



Embassy of Montenegro

Brussels

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The Embassy of Montenegro in Brussels presents its compliments to the Secretariat of the Assembly of States Parties of the International Criminal Court, and in relation with the Secretariat's NV ICC-ASP/20/SP/43 from 5 July 2021 has an honour to **enclose herewith the responses of Montenegro to the Annex III Implementing legislation questionnaire for States Parties.**

The Embassy of Montenegro in Brussels avails itself of this opportunity to renew to the Secretariat of the Assembly of States Parties of the International Criminal Court, the assurances of its highest consideration. *je*



Brussels, 19 November 2021

Secretariat of the Assembly of States Parties of the International
Criminal Court

The Hague

UNOFFICIAL TRANSLATION

IMPLEMENTING LEGISLATION QUESTIONNAIRE FOR STATES PARTIES'

1. Has your Government adopted any national legislation implementing the Rome Statute ("the Statute"), or otherwise enacted legislation pertaining to the Rome Statute?

Montenegro has been a member of the Rome Statute since 2001, when it was ratified by adopting the Law on Ratification of the Rome Statute of the International Criminal Court in June 2001 (Official Gazette of the Federal Republic of Yugoslavia - International Treaties, No. 5/2001).

In 2009, Montenegro adopted the Law on Cooperation with the International Criminal Court ("Official Gazette of Montenegro" No. 053/09). This Law regulates the cooperation of state authorities of Montenegro with the International Criminal Court and the execution of other obligations, in accordance with the Rome Statute of the International Criminal Court, as well as other issues related to prosecution of perpetrators of crimes under Article 5 of the Statute, i.e crimes against humanity and others goods protected by international law related to violations of International Humanitarian Law from the Criminal Code of Montenegro.

IF NOT

Part A

2. What legislative or other efforts, if any, has your Government taken or initiated to implement the provisions of the Statute into national law?

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3. What obstacles, if any, has your Government faced in its efforts to implement the provisions of the Statute? Has your Government managed to overcome such obstacles, and if so how?

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4. What form of assistance would benefit or has benefitted your Government's efforts to implement the Statute?

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IF YES

Part B

5. In implementing the Statute, did your Government draft a stand-alone legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

In 2009, Montenegro adopted the Law on Cooperation with the International Criminal Court ("Official Gazette of Montenegro" No. 053/09). This Law regulates the cooperation of state authorities of Montenegro with the International Criminal

Court and the execution of other obligations, in accordance with the Rome Statute of the International Criminal Court, as well as other issues related to prosecution of perpetrators of crimes under Article 5 of the Statute, i.e crimes against humanity and others goods protected by international law related to violations of International Humanitarian Law from the Criminal Code of Montenegro.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes into domestic law?

The 2003 Criminal Code, Chapter 35 (Crimes against Humanity and Other Goods Protected by International Law), introduced the crimes of genocide, crime against humanity and war crime, in order to comply with key provisions of the Rome Statute of the International Criminal Court. The harmonization of criminal legislation in this segment, continued with amendments to the Criminal Code with the introduction of the criminal offense of "crime of aggression" in 2013.

7. Does the implementing legislation incorporate the following aspects of cooperation with the Court" and if yes, how?

(a) Arrest and surrender;

The Law on Cooperation with the International Criminal Court in Chapter IV Deprivation of Liberty and Surrender of the Defendant prescribes this aspect of cooperation in such a way that deprivation of liberty and surrender of the defendant is carried out on the basis of a request for surrender of the defendant to the International Criminal Court. The International Criminal Court shall submit a reasoned request for the surrender of the defendant together with the necessary data, documents, statements and information necessary to establish the identity of the defendant to the Ministry of Justice, which shall forward it to the public prosecutor and, where necessary, to the police authority. The provisions of the law governing the provision of mutual legal assistance in criminal matters shall apply accordingly to the procedure of surrendering the accused. (Article 21). The parties to this proceeding are the defendant, the International Criminal Court and the public prosecutor representing the surrender request.

