be punished by a fine or a prison sentence for a term not exceeding three years.

(2) Whoever uses the gotten loan, subsidy or other facility for purposes other than the ones the loan, subsidy or other facility was granted for, shall be punished by a fine or a prison sentence for a term not exceeding two years.

(3) The penalty for the offences set forth in paragraphs 1 and 2 of this Article shall also be imposed on the responsible officer of a business organisation or entity engaged in commercial activity, where the loan, subsidy or other facility were obtained for the business organisation or other entity engaged in commercial activity or where they were not used by these entities for intended purposes.

Concealment

Article 256

(1) Whoever conceals, facilitates the disposal of, buys, accepts as security, or otherwise obtains property knowing that it was acquired through a criminal offence or does the same with the property obtained in a sale or exchange thereof, shall be punished by a fine or a prison sentence for a term not exceeding three years, provided that the penalty may not be higher than the penalty prescribed for the criminal offence through which that property was acquired.

(2) Whoever commits the offence set forth in paragraph 1 of this Article and who could have known or should have known that the property represents a benefit from criminal conduct shall be punished by a fine or a prison sentence for a term not exceeding one year.

(3) Where the perpetrator commits the criminal offences set forth in paragraph 1 of this Article on a regular basis, or where the offence was committed by several persons in an organised manner, or where the value of concealed articles exceeds thirty thousand euro, the perpetrator shall be punished by a prison sentence for a term from six months to five years.

Prosecution in Cases when the Offender has a Close Relationship with the Injured Party

Article 257

Where the criminal offences set forth in Articles 239, 240, 244, 248, 249, paragraphs 1 to 3, and 256 of this Code are committed against a spouse, a person with whom the offender lives with in a durable customary marriage, direct blood relative, brother or sister, adoptive parent or adopted child, or other persons with whom the offender lives in a joint household, prosecution shall be instituted by a private action.

Money Laundering

Article 268

(1) Whoever converts or transfers money or other property knowing them to be derived from criminal activity, for the purpose of concealing or disguising the origin of money or other property or who acquires, possesses or uses money or other property knowing at the time of receipt that they are derived from criminal activity, or who conceals or disguises facts on the nature, source, place of deposit, movement, disposal or ownership of money or of other property knowing they are derived from criminal activity shall be punished by a prison sentence for a term from six months to five years.

(2) The penalty set out in paragraph 1 of this Article shall be imposed on the perpetrator of the offence set forth in paragraph 1 of this Article who is at the same time the perpetrator or the accomplice in the criminal offence resulting in acquisition of the money or property set out in paragraph 1 of this Article or on whomever assists a perpetrator in view of avoiding his accountability for the offence committed, or undertakes actions, with the same objective, to conceal the origin of money or property set out in paragraph 1 of this Article.

(3) Where the amount of money or value of the property set out in paragraphs 1 and 2 of this Article exceeds forty thousand euro, the perpetrator shall be punished by a prison sentence for a term from one to ten years.

(4) Where the offence set forth in paragraphs 1 and 2 of this Article is committed by several persons who associated for the purpose of committing such offences, they shall be punished by a prison sentence for a term from three to twelve years.

(5) Whoever commits the offence set forth in paragraphs 1 and 2 of this Article and could have known or should have known that the money or property are derived from criminal activity shall be punished by a prison sentence for a term not exceeding three years.

(6) The money and property set out in paragraphs 1, 2 and 3 of this Article shall be confiscated.

(7) Property, within the meaning of this Article, shall imply property rights of every kind, whether tangible or intangible assets, movable or immovable things, securities or other documents evidencing title to or interest in such assets.

