

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: *Fourth Cycle, 43rd Session*

MONTENEGRO

I. BACKGROUND INFORMATION

Montenegro restored its independence and became a UN member in 2006 and succeeded to all UN treaties ratified by former Yugoslavia. This included the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*), as well as to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*). In 2007, Montenegro joined the Council of Europe and signed the *2006 Convention on the Avoidance of Statelessness in relation to State Succession* and the *1997 European Convention on Nationality* (with reservation on Article 16). In December 2013, Montenegro acceded to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

Montenegro has been an EU candidate country since November 2010. Although a front-runner in the EU accession process, with national human rights guarantees generally aligned, additional work is needed to strengthen the institutional capacity, including the effective implementation of policies, legislation and improved accountability, oversight, and coordination.

According to the Government's data, at the end of July 2022 there were 154 refugees from former Yugoslavia in need of a regular legal status in Montenegro and 908 refugees from former Yugoslavia in need of housing.

Out of 16,727 asylum applications registered in Montenegro since 2006, 105 persons have been granted international protection, while most applications are otherwise closed, as asylum seekers left the country before the decision is made.

At the end of July 2022, UNHCR was aware of 459 persons at risk of statelessness and nine persons who had been officially granted stateless status in Montenegro. The legislative and administrative changes undertaken since 2015 and good cooperation with countries in the region have significantly improved birth registration opportunities, primarily for persons born in Montenegro.

On 11 March 2022, Montenegro activated Temporary Protection (TP) for Ukrainian arrivals for a period of one year. Since 24 February, more than 58,000 Ukrainians entered Montenegro, of whom 24,482 were believed to be in the country at the end of July, which is 4.4% of the overall population of Montenegro.

Since the national elections in 2020, Montenegro has experienced a period of political instability, marked by tensions and mistrust between political actors. Incidents of ethnically and religiously motivated attacks, hate crimes and hate speech have continued to rise, including against refugees from former Yugoslavia.

As a result of the political instability, as of September 2022, many important positions in the judicial system remained unfilled, significantly weakening the capacity and power of the judiciary. Of particular importance to UNHCR, the Administrative Court, which adjudicates asylum appeals at the final instance, is also without a president and is currently functioning with a reduced number of judges.

In 2020, the GDP of Montenegro dropped by 12,4% due to the COVID-19 pandemic, among the highest declines in Europe. The negative trend has persisted and continues to impact the well-being of UNHCR's persons of concern.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 3rd cycle UPR recommendation no.105.144 “Introduce into law a mechanism to expedite the determination of statelessness (Namibia)”

Through the 2018 *Law on Foreigners*, Montenegro introduced a statelessness determination procedure (SDP) in its legal system. As of mid-2022, 9 persons (out of 29 applicants) have been recognized as stateless through this procedure. However, concerns remain with respect to several procedural shortcomings as well as on the lack of access to basic rights for those who initiated the SDP and those who have been granted stateless status.

Linked to 3rd cycle UPR recommendation no. 106.5: “Strengthen its efforts to promote equality and fight discrimination against members of national and ethnic minorities, refugees and displaced persons, including persons of Roma, Ashkali and Egyptian origin, persons with disabilities, and other marginalized persons and groups, particularly in relation to their access to employment, social security, housing, health care and education (Ecuador)”

Konik camp, which hosted Roma and Egyptians displaced from Kosovo¹, was closed in December 2018, when the final 51 families (295 persons) moved into apartments constructed through the Regional Housing Program (RHP). Back in November 2017, 120 families with 667 persons moved in the apartments constructed through the same Program. Prior to that, a total of 48 families from so-called Konik camp 2 moved into apartments constructed through EU Instrument for Pre-Accession Assistance (IPA) funds.

Under the RHP, eight housing projects in Montenegro have been approved, out of which five projects have been completed (beneficiaries moved in) and three are still in the implementation phase. After completion of those projects, it is estimated that, out of the estimated 908 persons, 31 refugee families/110 persons would still be left without a durable housing solution.

Linked to 3rd cycle UPR recommendation no. 105.143: “Strengthen efforts to address the plight of refugees by providing durable solutions (Philippines)”

In the period June 2006 - end July 2022, 105 persons have been granted international protection (refugee status or subsidiary protection), of whom 47 persons reside in Montenegro, while others have left the country seeking better integration prospects in Western Europe. Although Montenegro has made significant progress in establishing and developing the integration system, there is a need for an increased structural focus, in particular through improvement of the education sector, language learning and diploma recognition, to enable easier employment of these persons.

Linked to 3rd cycle UPR recommendation no.106.15 “Facilitate the processing and obtaining of necessary documentation, such as civil registration papers, for the thousands of stateless persons in the country (Philippines)”

In the 2019 High Level Segment on Statelessness event² Montenegro pledged to continue with implementation of simplified procedures for obtaining identification documents, both at the national level and through cooperation with the respective countries of origin. While the COVID-19 restrictions significantly slowed down the administrative procedures and

¹ References to Kosovo shall be understood to be in the context of the Security Council Resolution 1244 (1999).