(b) Interim release and release of persons (acquittal non-confirmation of charges, etc);

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(c) Cooperation with OTP investigations;

Cooperation in the field of investigation is conducted in accordance with the Law on Cooperation with the International Criminal Court by informing Montenegro that there are reasons to initiate an investigation before the International Criminal Court for a criminal offense under Article 5 of the Statute for which a court in Montenegro could have jurisdiction. The Ministry will forward this notification to the Supreme State Prosecutor. If the notification referred to in paragraph 1 of this Article is confidential, its content shall be classified information in accordance with the law governing the confidentiality of information. (Article 16)

The Ministry shall, within thirty days from the day of receipt of the notification referred to in Article 16, paragraph 1 of this Law, inform the Prosecutor whether criminal proceedings are being conducted in Montenegro. If no procedure for the criminal offense referred to in Article 16, paragraph 1 of this Law is conducted in Montenegro, the Supreme State Prosecutor and another competent authority shall urgently take measures to determine whether there is a reasonable suspicion that a certain person has committed that criminal offense. In the case referred to in paragraph 2 of this Article, the Supreme State Prosecutor shall regularly inform the Ministry of the actions taken in the proceedings conducted in Montenegro, and the Government shall, if necessary or at the request of the International Criminal Court, inform the Prosecutor thereof. If criminal proceedings have already been instituted in Montenegro for the criminal offense referred to in Article 16, paragraph 1 of this Law, the Government shall request the International Criminal Court to transfer the case to Montenegro. If the International Criminal Court approves the Prosecutor's investigation and in addition to Montenegro's willingness to prosecute, Montenegro may, in accordance with the Statute and the Rules, file an appeal. (Article 17).

(d) Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes;

The request for cooperation of the International Criminal Court is submitted to the Ministry of Justice, Human and Minority Rights, which, after determining the formal validity of the request, submits it to the State Prosecutor's Office, court, other state authority or state administration authority for further jurisdiction and action.

The financial investigation is initiated by the order of the state prosecutor, who also manages the investigation, and for the needs of the financial investigation a financial investigation team consisting of representatives of the police, military police, tax authorities, customs and anti-money laundering and terrorist financing, as well as other authorities in the performance of activities for which they are competent, in order to discover material benefit derived from criminal activities or to prove material benefit derived from criminal activities.

The Law on seizure and confiscation of material benefit derived from criminal activity ("Official Gazette of Montenegro", no. 58/2015 and 47/2019).defines that the police shall take measures and actions of their own initiative or under an order of the state prosecutor aimed at tracing and identifying material benefit derived from criminal activities. Also, which is of special importance, state authorities, public administrative authorities, local self-government authorities and other legal entities exercising public authorizations and other entities are obliged to submit to the police, without delay, the required data necessary for tracing and identifying material benefit derived from criminal activities.

Courts shall decide on the seizure and confiscation of material benefit derived from criminal activities.

The tasks of management of seized and confiscated material benefit, instrumentalities of crime and items seized in criminal and misdemeanour proceedings, as well as of property pledged to the court as bail shall be performed by the administrative body in charge of state property management (Cadastre and State Property Administration).

(e) Enforcement of sentences;

Article 40 of the Law on Cooperation with the International Criminal Court defines that Montenegro will execute the decision of the International Criminal Court in accordance with the Statute and other regulations of the International Criminal Court and the relevant regulations of Montenegro. The Government shall, through

the Ministry, without delay inform the International Criminal Court of the actual or legal reasons which prevent or limit the execution of the decision and shall consult with that court on the manner of further action. In accordance with the above, it is prescribed that Montenegro may, at the request of the International Criminal Court, accept a person convicted by that court to serve a prison sentence. (Article 41).