Unauthorized Use of a Trade Name

Article 271

Whoever, with the intention to deceive buyers or service users, uses someone else’s trade name, geographical indication of origin, trademark, proprietary mark, or special commodity mark, or enters particular features of these marks into his trade name, trademark, proprietary mark, or his special commodity mark, shall be punished by a fine or a prison sentence for a term not exceeding three years

Manipulation in Securities Markets or Other Financial Instruments Markets

Article 281a

(1) Whoever, with the intention to obtain material benefit for himself or another or cause damage to another, acts contrary to the regulations governing the securities market, by taking any of the following actions:

1) effects a transaction or enters a trading order which provides or may provide false or misleading information with respect to the supply, demand or price of securities or other financial instruments, or by means of which the person or conspiring persons maintain the price of one or several securities or of other financial instruments at an unrealistic level;

2) when effecting a transaction or entering a trading order, retains, increased, decreases, or causes changes to the market price of securities or other financial instruments by means of purchase or sale or fictitious transaction which involves no change in the beneficial ownership of such security or other financial instrument;

3) disseminates or conveys, through the media, internet or otherwise, false or misleading information that may lead one astray with respect to the securities or other financial instruments, knowing that such information is false or misleading and that it may lead astray the party using such information, shall be punished by a prison sentence for a term from six months to five years and by a fine.

(2) Where the offence set forth in paragraph 1 of this Article results in a material benefit exceeding thirty thousand euro, the perpetrator shall be punished by a prison sentence for a term from two to ten years and by a fine.

Illegal Removal of Human Organs or Body Parts

Article 293a

(1) Whoever, without a written consent, or agreement within the meaning of regulations governing transplantation of organs, removes an organ or a body part of a living or a deceased person, shall be punished by a prison sentence for a term from one to eight years.

(2) Whoever removes an organ or a body part of a living or deceased person outside of the framework of the national transplantation system or commits the removal violating the basic principles and rules laid down in regulations governing transplantation of organs, shall be punished by a prison sentence for a term from six months to five years.

(3) Whoever, in exchange for a removed organ or body part, offers or gives material or any other benefit shall be punished by a prison sentence for a term from six months to five years.

(4) Where an offence set forth in paragraphs 1 and 2 of this Article results in the death or serious impairment of health or where the offence was committed by several persons in an organised manner or through abuse of office or against a minor, the perpetrator shall be punished by a prison sentence for a term from five to fifteen years.

Illegal Transplantation of Body Parts

Article 294

(1) A doctor who, prior to performing a body part transplantation, fails to obtain a written consent from either the recipient or his parent, adoptive parent or guardian, where the recipient is a minor or a mentally incapacitated person, shall be punished by a prison sentence for a term from three months to three years.

(2) The penalty set out in paragraph 1 of this Article shall also be imposed on a responsible officer of a health care institution which is conducting removal or transplantation of human body parts or examining transplant compatibility, where the institution does not fulfil the prescribed requirements for such interventions.

Unlawful Removal of Body Parts for Transplantation

Article 295

(1) A doctor who removes a body part for transplantation from a live, adult, mentally healthy person who enjoys legal capacity, without previously obtaining a written consent of that person and who removes a body part of a live under-age person, who is mentally incapacitated or does not enjoy legal capacity, without previously obtaining a written consent of that person’s parent, adoptive parent or guardian, shall be punished by a prison sentence for a term from three months to four years.

(2) The penalty set out in paragraph 1 of this Article shall also be imposed on a doctor who removes for transplantation a body part from a deceased person whose death was not established in the manner and within a procedure prescribed by regulations governing transplantation of human body parts.

(3) A doctor who for the purpose of transplantation removes a body part from a deceased person who while still living expressly objected to organ removal in writing or who removes a body part from a deceased minor or mentally incapacitated person, without having obtained prior consent in writing from his parent, adoptive parent or guardian, shall be punished by a fine or a prison sentence for a term not exceeding one year.

(4) Whoever removes or transplants a human organ, tissue, cell, embryo, or foetus although he knew, could have known, or should have known that the donor received financial compensation or other benefit in return, shall be punished by a prison sentence for a term not exceeding three years.

