



Centar za građansko obrazovanje  
Centre for Civic Education

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# SHORT GUIDE THROUGH LEGISLATIVE AND INSTITUTIONAL PROTECTION OF HUMAN RIGHTS IN MONTENEGRO



The project is financed by the EU



# **SHORT GUIDE THROUGH LEGISLATIVE AND INSTITUTIONAL PROTECTION OF HUMAN RIGHTS IN MONTENEGRO**

Podgorica, 2015

# Short Guide through Legislative and Institutional Protection of Human Rights in Montenegro

**Publisher:**

Centre for Civic Education (CCE)

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**Design and production:**

Centre for Civic Education (CCE)

**Print**

Studio MOUSE - Podgorica

**Edition**

100 copies

ISBN 978-86-85591-60-0

COBISS.CG-ID 27134992

*The publication is a part of the project “Fast Forward Human Rights!”, implemented by the Centre for Civic Education (CCE) in cooperation with the Civic Initiatives (CI) from Belgrade, financed by the EU Delegation to Montenegro.*



*The publication has been produced with the financial assistance of the European Union. The contents of this publication are the sole responsibility of the Centre for Civic Education (CCE) and can in no way be taken to reflect official opinion of the European Union*

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## INTRODUCTION

The protection of human rights is a huge challenge for all transitional societies. The achievements within constitutional, legal and institutional protection mechanisms are still seriously restricted in practice, which itself precisely diagnoses social weaknesses irrespective of whether their root lies at irresponsible political elites, whose influence on the institutions impacts the working efficiency and effectiveness, or it comes about bad habits, traditional demagoguery and prejudices. The strengthening of administrative capacities, through developing autonomous institutions, immune against improper political influences, capable of achieving full international cooperation and implementing the best international standards and practices, shall represent one of the national Montenegrin priorities in the course of establishing functional democracy through the negotiation process with the EU.

In order to achieve an overall protection of human rights, a normative and institutional framework should be fully coordinated. The areas covered by Chapter 23 (Judiciary and Fundamental Rights) are of utmost importance for core reforms of the Montenegrin institutions and fall under specific political criteria for the accession to the EU. On the path towards joining the European Union there shall not be more and less relevant human rights; within this process they are inseparable and mutually dependent.

Therefore, this publication provides an overview of the current normative and institutional system of Montenegro within the area of the protection of human rights and freedoms, with reference to necessary intervention for compliance with the international institutes, as well as practical mechanisms for the protection of human rights. Such a reference is been given through the relationship between international and domestic law, the fundamental freedoms guaranteed by the Constitution, the grounds of the controversial efficiency issues of legal remedies for the protection of human rights within the Montenegrin legal system. The efficiency of legal remedies has a special relevance, both for citizens and their interest to have their guaranteed rights protected by the institutions along with international norms, and for Montenegro which shall in future reduce the number of applications towards the European Court for Human Rights in Strasbourg. A particular part is devoted to the institutions and bodies responsible for the achievement, promotion and protection of the human rights in the Montenegrin legal system and to the relationship of the citizens with the state administration. Through developing a phenomenon concerning the prohibition of discrimination, the attention is been drawn to the necessity to establish a continuing system for the protection of human rights and freedoms. A part of issues within the area of human rights which are to be solved, is set as a priority for Montenegro, and it includes the following items: the freedom of expression and of the media, the position of minority peoples as well as other minority national communities, gender equality, the rights of children, the position of disabled people, the position of people with different sexual orientation and gender identity, the rights of people deprived of liberty, the prohibition of torture and other inhumane and degrading treatment or punishment, restitution, etc. The listed issues place a burden on social relations in Montenegro to a significant extent and represent a challenge for establishing an efficient and effective system for the protection of human rights and freedoms, as well as the functionality of Montenegrin democratic society. Additionally, this publication elaborates on human rights in Montenegro through the view of international treaties, and this is of a particular importance for creating an objective image concerning capacities and achievements of the Montenegrin institutions in this area. A contribution to such a perception, is being given through a comparative review of the regional experiences as well, in other words the Serbian experiences. Finally, the reader will find useful forms and instructions, as well as a specific guide for the proactive protection of the human rights and freedoms of the citizens of Montenegro. That represents an attitude of the very editors and authors regarding the necessity that each of us individually at every moment shall have civic awareness, conscience and courage to support the protection of human rights and freedoms. For themselves, as well as for those who are not capable of doing so.



## RELATIONSHIP BETWEEN INTERNATIONAL AND NATIONAL LAW

Constitution of Montenegro prescribes that ratified and published international agreements and generally accepted rules of international law are an integral part of internal legal order in Montenegro and that they have supremacy over the national legislation, when they regulate the relations differently from the internal legislation<sup>1</sup>. Their implementation, however, is significantly hindered by giving supremacy to international agreements over legislation, and not over the Constitution of Montenegro, which could have been circumvented by using the term “national law” instead of “internal legislation”. In particular, if the scenario where standard of judgement of European Court for Human Rights is contrary to provisions from the Constitution of Montenegro should happen, the interpretation of this provision requires national court or other body to apply the Constitution, and not the standard from judgement of the European Court, despite the fact that Montenegro could be accounted for violations of the European Convention on protection of Human Rights and Fundamental Freedoms.

Further, the Constitution of Montenegro prescribes that international agreements shall be directly applied only if “relations are regulated differently from internal legislation”, which leaves room for different interpretations in situations when some relation or issue from human rights domain is not regulated by the law. Constitutional Charter of former State Union of Serbia and Montenegro prescribed that international standards are enforced directly, without any restrictions<sup>2</sup>, and that they have supremacy over the law of Serbia and Montenegro, as well as over the law of the member states<sup>3</sup>. The Constitution of Montenegro, also, failed to incorporate important instruction from the Small Charter<sup>4</sup> which prescribes that these agreements shall be interpreted in line with international guarantees of human and minority rights and in line with practice of international bodies competent for supervision over their application<sup>5</sup>. This is contrary to the provision by which the state guarantees that achieved level of human and minority rights shall not be subsequently decreased, which was also prescribed by the Small Charter.<sup>6</sup>

Hence, the Constitution of Montenegro should be interpreted in accordance with ratified and published international agreements from the area of human rights and practice of international bodies competent for supervision over their application, in order for Montenegro to secure protection of human rights in line with minimal international standards and to prevent international competent bodies from determining the accountability of Montenegro for violation of rights prescribed by international agreements. This kind of interpretation is also confirmed by the opinion of Venice Commission on the Constitution of Montenegro.<sup>7</sup>

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1 Article 9 of the Constitution of Montenegro, “Official Gazette of Montenegro”, no. 1/2007”

2 Article 10 of the Constitutional Charter of the State Union of Serbia and Montenegro, “Official Gazette of Serbia and Montenegro”, no. 1/2003

3 Article 16, the Constitutional Charter of the State Union of Serbia and Montenegro, “Official Gazette of Serbia and Montenegro”, no. 1/2003

4 Pursuant to Article 8 and 61 of the Constitutional Charter of State Union of Serbia and Montenegro, Federal parliament, on Council meeting of citizens of 28 February 2013 and on the Council of Republic of 28 February 2003, the Commission adopted a Decision on proclaiming the Charter on Human and Minority Rights and Civil freedoms, or so called Small Charter, starting from the fact that human and minority rights are the foundation of every community.

5 Article 10 of the Constitutional Charter of the State Union of Serbia and Montenegro, “Official Gazette of Serbia and Montenegro”, no. 1/2003

6 Article 57, “Guarantees of acquired rights,” Charter on Human and Minority Rights and Civil Liberties, OG SM, no. 6/03

7 Translation published in the publication “International Human Rights Standards and Constitutional Guarantees in Montenegro”, Human Rights Action, Podgorica, 2008.



# MEMBERSHIP IN INTERNATIONAL ORGANISATIONS AND INTERNATIONAL AGREEMENTS ON HUMAN RIGHTS

Since the declaration of its independence on 3 June 2006, Montenegro has been implementing and assuming all international treaties and agreements, and in accordance with the Decision on proclamation of independence, which Montenegro concluded and to which the State Union of Serbia and Montenegro acceded, that are in line with its legal order. After acquiring membership in all relevant international organisations, Montenegro filed successor statements for a set of conventions of the United Nations (UN), Council of Europe, International Labour Organization, etc. An active cooperation was also established with the Organisation for Security and Cooperation in Europe (OSCE) in the area of protection of human rights and fundamental freedoms, as well as in promotion of the rule of law and further democratisation of society.

## *Montenegro and United Nations*

As an UN member, Montenegro is a contracting party to the most important international documents in the area of human rights of this organisation, which include:

- International Covenant on Civil and Political Rights (including the Optional Protocol to International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty);
- International Covenant on Economic, Social and Cultural Rights (including Optional Protocol);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (including Optional Protocol);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (including Optional Protocol)
- Convention on the Rights of the Child, including Optional Protocol to the Convention on the participation of children in armed conflicts along with the Convention on Rights of the Child, and Other Optional Protocol on the sale of children, child prostitution and child pornography;
- Convention on the Rights of Persons with Disabilities (including Optional Protocol);
- Convention on the Prevention and Punishment of the Crime of Genocide;
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity;
- International Convention on the Suppression and Punishment of the Crime of Apartheid;
- International Convention against the Apartheid in Sports.