(f) Witness protection;

Article 8 of the Law on Cooperation with the International Criminal Court covers this issue. In criminal proceedings conducted in Montenegro against perpetrators of crimes against humanity and other goods protected by international law relating to violations of International Humanitarian Law under the Criminal Code which simultaneously constitute criminal offenses under Article 5 of the Statute, as well as in proceedings at the request of the International Criminal Court, the highest standards of protection and respect for the dignity of witnesses, victims and their families shall be applied, in accordance with the law. Also, the same article covers the protection of a judge, state prosecutor and other persons participating in the procedure.

(g) Other forms of cooperation (see in particular article 93 of the Rome Statute).

Please see answers to question number 7 (a), (d), (e), (f).

Also, it is necessary to point out that the competent authorities of Montenegro in the procedure of cooperation with the International Criminal Court take actions in the manner prescribed by the Law on Cooperation with the International Criminal Court and other regulations governing criminal proceedings in Montenegro.

The Law on Cooperation with the International Criminal Court provides for the issue of cooperation related to the criminal prosecution of perpetrators, if the criminal prosecution of perpetrators of criminal offenses referred to in Article 8, paragraph 1 of this Law for real or legal reasons cannot be undertaken in Montenegro, the State Prosecutor shall notify the Ministry thereof, which shall notify the Prosecutor in accordance with Article 14 of the Statute.

Furthermore, Article 16 of the Law on the International Criminal Court defines that when the Prosecutor informs Montenegro that there are grounds to initiate an investigation before the International Criminal Court for a criminal offense under Article 5 of the Statute for which a court in Montenegro may have jurisdiction, the Ministry shall forward the notification to the Supreme State Prosecutor. In this regard, the Law stipulates that when the Prosecutor informs Montenegro that there are reasons to initiate an investigation before the International Criminal Court for a criminal offense under Article 5 of the Statute for which a court in Montenegro may have jurisdiction, the Ministry shall forward the notification to the Supreme State Prosecutor.

The Ministry shall, within thirty days from the day of receipt of the notification referred to in Article 16, paragraph 1 of this Law, inform the Prosecutor whether criminal proceedings are being conducted in Montenegro. If no procedure for the criminal offense referred to in Article 16, paragraph 1 of this Law is conducted in Montenegro, the Supreme State Prosecutor and other competent authority shall urgently take measures to determine whether there

is a reasonable suspicion that a certain person has committed that criminal offense. In the case referred to in paragraph 2 of this Article, the Supreme State Prosecutor shall regularly inform the Ministry of the actions taken in the proceedings conducted in Montenegro, and the Government shall, if necessary or at the request of the International Criminal Court, inform the Prosecutor. If criminal proceedings have already been instituted in Montenegro for the criminal offense referred to in Article 16, paragraph 1 of this Law, the Government shall request the International Criminal Court to transfer the case to Montenegro. If the International Criminal Court approves the Prosecutor's investigation despite Montenegro's willingness to prosecute, Montenegro may, in accordance with the Statute and the Rules, file an appeal.

8. Does the implementing legislation designate a channel of communication with the Court?

YES.

9. Does the implementing legislation create a central national authority or designate a national focal point for cooperation with the Court?

Cooperation and other forms of communication with the International Criminal Court shall be effected through diplomatic channels, through the ministry responsible for judicial affairs or directly in case of urgency or if there are other justified reasons. (Article 1 of the Law on Cooperation with the International Criminal Court).

10. Does the implementing legislation provide for the privileges and immunities of the Court? (See in particular article 48 of the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court)

Montenegro is a signatory to the Agreement on the Privileges and Immunities of the International Criminal Court, in accordance with which the signatory states to the International Criminal Court recognize the international legal personality necessary for the performance of its duties and fulfillment of its purpose. Member States shall enjoy all the privileges and immunities necessary for the attainment of its objectives set out in the Rome Statute.

11. What obstacles, if any did your Government face in its efforts to implement the provisions of the Statute? How did your Government manage to overcome such obstacles?

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12. Did your Government benefit from any form of assistance in the process of implementing the Statute?

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13. Has your government initiated or considered additional steps for the implementation of the statute in national legislation.

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