Unauthorized Production, Possession and Distribution of Narcotic Drugs

Article 300

(1) Whoever unlawfully produces, processes, sells, or offers for sale, or who for the purpose of selling buys, possesses, or transfers, or acts as an intermediary in the selling or buying, or otherwise unlawfully releases into circulation substances proclaimed to be narcotic drugs or plants containing such substances, shall be punished by a prison sentence for a term from two to ten years.

(2) Whoever brings into Montenegro substances proclaimed to be narcotic drugs or plants containing such substances with the intention to commit the offences set forth in paragraph 1 of this Article, shall be punished by a prison sentence for a term from two to twelve years.

(3) Where the perpetrator of the offence set forth in paragraphs 1 and 2 of this Article organized a network of dealers and middlemen, he shall be punished by a prison sentence for a term from three to fifteen years.

(4) The penalty set out in paragraph 3 of this Article shall also be imposed on whomever sells, offers for sale or gives narcotic drugs free of charge for further release into circulation to a minor, mentally ill person, person suffering from a temporary mental alienation, person with a severe mental impairment or person undergoing drug addiction treatment, or who releases into circulation narcotic drug mixed with a substance which may lead to serious impairment of health, or who commits the offence set forth in paragraph 1 of this Article in an educational institution or in its immediate vicinity, or in an institution for criminal sanctions enforcement, in a public facility, or at a public event, or where the offence set forth in paragraphs 1 and 2 of this Article was committed by a public official, a physician, social worker, priest, teacher or preschool teacher by virtue of their position or on who exploits a minor for the commission of that offence.

(5) The perpetrator of the offence set forth in paragraphs 1 to 4 of this Article who reveals the name of his drug supplier may be released from punishment.

(6) Whoever unlawfully makes, acquires, possesses, transports or gives for use equipment, material or substances knowing they are intended for the production of narcotic drugs, shall be punished by a prison sentence for a term from six months to five years.

(7) Narcotic drugs and the means used for their production shall be confiscated and destroyed.

Facilitating the Use of Drugs

Article 301

(1) Whoever instigates another person to use narcotic drugs or who gives narcotic drugs to another for his use or that of another person, or who places premises at the disposal of another person for drug use, or otherwise facilitates another person's use of narcotic drugs, shall be punished by a prison sentence for a term from six months to five years.

(2) Where the offence set forth in paragraph 1 of this Article is committed against a minor, mentally ill person, person suffering from a temporary mental alienation, person with a severe mental impairment or a person undergoing drug addiction treatment or against a number of persons, or who commits such an offence in an educational institution or in its immediate vicinity, or in an institution for criminal sanctions enforcement or in a public facility or at a public event, or where the offence in question is committed by a public official, physician, social worker, priest, teacher or preschool teacher by virtue of their position, the perpetrator shall be punished by a prison sentence for a term from two to ten years.

(3) Narcotic drugs shall be confiscated and destroyed.

Killing and Torturing Animals and Destroying Their Habitat

Article 309

(1) Whoever, in violation of regulations, kills, hurts or tortures an animal, shall be punished by a fine or a prison sentence for a term not exceeding one year.

(2) Whoever kills or hurts animals that belong to specially protected animal species shall be punished by a prison sentence for a term from six months to five years.

(3) The penalty set out in paragraph 2 of this Article shall also be imposed on a person who seriously damages or destroys an animal habitat within the protected area.

(4) Whoever unauthorisedly possesses animals that belong to a specially protected animal species or takes samples of such species, shall be punished by a fine or a prison sentence for a term not exceeding one year.

Devastation of Forests

Article 323

(1) Whoever, in violation of regulations or orders of competent authorities, cuts or clears forests, or who damages trees or otherwise devastates forests or cuts down one or more trees in a park, row of trees or in some other place where tree cutting is prohibited, shall be punished by a fine or a prison sentence for a term not exceeding one year.