By depositing documents on succession, Montenegro became a signatory of International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. Montenegro was also one of the first to sign the International Convention on the Protection of all Persons from Enforced Disappearance and Optional Protocol to International Covenant on Economic, Social and Cultural Rights<sup>8</sup>. Montenegro also ratified the Convention on the Reduction of Statelessness<sup>9</sup>.

Moreover, Montenegro is a contracting party of 69 conventions of International Labour Organisation. In January 2013, Montenegro became a member of UN's Human Rights Council.

Citizens of Montenegro have the possibility of filing individual submissions before every committee of UN, which envisages this possibility.

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<sup>8</sup> May 2013

<sup>9</sup> October 2013

Montenegro has certain obligations in relation to bodies and authorities competent for control and supervision when it comes to meeting the obligations that stem from membership in international organisations and ratified international agreements on human rights. In that sense, the delegation of Montenegro presented its *National report on the state of human rights in Montenegro* during the 11<sup>th</sup> session of Human Rights Council in Geneva, held on 28 January 2013, within the second cycle of Universal periodic review of state of human rights in member states of United Nations (UPR). This report was prepared in line with guidelines from the decision of Human Rights Council<sup>10</sup>, and it contains the review of state of human rights in Montenegro and opinions on progress made within the period between two UPR cycles (2008-2012), highlighting the application of recommendations of the first reviewed process. Member states of Council presented their estimates and, after asking some questions, provided recommendations for the improvement of respect of human rights in Montenegro. They were particularly interested in the state of minorities and other minority national communities, with the emphasis on Roma community, then state of persons with disabilities, children with disabilities, as well as in functioning and competence of Ombudsman and the issue of status of displaced and internally displaced persons. After presenting this report, Montenegrin delegation and representatives of the three-member delegation of Council rapporteurs (Estonia, Mauritania and the US) prepared a draft Report on state of human rights in Montenegro, which contains comments and questions of countries participants of interactive dialogue, answers of Montenegro to questions asked during the debate as well as adopted recommendations from countries aimed to improve the state of human rights in Montenegro. This draft Report was adopted on 31 January 2013, during session of the Working group for the UPR of UN's Human Rights Council. Countries participants of interactive dialogue provided 124 recommendations, thereby emphasising the implementation of laws and strategic documents, unlike previous UPR cycle, when recommendations mostly related to the adoption of legislative solutions from the area of human rights protection. Afterwards, Montenegro used its right to deliver cumulative response to recommendations provided by June 2013. An addendum was created on 8 April 2013 to the Human Rights Council's recommendations for Montenegro, and it consisted of several thematic areas:

- international documents on human rights and institutional framework for protection of human rights;
- fight against discrimination;
- gender equality;
- persons with disabilities;
- minority people and Roma;
- refugees and registration upon birth;
- children;
- human trafficking and sexual exploitation;
- domestic violence;
- violence against women and children;
- judiciary reform;
- fight against corruption;
- freedom of expression and freedom of media;
- freedom of religious communities.

Line ministries of Government of Montenegro participated in its creation, as well as NGOs, which submitted an alternative report to the Ministry of Foreign Affairs and European Integration in March 2013. Out of 124 received recommendations, Montenegro accepted 121, or three were not accepted, and one was partially accepted<sup>11</sup>. Final report on the state of human rights in Montenegro was adopted at the plenary session of Human Rights Council, held on 7 June 2013 in Geneva, and it contains documents prepared during the UPR process and serves as a basis

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<sup>10</sup> Human rights council decision A/HRC/DEC/17/19 – [http://www.upr-info.org/sites/default/files/general-document/pdf/a\\_hrc\\_dec\\_17\\_119\\_e.pdf](http://www.upr-info.org/sites/default/files/general-document/pdf/a_hrc_dec_17_119_e.pdf)

<sup>11</sup> Two recommendations that were not accepted by Montenegro relate to ratification of International Convention on Protection of Rights of all Migrant Workers and Members of their Families and ratification of MOR Convention no. 189, whereas one relates to recommendation on special rapporteurs. Recommendation that was partially accepted relates to independence and effective investigations within the proposed deadline of 15 days, as it was recommended by Subcommittee for Prevention of Torture. Explanation provided to Committee was that Montenegro conducted a reform in the area of criminal law, and that the concept of prosecutorial investigation was introduced for the purpose of more effective investigation, which should result in significantly shorter duration of criminal procedures, but also in further strengthening of independence and effectiveness of judiciary in that regard. Compared to particular formulation of recommendation and the abovementioned deadline of 15 days, during the process of clarifying with the UPR Secretariat, Subcommittee and state which provided the recommendation, a lack of recommendation of Subcommittee was determined and an error in stating by a state in interactive discussion.



for further estimate of progress of Montenegro and meeting the obligations in the area of promotion and protection of human rights.

Furthermore, Montenegro is the contracting party of *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*<sup>12</sup> (hereinafter referred to as: Convention) and Additional Protocol to the Convention<sup>13</sup>. The obligation of reporting to Committee against Torture (hereinafter referred to as: CAT) is defined under the Article 19 of the Convention. Initial report on measures, which Montenegro undertook in order to meet its obligations in line with the Convention was submitted to United Nations on 3 May 2006 and after the adoption it was published by UN - CAT/C/MNE on 16 October 2008. In line with the provisions from Article 19 of the Convention, a Second periodic report<sup>14</sup> was prepared, regarding the new measures that were undertaken for the purpose of a more effective implementation of the Convention, which is simultaneously a display of achieved results regarding the realisation of rights guaranteed under this Convention in Montenegro. While the report was being prepared, special emphasis was put on Final observations of Committee against Torture CAT/C/MNE/CO/1 of 19 January 2009, as well as on the List of questions prior to the submission of the Second periodic report of Montenegro (CAT/C/MNE/2). In addition to state institutions, NGOs played an important role in preparation of this report, NGO Human Rights Action in particular. The report was presented to Committee against Torture in Geneva on 14 May 2014. States bodies, the Ombudsman of Montenegro and NGOs Human Rights Action, Youth Initiative for Human Rights and Juventas were involved in preparation of the report, and the report itself was reviewed through the form of constructive dialogue between members of the Committee and delegation of Montenegro.

UN Committee for Human Rights considered the state of civil and political rights and adopted the list of questions on the *implementation of International Covenant on civil and political rights* (ICCPR) in Montenegro, during the session held from 10 - 28 March 2014. According to list that Committee adopted, Montenegro should provide a response on questions regarding the guarantees of the efficient legal remedy, prohibition of discrimination, protection of equal rights of men and women, right of the child, right to life and protection against torture, protection of right to privacy, as well as the rights of refugees and internally displaced persons and especially of Roma and Egyptians. The basis of dialogue between Committee and Montenegro, regarding the civil and political rights in Montenegro, was the answer of member state along with the report that Montenegro submitted in October 2013, held in Geneva on UN's 112 Committee session in October 2014. On that occasion, Delegation of Government of Montenegro presented the initial report of Montenegro on the implementation of International Covenant on Civil and Political Rights, and most questions from Committee experts related to the establishment of legislative framework and implementation of international standards, as well as to adoption of international legal norms and conventions in work of courts.

Experts showed particular interest in issues related to protection of rights of the most vulnerable social groups, especially of Roma, LGBT population, displaced and internally displaced persons, asylum seekers and children. During the debate, they also raised the issue of status of religious communities in Montenegro, status of women and their participation in political and public area of life and in decision making positions, as well as of access to institutions, including the implementation of Law on Free Legal Aid, and reforms in prison system. Members of delegation of competent line ministries also responded to questions related to prosecution of cases in basic and higher courts, the effectiveness of work of the state prosecution, including the course and results of prosecution of war crime cases and reparation of damage, human trafficking, assaults on journalists, as well as to questions regarding the preventive activities aimed at suppressing discrimination, hate speech and violence against women and children.

Montenegro joined the *Convention on the Rights of Persons with Disabilities and Optional Protocol on Rights of Persons with Disabilities*<sup>15</sup>, and in line with the Article 35 of the Convention, the Initial report was submitted to

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12 International agreements, "OG. Gazette SFRY", no. 9/1991

13 International agreements, "Official Gazette of Montenegro", no. 9/2008

14 Second periodic report on the implementation of UN Convention against Torture, source: site of Government of Montenegro [www.gov.me](http://www.gov.me)

15 International Agreements, Official Gazette of Montenegro no. 2/2009

Committee on the Implementation of Convention on Rights of Persons with Disabilities<sup>16</sup> regarding the measures undertaken in order to enable the realisation of rights recognised by this Convention, and on the improvement realised regarding the enjoying of aforementioned rights in January 2004, or with a delay of two years. The Initial report was prepared by state bodies, with the support from UN system in Montenegro, but without participation of NGOs that deal with issues from this area, which refused to do that<sup>17</sup>. Nonetheless, the Association of youth with disabilities Montenegro (AYDMNE) submitted comments it had regarding the Initial report, prepared by state, during consultations which lasted briefly, based on the initiative of AYDMNE itself, thereby criticising the report severely.<sup>18</sup>

Montenegro accepted the *Convention on the Rights of the Child*<sup>19</sup>. The obligation was established for signatory states, under provision of the Article 44 of Convention, to submit a report to Committee for the Rights of the Child, by General UN Secretary, regarding the measures related to the establishment of rights recognised by the Convention and on the improvement accomplished regarding the enjoying of those rights. Signatory states of the Convention are obliged to submit a report of its application to the Committee for the Rights of the Child, within a two-year period from the acceptance of Convention. After the first initial report, states submit progress reports every five years regarding the area of protection of the rights of the child. In November 2008, Government of Montenegro submitted the report on the implementation of Convention on the Rights of the Child to Committee for the Rights of the Child for period 2006-2008. The Ombudsman of Montenegro submitted the report to Committee on state and application of rights of children in Montenegro, in accordance with general Comment no. 2 of the Committee for the Rights of the Child. The Alternative report on the application of Convention was submitted by coalition of 18 NGOs<sup>20</sup>. After held sessions, whereat they considered reports of the Government, the Ombudsman and NGO sector, the result were the recommendations that were submitted to Montenegro on 1 October 2010.