² See <https://www.unhcr.org/ibelong/high-level-segment-statelessness/>

cooperation between countries in the last two years, UNHCR recorded the efforts of line authorities in the area of statelessness, leading to the reduction of persons at risk of statelessness to less than 500.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Right to housing

Linked to 3rd cycle UPR recommendation no. 106.5: “Strengthen its efforts to promote equality and fight discrimination against members of national and ethnic minorities, refugees and displaced persons, including persons of Roma, Ashkali and Egyptian origin, persons with disabilities, and other marginalized persons and groups, particularly in relation to their access to employment, social security, housing, health care and education (Ecuador)”

Montenegro has made significant progress in the implementation of the Regional Housing Programme. Thanks to the RHP, all collective accommodation facilities, Konik camp included, have been closed. As the RHP ends after June 2023, Montenegro will have to rely on its own capacities or to generate more donor funds to deal with the housing needs of the most vulnerable population. In that regard, it is worth mentioning that the existing *Law on Social Housing* recognizes stateless persons as beneficiaries, under Article 3(3) and the former Yugoslavia refugees in Article 4 of the law.

Recommendations:

UNHCR recommends that the Government of Montenegro:

- a) Amend the *Law on Social Housing* to include persons granted international protection as beneficiaries, in addition to the ex-Yugoslavian refugees and stateless persons, on equal terms with the citizens of Montenegro.

Issue 2: Refugees and asylum-seekers

Linked to 3rd cycle UPR recommendation no. 105.143: “Strengthen efforts to address the plight of refugees by providing durable solutions (Philippines)”

Refugee children are being enrolled to school as per their calendar age. The certificates from prior education are not required. This ensures access to education for refugee children without impediments resulting from provision and recognition of prior issued academic documents. However, there is no consistent and systematic support to refugee children in learning the Montenegrin language, catching up with school curricula, or adapting to the new environment.

Language learning for adults is organized and provided by the Ministry of Education at basic and advanced levels. However, refugees do not seem to be motivated to pursue the language classes, explaining that the language course does not equip them to have even a simple conversation. The licenced language service providers are available only in a few municipalities, which also limits the availability of the language course. The teachers have no specific skills in teaching the Montenegrin language without having a common language with the students.

Diploma recognition is possible for refugees, but the required documents from their country of origin are often not available.

Recommendations:

UNHCR recommends that the Government of Montenegro:

- a) Assist schools and teachers in providing consistent support to refugee children in learning the language, catching up with the school curricula and adapting to the school environment;
- b) Make language courses available, if not in every municipality, then regionally, to ensure that all refugees have access to language classes and ensure that the language learning is available both at basic and more advanced level;
- c) Build the capacities of language teachers in teaching the language to the students without having a common language and in equipping the students for everyday life conversations.
- d) Ensure that the procedure for the recognition of diploma for foreigners granted international protection in Montenegro foresees that some documents from the country of origin may be missing and that this should not prevent them from having their education recognised.

Issue 3: Causes of statelessness addressed and protection of stateless persons strengthened

Linked to 3rd cycle UPR recommendations no.105.144 “Introduce into law a mechanism to expedite the determination of statelessness (Namibia)” and no.106.15 “Facilitate the processing and obtaining of necessary documentation, such as civil registration papers, for the thousands of stateless persons in the country (Philippines)”

While the issue of birth registration has been largely addressed through the establishment of the 2015 judicial Procedure for Determination of Date and Place of Birth of Persons, related to persons born outside of the health care system, and 2019 practice for birth registration of children abandoned by their mothers or whose mothers are without identity documents, there is still a need for a close follow up of this issue, to secure that all new cases are timely registered in the birth registry. Of primary concern is the lack of capacity of line institutions to implement legislative changes. The cross regional dimension of the problem and the need for cooperation with other countries in the region brings additional complexity to the issue. In addition, the lack of awareness of the importance of birth and citizenship registration is still present in the affected communities, particularly among the Roma and Egyptians.

As noted above, the lack of access to basic rights for those who have initiated a SDP, and those who have been granted stateless status, remains an area of concern. In 2021, in cooperation with UNHCR, Montenegro started drafting relevant amendments to the SDP, with the aim of adopting them by the end of June 2023. These amendments are expected to enable Montenegro to grant stateless persons the rights to which they are entitled in line with the *1954 Convention*.

UNHCR remains the only free legal aid provider as the national Law on Free Legal Aid foresees state funded free legal aid for judicial procedures only, while the birth registration procedure and the SDP are administrative procedures.

Recommendations:

UNHCR recommends that the Government of Montenegro:

- a) Continue strengthening the capacity of national institutions, in particular at the local level, to implement legislative and administrative changes in the area of birth registration, for persons born in Montenegro.
- b) Continue the implementation of simplified procedures for obtaining identification documents, both at the national level and through cooperation with the respective countries of origin, to secure the resolution of the legal status of all undocumented persons, including remaining refugees from former Yugoslavia;
- c) Amend the statelessness determination procedure to enhance procedural rights and ensure access to socio-economic rights for persons in the statelessness determination procedure and persons granted stateless status; and,

- d) Amend the Law on Free Legal Aid to include judicial procedures for the determination of date and place of birth and statelessness determination procedures in the scope of the state funded free legal aid scheme.