(2) Whoever commits the offence set forth in paragraph 1 of this Article in a protection forest, national park or some other special purpose forest shall be punished by a prison sentence for a term from three months to three years.

Timber Theft

Article 324

(1) Whoever, with the intention to steal, cuts one or more trees in a forest, park or a row of trees, where the volume of trees cut exceeds one cubic meter, shall be punished by a fine or a prison sentence for a term not exceeding one year.

(2) Where the offence set forth in paragraph 1 of this Article is committed with the intention to sell the felled trees, or if the volume of felled trees exceeds five cubic meters, or if the offence is committed in a protection forest, national park or other special purpose forest, the perpetrator shall be punished by a prison sentence for a term from three months to three years and by a fine.

(3) An attempted offence set forth in paragraphs 1 and 2 of this Article shall be subject to punishment.

Causing General Danger

Article 327

(1) Whoever causes danger to the life or limb of persons or property the value of which exceeds twenty thousand euro through causing fire, flood, explosion, by poison or poisonous gas, radioactive or other ionising radiation, electrical power, motor power or any other generally dangerous act or generally dangerous means, shall be punished by a prison sentence for a term from six months to five years.

(2) The penalty set out in paragraph 1 of this Article shall also be imposed on a public official or a responsible officer who fails to install the devices prescribed for protection against fires, floods, explosions, poisons or poisonous gases, radioactive or other ionising radiation, electric power or other hazardous agents, or fails to keep these devices in proper working condition, or in case of need, fails to use the equipment, or does not observe regulations or technical rules on safety measures at all, thereby causing danger to life or limb of persons or property the value of which exceeds twenty thousand euro.

(3) Where the offences set forth in paragraphs 1 and 2 of this Article are committed in a place where people have congregated in large numbers, the perpetrator shall be punished by a prison sentence for a term from one to six years.

(4) Where the offence set forth in paragraphs 1, 2 and 3 of this Article is committed through negligence, the perpetrator shall be punished by a prison sentence for a term not exceeding three years.

Destroying and Damaging Public Infrastructure

Article 328

(1) Whoever destroys, damages, alters or makes unusable or removes public infrastructure devices for water supply, heating, gas, electrical or other energy or telecommunications system devices or another public device or who obstructs their use, shall be punished by a fine or a prison sentence for a term not exceeding two years.

(2) Where the offence set forth in paragraph 1 of this Article resulted in a major disruption of their use, the perpetrator shall be punished by a prison sentence for a term from three months to five years.

(3) Where the offence set forth in paragraph 1 of this Article is committed through negligence, the perpetrator shall be punished by a fine or a prison sentence for a term not exceeding six months.

(4) Where the offence set forth in paragraph 2 of this Article is committed through negligence, the perpetrator shall be punished by a fine or a prison sentence for a term not exceeding two years.

Serious Offences against the General Safety

Article 338

(1) Where an offence set forth in Articles 327, paragraphs 1 to 3, 328, paragraphs 1 and 2, 329, paragraphs 1 and 2, 330, paragraph 1 and 333 of this Code resulted in a serious bodily injury of a person or property damage exceeding the amount of forty thousand euro, the perpetrator shall be punished by a prison sentence for a term from one to eight years.

(2) Where an offence set forth in Articles 327, paragraphs 1 to 3, 328, paragraphs 1 and 2, 329, paragraphs 1 and 2, 330, paragraph 1 and 333 of this Code resulted in the death of one or more persons, the perpetrator shall be punished by a prison sentence for a term from two to twelve years.

(3) Where an offence set forth in Articles 327, paragraph 4, 328, paragraphs 3 and 4, 329, paragraph 3 and 330, paragraph 2 of this Code resulted in a serious bodily injury of a person or property damage exceeding the amount of forty thousand euro, the perpetrator shall be punished by a prison sentence for a term not exceeding four years.