As a successor, Montenegro joined the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW). Based on Article 18 of the Convention, signatory states are obliged to submit a report to UN Secretary General on the legislative, judicial, administrative and other measures they adopted in order to implement the provisions of this Convention, as well as to provide opinion on the progress made, one year from the moment this Convention came into force, and afterwards, at least every four years. When it comes to Montenegro, deadline for Initial report was October 2007. However, making of that report was delayed, and it was not considered and adopted until the session of Government of Montenegro held on 25 February 2010, on the proposal of Ministry of Human and Minority Rights, after which it was forwarded to Committee for the Elimination of All Forms of Discrimination of Women. This report provided an overview of measures, which Montenegro undertook from 2006 till 2009 compared to 16 substantive articles of that Convention. In that sense, the Initial report by Montenegro on the implementation of the Convention on the Elimination of All Forms of Discrimination of Women (CEDAW/C/MNE/1) was submitted to the Committee for CEDAW in May 2010, and the Committee reviewed it on its meetings on 6 October 2011 (CEDAW/C/SR. 1002 and 1003). An Alternative report was submitted by a group of NGOs that deal with the improvement of rights of women<sup>21</sup>, and Deputy

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16 Source: Ministry of Labour and Social Welfare <http://www.mrs.gov.me>

17 <http://umhcg.com/poziv-za-izbor-clanova-radne-grupa-za-pripremu-inicijalnog-izvjestaja-o-sprovođenju-un-konvencije-o-pravima-osoba-s-invaliditetom/>

18 "Even though we submitted the proposals for consultation to the Ministry, the only organised public consultations related to the possibility of sending written comments after the Ministry prepared a draft report. Based on comments we submitted, we pointed out to the use of incorrect titles of articles from the Law on Ratification of Convention, incomplete legal analysis of national legal acts, failing to quote some very important laws, favouring and selective quotation of activities of some organisations of persons with disabilities, non-existence of analysis of implementation of legal acts, and failure to connect analysis of legal acts with provisions of articles of the Convention. The AYDMNE is very dissatisfied in general with the report and manner in which it was written, particularly with copying parts of report of Serbia, as well as with the omission of various and, at the same time, important information contained in national legislation" excerpt from the Report of AYDMNE on programme activities from 2014.

19 International agreements, Official Gazette of SFRY, no. 15/90 and International agreements Official Gazette of SFRY, no. 4/96 and 2/97

20 Centre for rights of the child Montenegro, Centre for human and minority rights, Children at the first place, Centre for development of communities, Centre for protection of rights of woman and child, Shelter, Legal Centre, Association of parents of children and youth with special needs of Montenegro Our Initiative, Association of citizens "Cat", Humanitarian, NGO "New chance in Herceg Novi", Forum MNE, Pedagogical centre of Montenegro, Montenegrin women's lobby, Association of parents of Montenegro, Start, Enfants, Association of youth with disabilities Montenegro

21 Centre for women and peace education - Anima, SOS Hotline for women and children victims of violence, Montenegrin women's lobby, "House of Hope", Female group "Stela", "Women for better future", NGO Female alliance for development, Bona Fide, League of female voters in Montenegro, Shelter, Centre for Roma initiatives.



Ombudsman provided a presentation on meeting of Committee's preparatory working group and answered questions of Committee members related to implementation of the aforementioned Convention. On that occasion, the Committee, among other things, reminded Montenegro is obliged to apply every provision of Convention in a systematic and continuous manner. Given that in certain areas results were insufficient, Committee expressed concern in its presented final views and provided recommendations in terms of priority tasks that need to be realised by the time the next periodic report is submitted. In connection to that, Committee asked for information on the implementation of recommendations contained in paragraphs 19 to 23, within two-year period, related to violence against women, human trafficking and exploitation for prostitution, and participation of women in social and political life. Ministry of Human and Minority Rights, in cooperation with Ministry of Education and Office for the Fight against Human Trafficking, prepared answers to recommendations 19 to 23, and Committee for Gender Equality of the Parliament of Montenegro considered the aforementioned report during 24th session held on 27 December 2013 and concurred to its content, thereby providing a recommendation to complement item 22, related to gender balance of the composition of Parliament, having in mind that consensus on the introduction of guaranteed quotas for the underrepresented gender has not yet been reached. In January 2014, Government of Montenegro adopted the aforementioned Report<sup>22</sup>, with a delay of several months and without holding a public debate, which was made without consultations with civil society, even though that was one of the recommendations of Committee. Government of Montenegro submitted the report to UN's Committee for Economic, Social and Cultural Rights regarding the implementation of Covenant on Economic, Social and Cultural Rights (Covenant), with considerable delay of several years. NGOs were not involved in the process of preparation of Government's report in either of its stages, not even after being asked by the Committee. On the eve of debate on report, held from 10 to 28 November 2014 in Geneva, during the October 2014, 14 NGOs<sup>23</sup> submitted an alternative report on the implementation of Covenant containing more than 100 recommendations<sup>24</sup>, where it was concluded, among other things, that there are serious omissions both in regulations and in their implementation, starting from the lack of independence and capacities of institutions that deal with human rights including the ineffective means for their protection, highlighting particularly aggravated position of members of marginalised groups. Committee's conclusions were very precise and present a useful instruction for further activities in Montenegro in order to improve this area in a systematic and long term manner<sup>25</sup>. Recommendation of Committee, which is of special importance, is for all future national plans, programmes and strategies related to enjoying of human rights to envisage the mechanisms for monitoring and estimating the success of their implementation aimed to secure temporary results to be available at any stage of their implementation.

In July 2011, Montenegro submitted its second and third report to *UN's Committee for the Elimination of All Forms of Racial Discrimination*, regarding the implementation of Convention on the Elimination of All Forms of Racial Discrimination. Montenegro presented this report to the Committee in February 2014.

Heretofore practice of submitting reports to UN Committees was characterised by continuous tardiness of Montenegro in meeting its international obligations. It indicates the necessity of raising the awareness of institutions on the significance of these reports, as well as on the establishment of functional mechanisms for timely reporting, which includes all interested parties.

### *Montenegro and the Council of Europe*

Montenegro has been cooperating actively with the Council of Europe (CoE) since the period of the State Union of Serbia and Montenegro, within which it ratified the European Convention for Protection of Human Rights and Freedoms and fourteen of its Protocols in 2003. After gaining its independence, Montenegro

22 Report available on site of the Government of Montenegro: [www.gov.me](http://www.gov.me)

23 Human rights action (HRA), Centre for democracy and human rights (CEDEM), Centre for civic education (CCE), Centre for monitoring and research (CEMI), Centre for right of the child, Centre for women's rights, Montenegrin women's lobby, Civic Alliance, Network for affirmation of NGO sector (MANS), Prima, First association of parents of children and youth with special needs, Shelter, Association of youth with disabilities of Montenegro (AYDMNE) and Union of Free Trade Unions

24 <http://www.hraction.org/wp-content/uploads/Shadow-report-to-the-Committee-on-economic-social-and-cultural-rights-in-connection-with-the-consideration-of-the-initial-report-of-Montenegro.pdf>

25 [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=822&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=822&Lang=en)

addressed a statement to Council of Europe in July 2006 in relation to every convention to which State Union of Serbia and Montenegro was signatory or contracting party. Accordingly, Montenegro became member of Council of Europe on 11 May 2007. Based on the decision from Committee of Ministers of the Council of Europe, monitoring mission in relation to Montenegro was abolished in 2013, and in January of 2015, based on the decision of Parliamentary Assembly of Council of Europe, monitoring was abolished to Montenegro, on condition that it will be considered whether Montenegro should be subjected to process of monitoring if, by the end of 2017, criteria from the resolution are not met.

In addition to European Convention for Protection of Human Rights and Fundamental Freedoms, Montenegro ratified a great number of other conventions of Council of Europe, regarding the area of human and minority rights, including the following as most important:

- Framework Convention for Protection of National Minorities;
- European Charter for Regional or Minority Languages;
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

European Commission against Racism and Intolerance (ECRI) is a body of Council of Europe responsible for supervision of human rights, specialised for fight against: racism, racial discrimination, xenophobia, antisemitism and intolerance: ECRI operates through recommendations to member states, which are not binding, but are respected to the great extent. Therefore, ECRI conducts constant supervision over member states of Council of Europe, performs contact visits in countries where it meets with state body representatives, independent institutions and civil society, after which it makes up a draft of report, which implies the initiation of confidential dialogue with the authorities. The report is followed by adoption and submission to state to which it relates, once the state submits remarks and suggestions. Members of ECRI are elected by governments of member states of Council of Europe, which was also done by Montenegro. Member of ECRI from specific state cannot be a part of the ECRI delegation, which supervises the state of affairs in state he/she comes from. Montenegro appointed its national ECRI coordinator, whose task is to consolidate data when it comes to activities of Montenegrin state bodies aimed to meet the ECRI recommendations.