Additional protection challenges

Issue 4: Fair and efficient asylum procedures

The asylum environment of Montenegro is characterized both by a significant number of people making the initial step in seeking asylum, through the declaration of the asylum intention, and by a large number of people abandoning to lodge asylum applications by onward movements and/or also by those who do not wait to complete the RSD procedures after lodging asylum claim. With the start of implementation of the new asylum law in 2018, the expression of an intention to seek asylum has been established as a binding step in the asylum procedure. Although the asylum law foresees that the intention to seek asylum can be expressed at any police station, at the border, or in the accommodation centre for asylum-seekers, in practice, asylum-seekers were able to express intention only in the Transit Centre Bozaj. This center is located some 20km from capital Podgorica, close to the border with Albania. Since February 2022, the registration of people intending to seek asylum has been possible at any police station, except in Podgorica, where asylum-seekers are still instructed to go to the transit center in Bozaj.

Since mid-2021, the Department of Foreign Affairs (DfA) has made significant efforts to reduce the backlog of asylum applications and respect the regular 6-months deadline for issuing a decision, resulting in the increase of recognitions and RSD decisions issued *in meritum*. However, the DfA still needs to improve internal case management procedures, as well as capacities to conduct specific procedures such as: Country of Origin Information (CoI) research, establishing material elements of the claim, family reunification procedures, accelerated procedures for manifestly founded/unfounded applications, the use of the safe country of origin principle/safe third country concept, etc.

In September 2021 Montenegro adopted the new 2021-2025 Strategy on Migration and Reintegration of Returnees, setting benchmarks for work with asylum-seekers.

Recommendations:

UNHCR recommends that the Government of Montenegro:

- a) Ensure that a declaration of intent to apply for asylum can be submitted in any police station, at the border, or in the accommodation centre for asylum-seekers, as foreseen by the national asylum law;
- b) Strengthen internal case management procedures of the first instance asylum authorities and the capacities of staff to implement specific asylum procedures;
- c) Ensure full implementation of the 2021-2025 Strategy on Migration and Reintegration of Returnees; and,
- d) Amend the Law on Free Legal Aid to include refugee status determination procedures within the scope of the state funded free legal aid scheme.

Issue 5: Ukrainian situation

Between 24 Feb 2022 and 15 Aug 2022, nearly 58,000 people from Ukraine fled to Montenegro. At the end of August 2022, Montenegro records approximately 24,000 Ukrainians, which is some 4% of its total population.

On 11 March 2022, the government activated the Temporary Protection (TP) for Ukrainians. The regime is established to allow Ukrainians to submit requests for TP in the municipality of their residence. Some 6,000 of them applied for TP in Montenegro, while the other 18,000 regulated residence in Montenegro through other statuses, such as touristic residence, temporary residence based on the possession of property, etc. By August 2022, some 69%

of TP applications have been processed by the Ministry of the Interior.

With the activation of TP for Ukrainians, the Government decided to establish a separate registration and reception mechanism and infrastructure, so as not to burden the existing asylum system. Given the limited capacities, political instability hampering inter-ministerial coordination, and unclear perspectives of the caseload and their needs, the authorities are yet to establish an efficient mechanism for Ukrainians to access certain rights. As of April 2022, in addition to no state-provided accommodation facilities for this population, access to many rights are subject to technical arrangements that are yet to be established, including the systematic allocation of a Personal Identification Number (PIN).

Following the issuance of TP, an applicant needs to apply for a PIN, in order to be able to access their associated rights. Problems with the issuance of a PIN, as well as some administrative and legal barriers, prevent TP holders from accessing their rights, most notably access to the labour market and health care.

In April 2022, the Government established a Coordination Board, tasked with coordinating the response in the country across various actors and sectors for the Ukrainians. UNHCR is a member of the Coordination Body.

A total of 31% of the Ukrainian arrivals are children. During academic year 2021/2022, schools reported an increasing enrolment interest from children from Ukraine (56% increase in the numbers of Ukrainian children enrolled compared to the previous school year), as well as those from Russia and Belarus. This obviously puts an additional burden on the educational system of Montenegro. The Ministry of Education is undertaking activities to ensure that educational institutions have the capacity to absorb the increased number of pupils.

The Government has launched a public call to provide the facilities for accommodation for TP holders. The process of the evaluation of the bidders is ongoing. In the meantime, the Asylum Centre in Spuz remains as an interim solution for the accommodation of Ukrainians. Currently, many Ukrainians are self-reliant and rent apartments on their own.

Recommendations:

UNHCR recommends that the Government of Montenegro:

- a) Enhance the efficiency of the Temporary Protection registration procedure for all Ukrainians who apply for Temporary Protection in Montenegro;
- b) Alleviate obstacles to accessing the right to work, health care and education for Temporary Protection holders in Montenegro; and,
- c) Provide sufficient and adequate reception capacities for Temporary Protection holders.

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