(4) Where an offence set forth in Articles 327, paragraph 4, 328, paragraphs 3 and 4, 329, paragraph 3 and 330, paragraph 2 of this Code resulted in the death of one or more persons, the perpetrator shall be punished by a prison sentence for a term from one to eight years.

Provoking Ethnic, Racial and Religious Hatred

Article 370

(1) Whoever publicly incites to violence or hatred towards a group or a member of a group defined by virtue of race, skin colour, religion, origin, nationality or ethnic affiliation shall be punished by a prison sentence for a term from six months to five years.

(2) The penalty set out in paragraph 1 of this Article shall also be imposed on whomever publicly approves, denies the existence, or significantly reduces the gravity of the crimes of genocide, crimes against humanity and war crimes committed against a group or a member of group by virtue of their race, skin colour, religion, origin, nationality or ethnic affiliation in a manner which can lead to violence or cause hatred against a group of persons or a member of such group, where such criminal offences have been determined by a final judgment of a court in Montenegro or of an international criminal tribunal.

(3) Where the offence set forth in paragraphs 1 and 2 of this Article was committed by coercion, ill-treatment, endangering of safety, exposure to mockery of national, ethnic or religious symbols, damaging property of another person, desecrating monuments, memorials or tombs, the perpetrator shall be punished by a prison sentence for a term from one to eight years.

(4) Whoever commits the offence set forth in paragraphs 1 to 3 of this Article by abuse of office or where such offences result in riots, violence or other severe consequences to the joint life of nations, national minorities or ethnic groups living in Montenegro, shall be punished for the offence set forth in paragraph1 of this Article by a prison sentence for a term from one to eight years and for the offence set forth in paragraphs 2 and 3 by a prison sentence for a term from two to ten years.

Failing to Report Crime Preparations

Article 385

(1) Whoever is aware of preparations for a criminal offence punishable by law by a five-year prison sentence of a more severe penalty, but fails to report it at a time such an offence could have still been prevented, where the offence is eventually attempted or committed, shall be punished by a fine or a prison sentence for a term not exceeding one year.

(2) Where preparations for a criminal offence punishable by law by a long-term prison sentence are not reported, the perpetrator shall be punished by a prison sentence for a term from three months to three years.

(3) The spouse of the perpetrator, his partner in a durable customary marriage, direct blood relative, brother or sister, adoptive parent or adopted child, as well as the spouse of one of the above mentioned persons, or a person living with one of such persons in a durable customary marriage shall not be punished for the offence set forth in paragraph 1 of this Article.

Failing to Report Criminal Offences and Offenders

Article 386

(1) Whoever knows that a person committed a criminal offence punishable by law by a long-term prison sentence or who knows that such a criminal offence was committed but fails to report it before such criminal offence and the perpetrator are detected, shall be punished by a prison sentence for a term not exceeding two years.

(2) The penalty set out in paragraph 1 of this Article shall also be imposed on a public official or responsible officer who knowingly fails to report a crime he has been informed about in the performance of his duty, where the criminal offence is punishable by law by a five-year prison sentence or a more severe penalty.

(3) The spouse of the perpetrator, his partner in a durable customary marriage, direct blood relative, brother or sister, adoptive parent or adopted child, as well as the spouse of one of the above mentioned persons, or a person living with one of such persons in a durable customary marriage, as well as the offender's defence counsel, physician or confessor shall not be punished for failing to report the criminal offence or the offender set forth in paragraphs 1 and 2 of this Article.

Assisting an Offender after the Crime

Article 387

(1) Whoever harbours an offender or assists an offender by hiding the means or traces of an offence, or otherwise assists him to avoid detection, and who harbours a sentenced person or takes other measures with the intention to avoid the enforcement of an imposed penalty, security measure or correctional measures of referral to a correctional facility or reformatory school shall be punished by a fine or a prison sentence for a term not exceeding two years.