Citizens of Montenegro have the option to file a submission to the **European Court of Human Rights** (ECHR) in Strasbourg. ECHR applies European Convention on Human Rights (ECHR) and it has the task to see that member states respect the rules and guarantees provided by ECHR. It does so by reviewing submissions (applications, complaints) submitted by individuals or, sometimes, by states. Once it is established that a member state violated one or more rights and guarantees, the Court delivers a judgment which is binding for state to which the submission relates. Based on the Report on work of Representative of Montenegro before the European Court of Human Rights for 2013<sup>26</sup>, by the end of that year, that court had to process 1602 submissions filed against the state of Montenegro, by natural and legal persons and non-governmental organisations, out of which 26 submissions were in the process of main hearing<sup>27</sup> before the court, in the moment when the report was submitted. Out of that number, 700 submissions were reviewed by the end of 2013, whereby 671 were rejected as unfounded, unacceptable or were deleted from list of cases because the Court determined that there was no violation of rights guaranteed by the Convention. Since 2009, when ECHR first ruled in relation to Montenegro, by the end of first quarter of 2015, the Court delivered 19 judgments, whereby in 18 it determined violation of at least one of the convention rights to which those submissions related, and in one case it did not determine violation of a single right of the Convention. Mostly violated was the right to fair trial (12 cases, Art. 6 of ECHR), then the right to property (2 cases, Art. 1 of Protocol 1 to ECHR), right to freedom of expression (2 cases, Art. 10 of ECHR), and finally, right to family and personal life (one case, Art. 8 ECHR), as well as the prohibition of torture, inhuman or degrading treatment or punishment (one case, Art. 3 of ECHR). In general, the submitters of eligible submissions against Montenegro, in most cases, invoked the violation of Art. 6 (right to fair trial), Art. 13 (right to efficient legal remedy), Art. 3 (prohibition of torture, inhuman or degrading treatment or punishment), Art. 5 (right to freedom and security of person), Art. 2 (right to life) and Art. 10 (freedom of expression).

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<sup>26</sup> Report of the Representative of Montenegro before the European Court of Human Rights is available at site of the Government of Montenegro: [www.gov.me](http://www.gov.me)

<sup>27</sup> Phase of the procedure whereby main issues are discussed, both acceptability of submissions, or process submissions and the issue of adequacy, or merits of submission

In line with general principles of Supervision over the execution of judgments by the ECHR, adopted by the Committee of Ministers of the Council of Europe, the obligation of execution and undertaking of measures by a member state arises when the judgment is final. Those measures can be individual or general in case the Court determines the existence of so called "systematic problem". The issue of securing the right to fair trial within reasonable time is in the focus of interest of the Committee of Ministers, during the supervision procedure over the execution of Court judgments, given that one third of all judgments, where Court determined the violation of some of the rights of Convention in proceedings against member states, relates to violation of right to trial within reasonable time, while more than 50% of all judgments related to various aspects of violation of right to fair trial from Art. 6 of ECHR.

The Optional protocol no.16, which allows highest judicial instances to seek for advisory opinion from ECHR, was opened for signing in October 2013. It takes ten ratifications for this protocol to come into force, and it would bind only those states that acceded to it. Montenegro has still not ratified this Protocol.

Annual report from European Court of Human Rights for 2014<sup>28</sup>, noted that 499 submissions against Montenegro are pending, with a coefficient of complaints significantly above the average of 47 member states of Council of Europe. Namely, with 2.53 submissions on 10, 000 citizens, Montenegro is quoted above European average (0.68), and falls under the category of states that have the most opened cases before this Court. Only one judgment related to Montenegro was delivered during 2014, whereby the violation of ECHR was determined.<sup>29</sup>

#### *Judgments of the European Court of Human Rights against Montenegro and its obligations regarding their execution*<sup>30</sup>

1. *Bijelić vs. Montenegro and Serbia*<sup>31</sup> (application no. 11890/05) - in judgment from 28 April 2009, European Court of Human Rights determined violation of right to property (Art. 1 Protocol 1 of ECHR) due to long term delay in the execution of final and enforceable judgment. Submitters were awarded with 4,500 € for non-material damages they suffered, as well as with 700 € for costs and expenses. The state executed this judgment in its entirety.
2. *Garžičić vs. Montenegro*<sup>32</sup> (application no. 17931/07) - in judgment from 21 September 2010, Court determined violation of right of access to court (Art. 6 p. 1 ECHR), because the Supreme Court refused to consider the demand for revision without any justified reason. Submitter was awarded with 1,500 € for non-material damage. The state executed this judgment in its entirety.
3. *Mijušković vs. Montenegro*<sup>33</sup> (application no. 49337/07) - in judgment from 21 September 2010, Court determined violation of right to respect of private and family life (Art. 8 ECHR) due to delay in execution of final judgment on custody, and failure of state to execute temporary order on custody. Submitter was awarded with 10,000 € for non-material damage. The state executed this judgment in its entirety.
4. *Živaljević vs. Montenegro*<sup>34</sup> (application no. 17229/04) - in judgment from 8 March 2011, Court determined violation of right to trial within reasonable time (Art. 6, paragraph 1 of ECHR), in proceeding originally initiated in 1995. Total of 1,200 € were awarded to both of the submitters for non-material damage. The state executed this judgment in its entirety.
5. *Šabanović vs. Montenegro and Serbia*<sup>35</sup> (application no. 5995/06) - in judgment from 31 May 2011, Court determined violation of right to freedom of expression (Art. 10 of ECHR), in proceeding whereby the submitter was sentenced for defamation. The Court refused the submission for fair compensation. During the repeated procedure, after the aforementioned judgment of European Court of Human Rights, complaint against the submitter was refused, based on the decision of Basic Court in Podgorica, because the act, which was the subject of complaint, was not classified as criminal offense anymore, and the

<sup>28</sup> [http://www.echr.coe.int/Documents/Annual\\_Report\\_2014\\_ENG.pdf](http://www.echr.coe.int/Documents/Annual_Report_2014_ENG.pdf)

<sup>29</sup> See case Bulatović vs. Montenegro (Submission no. 67320/10)

<sup>30</sup> In addition to site of European Court of Human Rights, the Report of the representative of Montenegro before ECHR for 2013 was used in processing of judgments, as well as the review of Human rights Action ([http://www.hraccion.org/?page\\_id=1782](http://www.hraccion.org/?page_id=1782))

<sup>31</sup> [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-92484#{"itemid":\["001-92484"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-92484#{)

<sup>32</sup> [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100500#{"itemid":\["001-100500"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100500#{)

<sup>33</sup> [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100492#{"itemid":\["001-100492"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100492#{)

<sup>34</sup> [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103765#{"itemid":\["001-103765"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103765#{)

<sup>35</sup> [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104977#{"itemid":\["001-104977"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104977#{)

judgment of same court was repealed, based on which the submitter got sentenced for criminal offense of defamation from Art. 76, p. 2 regarding the paragraph 1 of CCMNE. That decision was confirmed by the decision of High Court in Podgorica.

6. *Koprivica vs. Montenegro*<sup>36</sup> (application no. 41158/09) - in judgment from 22 November 2011, Court determined violation of right to freedom of expression (Art 10 ECHR), because the domestic court obliged the submitter to pay 5,000 €, based on the compensation of damage for defamation, as well as court expenses, amount which was 25 higher than his monthly incomes. It was decided that they shall rule on demand for fair compensation subsequently. During the repeated procedure, after the judgment of the European Court of Human Rights, based on the decision of Basic Court in Podgorica, it was determined that charges were to be withdrawn in legal matter of plaintiff Božidar Čolović against the defendant Veseljko Koprivica. The procedure was finalised, and the panel of High Court in Bijelo Polje adopted the decision, on the basis of complaint from submitter, lodged against the decision of Basic Court in Podgorica, whereby first instance decision was revised in part related to costs of procedure.
7. *Lakićević and others vs. Montenegro and Serbia*<sup>37</sup> (application no. 27458/06, 37205/06, 37207/06 and 33604/07) - in judgment from 13 December 2011 the Court determined violation of right to property (Art. 1 of Protocol 1). Submitters were retired owners of law offices, and they complained because their pension was terminated during 2004-2005 period, because they reopened their offices and continued working part-time. Court awarded first and third submitter with 8,000 €, 6,000 € to second, and 4,000 € to fourth for material damage, and another 4,000 € to each submitter for non-material damage, as well as the 679.80 € to the first one for costs and expenses. State executed this judgment in its entirety.
8. *Barać and others vs. Montenegro*<sup>38</sup> (application no. 26945/06) - in judgment from 21 February 2012 the Court determined violation of right to a fair trial (Art. 6, p.1 of ECHR), because the court refused the applicants their claims for damages against employers and it founded its judgment on the law for which was previously determined that it is not in accordance with the Constitution, and which ceased to be valid before the final judgment was rendered. In turn, the submitters were deprived of their right to file demands for compensation to their employers. The European Court compensated each submitter and awarded them with 202.34 € for non-material damage, and 4,405 € in total for costs and expenses. State executed this judgment in its entirety.
9. *Boucke vs. Montenegro*<sup>39</sup> (application no. 26945/06) - in judgment from 21 February 2012 the Court determined violation of right to a fair trial, or trial within reasonable time (Art. 6, paragraph 1 of ECHR), due to failure in executing judgments on payments of alimony. Compared to general measures, the representative informed the Committee of Ministers, in cooperation with Ministry of Justice of Montenegro, about the measures which Montenegro undertook, and which it will undertake during the following period, for purpose of reforms of executive procedure. In relation to that, the Parliament of Montenegro passed the Law on Enforcement and Security<sup>40</sup> on 12 July 2011, which is a novelty in this area, and most important one is related to regulation of competencies of public bailiffs regarding enforcement and conducting of enforcements. Based on the new regulation of executive procedure, previous model of court enforcing was terminated and the conducting of executions is delegated to public bailiffs, except in cases of custody, returning the employee to work, and some specific actions that can be done only by executive debtor, which remains under the jurisdiction of court. The bailiff service is a public service, delegated to persons worthy of public delegation, as the independent and autonomous officials of that service. For the purpose of creating conditions for performing activities of public bailiffs and improving legal security of citizens, the Ministry of Justice adopted corresponding bylaws for the implementation of the Law.
10. *Tomić and others vs. Montenegro*<sup>41</sup> (application no. 18650/09, 18676/09, 18679/09, 38855/09, 38859/09, 38883/09, 39592/09, 65365/09 and 7316/10) - in judgment from 17 April 2012 the Court did not determine violation of right to a fair trial. Submitters complained, based on Articles 6, 13 and 14 of ECHR, Article 1 of Protocol 1 and Article 1 of Protocol 12, that domestic courts rejected their complaints, and that they simultaneously accepted identical complaints submitted by their co-workers, thereby claiming that the

36 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107541#{"itemid":\["001-107541"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107541#{)

37 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107937#{"itemid":\["001-107937"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107937#{)

38 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107943#{"itemid":\["001-107943"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107943#{)

39 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109142#{"itemid":\["001-109142"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109142#{)

40 Official Gazette of Montenegro, no. 36/2011 od 27.07.2011, and the Law came in force 31.12.2011, and the Ministry of Justice adopted the corresponding bylaws acts for the implementation of Law, conducted training of candidates and appointed public executors

41 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110384#{"itemid":\["001-110384"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110384#{)



practice of domestic courts was inconsistent. European Court estimated that it was not up to it to question the manner in which domestic courts interpret domestic law, nor to compare different decisions of domestic courts, even if it is obviously similar procedures, because it has to respect the independence of those courts. The Court, also, stated that certain differences in interpretation can be accepted as the inherited property of each judicial system which, same as Montenegrin, is based on a network of first instance and appellate courts which have jurisdictions in a specific territory. However, profound and long-lasting differences in practice of highest judicial instances could be contradictory to principle of legal security, implied in ECHR, which represents one of the basic elements of the rule of law. Criteria for the assessment, whether different domestic supreme court decisions represent the violation of right to a fair trial from Article 6, paragraph 1 of ECHR, and it determines whether «profound and long-lasting differences» exist in practice of Supreme court, whether domestic law envisages the mechanism for overcoming these inconsistencies, whether that mechanism was used, and if the case, what were the consequences. Finally, it was accepted that there could be no conflicting jurisprudence if two disputes are treated in a different manner, when this is justified based on the difference in factual situations in question. Regarding this particular case, Court noted that the Supreme Court decided only in one case, out of six cases stated by submitters. In addition, it was pointed out that the judgment was delivered much earlier compared to others, and in the case where prosecutor was in a completely different situation compared to submitters. Given that Court did not determine violation of rights stipulated by the Convention, the state did not have any obligations.

11. *Stakić vs. Montenegro*<sup>42</sup> (application no. 49320/07) - in judgment from 2 October 2012 the Court determined violation of right to a fair trial, or trial within reasonable time (Art. 6, paragraph 1 of ECHR), as well as of right to efficient legal remedy (Art. 13 of ECHR). The motive behind the submission was a civil litigation for compensation, based on the complaint of submitter filed in 1978 before the Basic Court in Podgorica, which had still not been terminated finally. Main hearing was concluded twice and first instance decisions were made, which were annulled by High Court in Podgorica during a complaint procedure. Court awarded submitter with 5,000 € for non-material damage, along with additional fees and interests, while the rest of demands by submitters for fair compensation were rejected. State executed individual obligations in their entirety. Regarding the general measures expected of Montenegro, the Ombudsman shall monitor the implementation of Law on protection of right to trial within reasonable time by Montenegrin courts, in cooperation with the Ministry of Justice of Montenegro, for purpose of full affirmation and efficiency of legal remedies, stipulated by this Law (request to expedite the proceeding and complaint for fair satisfaction). It shall inform the Committee of Ministers on a regular basis regarding the measures undertaken.
12. *Velimirović vs. Montenegro*<sup>43</sup> (application no. 20979/07) - in judgment from 2 October 2012 the Court determined violation of right to a fair trial, or right to trial within reasonable time (Art. 6, paragraph 1 of ECHR). The submitter complained due to failure to execute the judgment which became final on 28 April 1992 regarding the awarding of apartment by the employer. Court awarded submitter with 4,325 € for non-material damage, with additional taxes related to costs and expenses, and rejected the rest of demands by submitter for fair compensation. The state executed individual obligations in their entirety. Compared to general measures, and given that Court determined violation of Art. 6, paragraph 1 of ECHR, related to failure to execute final court judgment, the representative informed the Committee of Ministers on what Montenegro did and what it will do for purpose of reforms of executive procedure.<sup>44</sup>
13. *Novović vs. Montenegro*<sup>45</sup> (application no. 13210/05) - in judgment from 13 October 2012 the ECHR determined violation of right to a fair trial, or trial within reasonable time (Art. 6, paragraph 1 of ECHR), stating that the overall length of impugned proceedings failed to meet the request for reasonable deadline. Court noted that the impugned proceedings were in jurisdiction of Court *ratione temporis*, within the period of 5 years and 3 months, after the respondent state ratified the ECHR on 3 March 2004 and that prior that date another 12 years and 8 months passed. Hence, the proceeding lasted for 17 years and 11 months in total. Court rejected demand of submitter for fair compensation, because the documentation was not submitted in due time. Since Court did not determine the so called fair compensation in this case based on demand of submitter, there was no international legal obligation of Montenegro in that regard. As a general measure, the representative of Montenegro informed the Committee of Ministers that the Law on protection of right to trial within reasonable time, applied for five years, envisages mechanisms of protection of this

42 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113297#{"itemid":\["001-113297"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113297#{)

43 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113298#{"itemid":\["001-113298"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113298#{)

44 Same as in case related to judgment Boucke vs. Montenegro

45 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113978#{"itemid":\["001-113978"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113978#{)

right during the very proceeding (control request for expedition of proceeding). In total, 268 such demands were submitted, and they were all resolved. After the court proceeding is terminated, the right to complaint for fair compensation is guaranteed in accordance with ECHR standards, and the complaint is submitted to Supreme Court of Montenegro. By July of 2013, 67 such complaints have been submitted, out of which two remained unsolved. In that sense, according to representative's opinion, the law proved to be an efficient legal remedy for protection of this right, on a national level, based on which the number of submission before the ECHR will reduce.

14. *Milić vs. Montenegro*<sup>46</sup> (application no. 28359/05) - In judgment from 11 December 2012 the Court determined violation of right to a fair trial, or trial within reasonable time (Art. 6, paragraph 1 of ECHR) as well as of right to efficient legal remedy (Art. 13 of ECHR) in relation to Montenegro. Submitter complained due to failure to execute final decision, based on which his return to job was ordered and due to inexistence of an efficient legal remedy with regards to that. The impugned proceeding lasted 6 years and 3 months in total. Within the jurisdiction of Court *ratione temporis* was more than 5 years and 7 months, and prior to that another 9 months. Submitter was awarded with 7,000 € for non-material damage he suffered, along with costs of trial, fees and interests, while the rest of the demands for fair compensation was rejected. The state executed individual obligations in their entirety. In addition, the representative informed the Committee of Ministers on results achieved in preventing and solving labour disputes, legislative and institutional framework, with emphasis on competency and work of Agency for peaceful conflict solution. The representative also regularly informs the Committee of Ministers on the dynamics of solving labour disputes.
15. *A and B vs. Montenegro*<sup>47</sup> (application no. 37571/05) - in judgment from 5 March 2013 submitters complained that they have been deprived of their right of access to court and to trial within reasonable time (Art. 6, paragraph 1 of ECHR). Court declared this complaint was inadmissible. Court determined that their right to property of Art. 1 of Protocol 1 to ECHR was violated, in relation to fact that their saving was not registered and converted into public debt. The motive behind the submission was the failure to execute final and executive court decisions related to old foreign savings of legal predecessor of submitter. The ECHR ruled that the state should award submitters, within 3 months period, in line with Art. 44, paragraph 2 of ECHR, with following amount: all rates including the interest, accounted for those amounts, from the day when foreign saving converted into public debt, till day this judgment became final, except for some amount that may have been paid in meantime on this basis; 3,000 € in total, plus fees that will have to be paid for non-material damage; 6,500 €, plus costs fees, along additional taxes and interests. Court rejected the rest of demands by submitters for fair compensation. The Court, also, thereby questioned the efficiency of constitutional appeal in terms of its effectiveness and availability, due to lack of compensational component of efficiency. The estimate, whether domestic legal remedies have been exhausted, is made compared to day when submission was filed. Court noted in particular case that the submission was filed on 19 October 2005, while the constitutional appeal was introduced on 22 October 2007, which is two years later. Thus, it was not at the disposal to submitters in relevant time. The state executed individual obligations in their entirety. Submitters were awarded with fair compensation for non-material damage, as well as with the amount which was determined afterwards, which would have been paid to submitters by the ordinary course of things, had the same been enlisted as foreign saving depositors, when old foreign saving was converted in public debt. Also, the submitters were enlisted as foreign saving depositors, and in that manner it was determined for all future payments to relate to them on basis of old foreign saving. This case is an isolated one, since there are no such or similar before administrative bodies or Montenegrin courts, that could cause new submissions before ECHR. For the purpose of prevention, the representative informed the Governor of Central Bank on the content of judgment and reason for dispute before ECHR, in concordance with Committee of Ministers. Supervision of banks and other financial institutions in Montenegro falls under the competence of Central Bank.
16. *Vukelić vs. Montenegro*<sup>48</sup> (application no. 58258/09) - in judgment from 4 June 2013 the Court determined violation of right to a trial within reasonable time (Art. 6, paragraph 1 of ECHR). Based on the decision of domestic court from 1997, submitter was awarded with an apartment from debtor in Bar, on behalf of collateral. However, the execution was not conducted, submitter did not receive the aforementioned apartment, which is why he complained to ECHR, which stated that Montenegro must secure the execution of judgment within three months period from the moment it became final. During the same