(2) Whoever assists the perpetrator of an offence punishable under law by a prison sentence exceeding five years shall be punished by a prison sentence for a term from three months to five years.

(3) Whoever assists the perpetrator of an offence punishable under law by a long-term prison sentence shall be punished by a prison sentence for a term from one to eight years.

(4) The penalty for the offence set forth in paragraph 1 of this Article may not be more severe in terms of its type or duration than the penalty prescribed for the criminal offence committed by the person who received assistance.

(5) The penalty for offences set forth in paragraphs 1 to 3 of this Article shall not be imposed on the spouse of the offender or his partner in a durable customary marriage, direct blood relative, brother or sister, adoptive parent or adopted child, neither on the spouse of one of the foregoing persons, or a person living with any of such persons in a durable customary marriage.

Causing Panic and Disorder

Article 398

(1) Whoever causes panic by disclosing or disseminating false news or allegations or seriously disrupts public law and order or thwarts or hampers to a significant extent the enforcement of decisions and measures of state authorities or organisations exercising public powers, shall be punished by a fine or a prison sentence for a term not exceeding one year.

(2) Where the offence set forth in paragraph 1 of this Article is committed using the media or other means of public information or similar means or at a public meeting, the perpetrator shall be punished by a prison sentence for a term not exceeding three years.

Unlawful Possession of Weapons and Explosive Substances

Article 403

(1) Whoever manufactures, sells, procures, exchanges, carries or possesses firearms, ammunition or explosive substances without authorization shall be punished by a prison sentence for a term from three months to three years.

(2) Whoever, without authorisation, possesses, carries, manufactures, repairs, processes, sells, procures, exchanges, transports or otherwise releases into circulation firearms, ammunition, explosive substances, fragmentation or gas weapons whose possession is prohibited to the citizens shall be punished by a prison sentence for a term from six months to five years.

(3) Where the object of the offences set forth in paragraphs 1 and 2 of this Article is a larger quantity of weapons or instruments or where it concerns a weapon or other instruments of large destructive power, the perpetrator shall be punished by a prison sentence for a term from one to eight years.

Instigation to Authenticate False Content

Article 415

(1) Whoever misleads a competent authority to authenticate in a public document, written record or register any false information that may be used as evidence in legal transactions shall be punished by a prison sentence for a term from three months to five years.

(2) The penalty set out in paragraph 1 of this Article shall also be imposed on whomever uses such a document, written record or register knowing them to be false.

Failure to Undertake Measures to Prevent Criminal Offences against Humanity and Other Values Protected under International Law

Article 440

(1) A military commander or a person effectively performing that office or a superior civilian who knowing that the forces under his command or control are preparing or have commenced the commission of a criminal offence set forth in Articles 426 to 430, Article 432, Articles 434 to 437 and Article 439 of this Code fails to take the necessary measures that he could have taken and was obliged to take for the prevention of commission of the offences and thereby causes actual commission of such an offence, shall be punished by a prison sentence for a term from two to ten years.

(2) Where the offence set forth in paragraph 1 of this Article is committed through negligence, the perpetrator shall be punished by a prison sentence for a term not exceeding three years.

Racial and Other Forms of Discrimination

Article 443

(1) Whoever, due to national or ethnic affiliation, race or religion or due to the lack thereof, or due to the differences in terms of political or any other belief, sex, language, education, social position, social origin, sexual orientation, gender identity, disability, financial standing or any other personal characteristic violates fundamental human rights and freedoms guaranteed by generally recognized rules of international law and international treaties ratified by Montenegro shall be punished by a prison sentence for a term from six months to five years.

(2) The penalty set out in paragraph 1 of this Article shall also be imposed on whomever persecutes organisations or individuals for their efforts to ensure equality of people.

(3) Whoever spreads ideas of superiority of one race over another, or propagates hatred or intolerance on grounds of race, sex, disability, sexual orientation, gender identity or other personal characteristics, or who incites to racial or other forms of discrimination shall be punished by a prison sentence for a term from three months to three years.