46 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115210#{"itemid":\["001-115210"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115210#{)

47 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116972#{"itemid":\["001-116972"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116972#{)

48 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-120064#{"itemid":\["001-120064"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-120064#{)

period, state was obliged to award the submitter with 3,600 € for non-material damage. Vukelić also asked for 208,333.88 € for non-material damage caused by long judicial proceeding, but the Court rejected his demand due to lack of evidence. Ministry of Finances executed this payment timely, on which the representative informed the Committee of Ministers. And in addition to fact that a precise deadline was determined based on the decision from ECHR, regarding the execution of judgment from Basic Court in Bar, related to the eviction from apartment, the judgment was executed only after the Representative warned Montenegro on international legal consequences it may face due to delay.

17. *Mijanović vs. Montenegro*<sup>49</sup> (application no. 19580/06) - in judgment from 17 September 2013 the Court determined violation of right to fair trial due to failure to execute final judgment (Art. 6, paragraph 1 of ECHR), as well as of right to property (Art. 1 of Protocol 1). Submitter asked for compensation from former factory "Radoje Dakić", and the judgment in his favour became final in 2004. The motive behind the submission was the executive proceeding, which was conducted based on the proposal of submitter for execution since 2004. In the meantime, submitter passed away, and the proceeding was continued before the ECHR by his successors. Court determined that neither Central Bank nor basic court undertook all measures necessary to secure the execution from one of the many accounts that public limited company had in Central Bank. Also, the state, as the majority holder of company, was obliged to pay off that debt. Court demanded from Montenegro to pay to submitter total amount determined based on decisions of domestic courts, within three months period, since the moment this judgment became final, in line with Art. 44, paragraph 2 of the Convention, including all legal interests and court expenses from that paragraph, for non-material damage. In this judgment, Court reiterated that complaint to Supreme court for compensation due to violation of right to trial within reasonable period, as well as the constitutional appeal in case of failure to execute judgment are not efficient legal remedies. State executed the aforementioned judgment by awarding the successors with total amount, determined by decisions of domestic courts, including all legal interests and court expenses from that paragraph, for non-material damage.
18. *Bulatović vs. Montenegro*<sup>50</sup> (application no. 67320/10)- in judgment from 22 July 2014 the Court determined violation of prohibition of torture, inhuman or degrading treatment or punishment (Art. 3 of ECHR). Court did not find that Art. 3 of the Convention was violated, regarding the medical care in detention. Court rejected demand by submitter for fair compensation. Motive behind the submission was a criminal proceeding conducted against the submitter before High Court in Podgorica, or Appellate court of Montenegro, due to criminal offense of murder from Art. 30, paragraph 2, item 3 in relation to paragraph 1 of Criminal Code of Republic of Montenegro. During the criminal proceeding, measure of prolonged detention was sentenced to submitter several times. Submitter complained on conditions in detention, stating that he was a victim of inhuman and degrading treatment, because his walks in prison camp was limited illegally, as well as his visits, and he did not receive appropriate medical care (Art. 3 of ECHR). Particularly, he stated that medical visits were organised once a week, in best case scenario, regardless of his needs. Submitter complained on length of continued deprivation of liberty between 27 June 2002 and 21 March 2011 when court judgment became final, then on length of criminal proceeding, as well as on the fairness and outcome. The submitter, also, complained that the Law on criminal proceeding from 1977, applied in his case, did not limit the duration of his detention, whereas the Code on criminal proceeding from 2003 would do so (Art. 14 of ECHR and Art. 1 of Protocol no. 12 to ECHR). Court declared complaints in relation to conditions of detention, lack of medical care in detention and duration of detention admissible, while the other complaints were declared inadmissible. Deadline for the preparation of Action plan aimed to execute judgment is April 2015, and the same is being prepared.
19. *Bujković vs. Montenegro*<sup>51</sup> (application no. 40080/08) – in judgment from 10 March 2015, Court determined violation of right to trial within reasonable period (Art. 6, paragraph 1 of ECHR). Motive behind the submission was a civil litigation, which was conducted before Basic Court in Bar, regarding the complaint of submitter for protection of property from 20 April 2000. On 23 January 2003, first instance court reached a judgment based on which it partially accepted complaint demand from submitter, but the same was annulled by Higher court in Podgorica on 27 April 2004 in one part, while in other it was confirmed. By acting according to revision, Supreme Court of Montenegro rejected the same. Submitter initiated several litigations before Basic court in Bar, based on similar factual or legal basis. Competent courts passed 10 decisions in three instances on this basis, and during the period which lies in jurisdiction of European

49 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126349#{"itemid":\["001-126349"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126349#{)

50 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145705#{"itemid":\["001-145705"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145705#{)

51 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-152780#{"itemid":\["001-152780"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-152780#{)

Court of Human Rights, 6 decisions in three instances were passed, but the proceeding was not terminated. European court reached a judgment based on which it determined that violation of Art. 6 of ECHR occurred, and that the state should award the submitter with 1,020 €, within three months period from the moment judgment becomes final, in accordance with Art. 44 of ECHR, plus with each tax that could be charged to submitter, in terms of costs and expenses. Upon the expiration of three months, the payment of interests should be paid on abovementioned amount in accordance with rate, which is equal to lowest interest rate of European Central Bank during the period of non-payment plus three percentage points.

### *Montenegro and the European Union*

Relations between Montenegro and EU began in 2001 during the Process of Stabilisation and Association. European perspective of Western Balkans states was confirmed on Summit in Thessaloniki in 2003, and the Enhanced Permanent Dialogue was established in July of the same year, in form of regular consultations. Bilateral recognitions of Montenegro came from member states of the Union after the referendum on independence of Montenegro and declaration of independence in Montenegrin Parliament in 2006. Diplomatic relations between Montenegro and the Union were conducted through Mission of Montenegro to EU, or in Brussels, which has been functioning since 2006, and EU Delegation to Montenegro in Podgorica, which started working in November of 2007. Further, the Interim Agreement on Trade and Trade-Related Matters<sup>52</sup> came into force on 1 January 2008, as well as the Agreement on Visa Facilitation<sup>53</sup> and the Agreement on Readmission<sup>54</sup>. On 30 November 2009, Council of Ministers of European Union adopted the decision on abolishment of visas for Montenegro, Macedonia and Serbia, and once it came into force, citizens of Montenegro were able to travel without visas to all 25 member states, which are a part of Schengen zone, but also to three states that are not part of the EU (Iceland, Norway and Switzerland).

Montenegro and EU signed the Stabilisation and Association Agreement (SAA)<sup>55</sup> on 15 October 2007, which came into force on 1 May 2010, after all other member states finished process of ratification. The supervision over the application and implementation of SAA was done by the Council for Stabilisation and Association. Once SAA came into force, Interim Agreement ceased to be valid, and the establishment of new institutional framework for cooperation between EU and Montenegro was envisaged afterwards.

Montenegro submitted request for EU membership on 15 December 2008. In accordance with Article 49 of the EU Agreement<sup>56</sup>, member states asked European Commission to prepare opinion on application on 23 April 2009, after which Montenegro received Questionnaire from European Commission containing more than 4,000 questions from every area of EU Acqui. That same year in Brussels, Prime minister of Montenegro submitted the answers to Questionnaire to EU Enlargement Commissioner Olli Rehn, on 9 December 2009. Directorate for the Enlargement of European Commission submitted a new set of 673 additional questions from Questionnaire to Ministry of European Integrations on 1 March 2010, related to additional information and clarification on answers from almost every chapter (except for Chapter 12 - food safety, veterinary and phytosanitary policy). The answers from Government of Montenegro were submitted to Commission within the scheduled deadline (12 April 2010).

European Commission published its Opinion<sup>57</sup> on 9 November 2010, whereby it was noted that the European Commission believes that accession negotiations between EU and Montenegro should take place as soon as it achieves necessary level of compliance with membership criteria, especially with Copenhagen political criteria that require stability of institutions that guarantee the rule of law. President of the European Council, Herman Van Rompuy paid a visit to Montenegro in October 2010, and on November 9 of that same year, European Commission published a positive Opinion on readiness of Montenegro for membership, whereby it recommended that Council grants the status of candidate to Montenegro. On a session of the European Council, Montenegro became a candidate for membership in the EU. During period that followed, Government of Montenegro adopted Action Plan on 17 February 2011, regarding the supervision over the implementation of recommendations from the Opinion of European Commission. European Commission published its Progress report on 12 October 2011,

52 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:345:0002:0326:EN:PDF>

53 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0109:0119:EN:PDF>

54 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:334:0026:0044:EN:PDF>

55 <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011566%202007%20INIT>

56 <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M/TXT&from=EN>

57 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/mn\\_opinion\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mn_opinion_2010_en.pdf)



whereby it provided a positive opinion on efforts of Montenegro and recommended the opening of new accession negotiations with the EU, and in summit in Brussels, held on 29 June 2012, heads of states and governments of EU confirmed the opening of negotiations on accession of Montenegro. After a positive decision, they initiated a new approach in negotiations with Montenegro, based on which Chapters 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security) shall remain open until the end of the negotiating process. In that sense, meetings of explanatory and bilateral screening were held first, during March and May of 2012, until January 2015. Montenegro opened 16 negotiating chapters<sup>58</sup>, out of which two have been temporarily closed.<sup>59</sup>

Obligation of Montenegro to adopt Action Plans for Chapters 23 and 24 was the only benchmark based on which negotiations between the EU and Montenegro could be opened, and that was done by the Government of Montenegro in July 2013, upon consultations with European Commission, NGO sector and other interested part of public. Emphasis of those action plans was on the recommendations from the report on analytical overview, and those recommendations simultaneously represent benchmarks for the opening of negotiations in these chapters. Government of Montenegro made three reports on the realisation of benchmarks from action plans, and one revision of these action plans, which primarily related to harmonisation of deadlines and budget resources for envisaged benchmarks, which were obviously unrealistically planned, to which the NGO sector continually pointed out on. In December 2014, when they considered the revision of these plans, they discovered that more than 50% of benchmarks have not been achieved, and instead accompanied with dissatisfying level of reporting, as well as with the insufficiently defined indicators of achievement, which affected the inability of measuring the progress in certain areas. New action plans should overcome these flaws and acknowledge comments from European Commission and NGO sector. Also, new reports have to be harmonised in a methodological manner, more transparent and concise.

Meeting the benchmarks or standards set by the EU in an effective manner is of particular importance for the negotiating process regarding the part of fundamental rights, as well as the reform of judiciary, under the assumption that Montenegro will continue with its progress in harmonisation and implementation of EU acqui.

Benchmarks set by EC as principles for making of AP for Chapter 23 have 45 paragraphs. First paragraph directs competent bodies in Montenegro to conduct the realisation of benchmarks from AP for this chapter in a continued manner and in line with planned objectives and deadlines, through a clear and multi-sector mechanism, with special focus on adequacy of financial means, institutional capacity and respect of deadlines.

Next are the 18 paragraphs that represent the platform for further improvement of reform of judiciary system in Montenegro, starting from the implementation of strategy of judiciary reform (2013-2018) and accompanying Action plan, through series of benchmarks regarding the area of strengthening the independence and impartiality of judiciary, but of the improvement of professionalism, jurisdiction and effectiveness of judiciary as well.

Regarding the benchmarks from area of judiciary, paragraph, which is of special importance, states that « Montenegro efficiently demonstrated capacity of body for the implementation of laws and courts to resolve cases of war crimes independently, in line with international humanitarian right and court practice of International crime tribunal for former Yugoslavia, and undertook efficient measures for tackling the issue of impunity, especially by accelerating the progress of investigation and prosecution of these crimes as well as by securing access to justice and compensation to civil victims».

Benchmarks for chapter 23 consist of further 14 paragraphs related to strengthening the prevention and fight against corruption, whereby Montenegro committed to «undertake steps for improvement of efficiency of whistleblower protection system».

Within fundamental rights, 12 paragraphs are strictly related to protection of human rights with following obligations<sup>60</sup>:

- Montenegro shall further harmonise its legislative framework (in particular the Law on Ombudsman) with EU acqui and international standards. Montenegro shall strengthen independence, professionalism and institutional capacity of Ombudsman (through the establishment of National mechanism for prevention

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58 Chapters 4 (Free movement of capital), 5 (Procurement), 6 (Commercial law), 7 (Intellectual property), 10 (Information society and media), 18 (Statistics), 20 (Entrepreneurship and industrial policy), 23 (Judiciary and fundamental rights), 24 (Justice, freedom and security), 25 (Science and research), 26 (Education and culture), 28 (Protection of consumer and health), 29 (Customs union), 31 (Foreign, security and defense policy), 32 (Financial supervision), 33 (Financial and budget provisions)

59 Chapters 25 and 26

60 Integrally taken from benchmarks for Chapter 23

of torture). Montenegro shall guarantee efficient application of human rights - including the rights of child and rights of persons with disabilities - through judicial system and other bodies and secure sufficient training of staff in this sense.

- Montenegro shall conduct all recommendations of European Committee for prevention of torture and inhuman and degrading treatment (CPT) from the Report for 2008 and urgent recommendation from the Report for 2013 and particularly improve material conditions in prison, shelters and closed institutions. Montenegro shall secure sufficient benchmarks for recommendations from the Report for 2013. Montenegro shall prevent and secure swift reaction of judiciary in possible cases of abuse. Montenegro shall establish an effective system of probation.
- Montenegro shall secure the improvement of freedom of expression and media in state, and it shall apply zero rate of tolerance in terms of threats and assaults on journalists, as well as determine priorities of prosecutions if there are any. Montenegro shall establish the Commission for supervision over the activities of competent bodies during the prosecution of older and newer cases of threats and violence against journalists, including the case of murder. Montenegro shall secure the initial balance sheet of achieved results during the progress made in investigation, efficient prosecution and dissuasive sanctions for perpetrators of these acts.
- Montenegro shall continue with the implementation of Strategy of protection from domestic violence, as well as raise the awareness on preventing domestic violence and securing necessary protection for victims.
- Montenegro shall continue with the implementation of Strategy of improving the status of LGBT persons, work on raising the awareness of rights of LGBT persons and undertake corresponding measures against discrimination based on sexual orientation.
- Montenegrin courts shall determine initial balance sheet of achieved results regarding the efficient legal remedy in line with Article 13 of European Convention on Human Rights.
- Montenegro shall inform its citizens on legal rights and secure that free legal aid is generally available to all citizens who have the need for it, especially to most vulnerable categories.
- Montenegro shall undertake concrete steps - in line with Action plan - regarding the prevention of discrimination and cope with cases of discrimination in a systematic manner, through administrative and court acting.
- Montenegro shall conduct the Strategy of improving the status of Roma and Egyptians in Montenegro, facilitate their access to personal documents and registration, as well as their access to education, employment, healthcare and social housing, including the allocation of sufficient resources. Unequivocally promote the integration in the area of culture, education, local self-government, media and socio-economic rights and undertake concrete steps to reduce the rate at which children, who belong to Roma population, abandon schools.
- Montenegro shall improve the quality of life conditions for displaced persons, including the simplification of their registration as well as their access to education, health, employment and social housing.
- Montenegro shall alter the Criminal Code so that it could be fully harmonised with Framework Decision 2008/913/PUP from November 28. 2008, regarding the fight against certain forms of racism and xenophobia through measures of criminal code.
- For the abovementioned areas, policy of Montenegro shall secure adequate involvement of civil society regarding the progress, conducting and supervision over policies.

Great challenge lies ahead of Montenegrin institutions and it will not be easy to achieve optimal protection of human rights given the quite slower process of reforms, with numerous obstructions, which causes can be found in lack of administrative capacities and inappropriate political influence on state institutions. NGO sector plays an inevitable role in monitoring the process of decision-making, discovering flaws and problems in work of state bodies, initiating the resolution and consistent increase in confidence of negotiation process itself.



# THE CONSTITUTION OF MONTENEGRO - PROVISIONS ON HUMAN RIGHTS AND PROPOSALS FOR IMPROVEMENT

The Constitution of Montenegro defines Montenegro as a state with republican form of government, based on the idea of civic democracy and social justice<sup>61</sup>. The Constitution conveys political sovereignty to the individual-citizen, by which the principle of democracy<sup>62</sup> is explicitly upheld. General guarantee of human rights and freedoms is prescribed by Articles 7 and 8 of the Constitution. Namely, the Constitution prohibits infliction or encouragement of hatred or intolerance on any grounds, therein including personal capacity of a person or a group<sup>63</sup>, whereas Article 8 explicitly sets forth a prohibition of any direct or indirect discrimination of any groups, but also introduces a rule on the exemption from the legal definition of discrimination or the so-called measures of affirmative action i.e. those measure which serve to improve the position of individuals or groups in order to achieve their full equality with others. Anti-discrimination guarantees of special character are envisioned in Articles 13 and 14 of the Constitutions and they are dedicated to language and alphabet and separation of the religious communities from the State. It is defined that Montenegrin is the official language in Montenegro, but that languages of other national communities (Serbian, Bosnian, Albanian and Croatian) are also in the official use, and it is implied that Cyrillic and Latin alphabet are equal.<sup>64</sup> The basic guarantees of religious freedoms are defined in Article 14 and this Article prescribes separation of religious communities from the state is prescribed, as well as the equality of religious communities and their right to freely exercise religious rites and religious affairs. In Part II of the Constitution which formulates policies on human rights and freedoms introductory articles are dedicated to general guarantees of equality. Article 17 states that all people shall be deemed equal before the law, regardless of any particularity or personal feature. This rule is supplemented by the provision in Article 19 which stipulates that everyone has the right to equal protection of the rights and liberties. Finally, Article 18 guarantees the quality of men and women and sets forth an obligation of public authorities to develop the policy of equal opportunities. Temporary limitation of the rights and freedoms is permitted, but discriminatory limitations on the basis of personal features of persons or groups are forbidden<sup>65</sup>. Moreover, in the same article it is stated that there should be no abolishment of the constitutional prohibition of inflicting and encouraging hatred or intolerance, as well as of prohibition of discrimination. The limitations of enjoyment of certain guaranteed rights and freedoms are determined taking into account the need to ensure effective implementation of the constitutional guarantee of equality. Thus, Article 50 envisages possibility to prevent dissemination of information, if required in order to prevent incitement to violence or performance of criminal offences and to prevent propagating of racial, national and religious hatred or discrimination.