(4) Whoever commits the offence set forth in paragraphs 1 to 3 of this Article by abuse of office or where such offences lead to riots or violence shall be punished for the offence set forth in paragraphs 1 and 2 of this Article by a prison sentence for a term from one to eight years, and for the offence set forth in paragraph 3 of this Article by a prison sentence for a term from six months to five years.

Trafficking in Persons

Article 444

(1) Whoever, by means of the threat or use of force, fraud or deception, of the abuse of power, trust, dependence, a position of vulnerability, withholding, taking away or destroying personal documents, counterfeiting personal documents, procuring or manufacturing of counterfeit documents or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, commits any of the following: recruits, transports, transfers, surrenders, sells, buys, negotiates the sale of, harbours or receipts another person for the purpose of exploitation of his labour, forced labour, submission to servitude, slavery or practices similar to slavery, commission of criminal activity, prostitution or other forms of sexual exploitation, beggary, exploitation for pornographic purposes, for conclusion of an unlawful marriage, removal of organs for transplantation, or for exploitation in armed conflicts shall be punished by a prison sentence for a term from one to ten years.

(2) The offence set forth in paragraph 1 of this Article shall be deemed committed against a minor even where the perpetrator did not use force, threat or any other of the foregoing methods of commission.

(3) Where the offence set forth in paragraph 1 of this Article is committed against a minor, or where the offence set forth in paragraph 1 of this Article is committed by a public official while discharging his official duty or where the life of one or more persons is endangered with criminal intent, the perpetrator shall be punished by a prison sentence for a minimum term of three years.

(4) Where the offence set forth in paragraphs 1 to 3 of this Article resulted in a serious bodily injury of a person, the perpetrator shall be punished by a prison sentence for a term from one to twelve years.

(5) Where the offence set forth in paragraphs 1 and 3 of this Article results in the death of one or more persons, the perpetrator shall be punished by a prison sentence for a minimum term of ten years.

(6) Whoever commits the criminal offence set forth in paragraphs 1 to 3 of this Article on a regular basis, or where the offence was committed in an organised manner by several persons, shall be punished by a prison sentence for a minimum term of ten years.

(7) Whoever uses the services of a person knowing that the person was the subject of the offence set forth in paragraph 1 of this Article shall be punished by a prison sentence for a term from six months to five years.

(8) Where the offence set forth in paragraph 7 of this Article is committed against a minor, the perpetrator shall be punished by a prison sentence for a term from three to fifteen years.

(9) The consent of victim who was the subject of the offence set forth in paragraphs 1 to 3 of this Article shall have no impact on the qualification of that criminal offence.

Trafficking in Minors for Adoption

Article 445

(1) Whoever abducts a minor for adoption contrary to valid regulations or whoever adopts such a person or mediates in such an adoption or whoever for that purpose buys, sells or surrenders another person who has not reached the age of fourteen or who transports, provides accommodation for or conceals such a person shall be punished by a prison sentence for a term from one to five years.

(2) Whoever commits the activity set forth in paragraph 1 of this Article on a regular basis, or where the offence was committed in an organised manner by several persons, shall be punished by a prison sentence for a minimum term of three years.

Submission to Slavery and Transportation of Persons Held in Slavery

Article 446

(1) Whoever, in violation of rules of international law, places another into slavery or other similar position or keeps him in such a position, buys, sells, surrenders to another or negotiates the buying, selling or surrendering of such person or who incites another person to sell his own freedom or the freedom of his dependants or care-receivers shall be punished by a prison sentence for a term from one to ten years.

(2) Whoever transports persons held in slavery or similar position from one country to another shall be punished by a prison sentence for a term from six months to five years.

(3) Whoever commits the offence set forth in paragraphs 1 and 2 of this Article against a minor shall be punished by a prison sentence for a term from five to fifteen years.