Thus, not only citizens, but all other persons equally enjoy rights and freedoms guaranteed by the constitutional provisions. As regards human rights and freedoms, the Constitution provides additional guarantees that rights and freedoms are limited by the equal rights and freedom of others, and that they are the basis and a limitation to execution of authority. Also, human rights are divided into: personal, social, economic and cultural and political and special rights are minority rights and rights of the new generation. As regards the specific rights, for example right to own property<sup>66</sup>, it is explicitly stated that foreign nationals have these rights as well. Some human rights are guaranteed only to nationals, such as, for example, freedom from expulsion from the territory of the country or extradition to other state<sup>67</sup>, or the freedom of political organization and actions on the territory of Montenegro<sup>68</sup>. On the other hand, some rights, such as the right to asylum<sup>69</sup>, are guaranteed only to people who are not nationals

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61 Article 1 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

62 Article 2 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

63 Article 7 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

64 Article 13 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

65 Article 25 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

66 Article 61 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

67 Article 12 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

68 Article 54 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

69 Article 44 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

of Montenegro. Additionally, some provisions of the Constitution aim at providing special guarantees to certain categories of persons, such as the ones relating to the status of persons in legal proceedings, as for example is the provision which guarantees the right of the person deprived of liberty to use his/her own language<sup>70</sup>, as well as the accused person who uses the right to defense<sup>71</sup>, or the provision which limits the duration of detention of minors to 60 days<sup>72</sup>.

Also, a group of constitutional provisions guarantees special protection of certain, especially sensitive and vulnerable groups and persons. Thus, the Constitution envisages that: youth, women and disabled persons shall enjoy special protection at work the state provides<sup>73</sup>; the state shall provide material security to the person that is unable to work and has no funds for life<sup>74</sup>; special protection of the persons with disability shall be guaranteed<sup>75</sup>; as well as health protection of a child, pregnant woman, an elderly person and a person with disability<sup>76</sup>; family shall enjoy special protection, and children born out of wedlock shall have the same rights and freedoms as children born in marriage<sup>77</sup>; mother and child shall enjoy special protection<sup>78</sup>; a child shall be guaranteed special protection from psychological, physical, economic and any other exploitation or abuse<sup>79</sup>, and similar. Persons belonging to minority nations and other minority national communities are guaranteed the rights and liberties that they can exercise individually or collectively with others. Thus, Article 79 enumerates the rights of members of minority nations and other minority national communities, including the rights pertaining to preservation of identity, use of own language and alphabet, education in own language and alphabet, use of own name and surname, organization, political participation, information, and similar. Especially important is the guarantee of protection from forceful assimilation<sup>80</sup>.

Despite many solid solutions the existing Constitution provides, there is room for *improvement* of this highest legal act.

Article 8 should be supplemented by the words which directly point out to the examples of specific personal characteristics on the bases of which it is prohibited to discriminate against persons or groups. This amendment would be closer to readers, as it would clarify the content of constitutional guarantees and would eliminate the possible ambiguities pertaining to who belongs to a circle of protected persons or groups, which would jointly contribute to raising the level of legal certainty in this field. Of course, this list of personal characteristics should not be pinpointed, but it should only as an example serve to indicate the characteristics and properties in regard to which there is an actual or expected risk of discriminatory treatment.

Secondly, the title and content of Article 18 of the Constitution should be harmonized. Category of gender equality is much broader and the title of the article encompasses every person, and not just a binary concept of man and woman, i.e. persons of different gender identity therein including individual's personal gender perception which does not depend on the sex registered at birth of a person. Therefore, it is necessary to modify this constitutional provision in linguistic terms, in order to provide guarantees equality connected to gender and not sex.

Thirdly, the term "person with disability" used in Article 64 of the Constitution should be used to replace the term "the disabled" used in Article 64, as persons with disability consider this term as offensive. Also, there is a term to linguistically edit the content of the constitutional guarantee stipulated in Article 68 of the Constitution, i.e. the phrase "special protection of the persons with disabilities shall be guaranteed" should be expanded to guarantee the protection of rights and freedoms of this category of persons. Namely, these persons do not require special protection, but have the same rights, and their rights should be protected the same as the rights of all other citizens.

The fourth relates to the users of constitutional prohibition of dissemination of information from Article 50 of the

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70 Article 29 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

71 Article 37 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

72 Article 30 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

73 Article 64 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

74 Article 67 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

75 Article 68 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

76 Article 69 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

77 Article 72 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

78 Article 73 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

79 Article 74 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

80 Article 80 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

Constitution of Montenegro. Namely, the application of the institute of prevention of dissemination of information should not be limited only to cases of racial, national and religious hatred and discrimination. Relatedly, it wouldn't be justified only to protect against acts of incitement of violence, hatred or discriminations those persons who share the same racial, national or religious affiliation. This protection mechanism should also be available to the state when it comes to the need to protect the persons or groups which share some other personal characteristics, as for example: sexual orientation or gender identity.

The fifth relates to determining who Article 71 of the Constitution of Montenegro relates to, or beneficiaries of the right to marry. The existing formulation implies the rule is that only persons of different sexes have the right to enter into a marital union. Namely, the constitutional provision relating to marriage, and which time-wise preceded the existing constitutional solution, was contained in the Small Charter<sup>81</sup> and it guaranteed the right to enter into marriage, without limiting the circle of beneficiaries to the persons of different sex. Having in mind that today we can recognize some discrimination problems LGBT persons are faced with on the daily basis, among which are problems related to entering into marriage, as well as the direction of development of national legal systems and international standards in this field, with developing of consensus of the states signatories of the ECHR in this field, it is justified to remove the words indicating only to persons of different sexes from Article 71 of the Constitution.

Sixth, the Constitution does not guarantee the right to adequate housing, food and water as well as an array of rights to an adequate standard of living, which is guaranteed by the International Covenant on Economic, Social and Cultural Rights, and thus it requires improvement.

Finally, when it comes to *limiting of guaranteed human rights and freedoms*, according to Constitution they can be limited by law, to the level permitted by the Constitution and to the extent necessary to fulfill the purpose for which the restriction was set<sup>82</sup>, in an open and free democratic society (during a declared state of war or state of emergency). Limitations should not be made on the basis of gender, nationality, race, religion, language, ethnic or social origin, political or other opinion, economic status or any other personal feature. The following rights cannot be limited: right to life, legal remedy and regal aid, dignity and respect of a person, fair and public trial and the principle of legality, presumption of innocence, right to the defense, right to compensation of damage for illegal or ungrounded deprivation of liberty and ungrounded conviction, freedom of thought, conscience and religion and entry into marriage. The Constitution contains a list of rights that cannot be revoked in any case. The following prohibitions cannot be abolished: to inflict or encourage hatred or intolerance, discrimination, trial and conviction twice for one and the same criminal offence (*ne bis in idem*) and forced assimilation. The measures of limitation may be in effect at the most for the duration of the state of war or emergency.<sup>83</sup>

The Constitution does not use formulation from the ECHR that limitations must have a legitimate goal, i.e. built-in practice of the European Court of Human Rights according to which the legitimate goal must be a condition or acceptability of limitation of human rights, which is an important shortcoming. Namely, according to the Constitution of Montenegro everything is allowed that is not disallowed by the Constitution. Furthermore, the Constitution does not explicitly state which rights are directly enforceable, and which are not, and this determination is done by the Parliament. This, to some extent, opens a possibility for abuse and limits directly enforceable rights through legislation. European Convention also allows derogation of human rights "only to the extent strictly required by the exigencies of the situation"<sup>84</sup>, which should have been more precisely prescribed in Montenegrin Constitution.

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81 Article 25 of the Charter on Human and Minority Rights of the State Union of Serbia and Montenegro, Official Gazette of SM, no. 6/03

82 Article 24 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

83 Article 25 of the Constitution of Montenegro, "Official Gazette of Montenegro" no. 1/2007

84 European Convention for the Protection of Human Rights and Fundamental Freedoms "Official Gazette of SM" – International treaties, no. 9/2003





# THE EFFICIENCY OF LEGAL REMEDIES FOR THE PROTECTION OF HUMAN RIGHTS WITHIN LEGAL SYSTEM OF MONTENEGRO

## *General remarks*

Existence of efficient legal remedies is an essential precondition for effective exercise of human rights. Article 2, paragraph 3 of the International Covenant on Civil and Political Rights, Article 13 of the European Convention and provisions of other international agreements ratified by Montenegro, set forth an obligation of the state to secure legal remedies based on which it is possible to consider complaints for violation of rights guaranteed by international agreements, as well as the obligation to secure the right to adequate compensation to victim of such violation.

Constitution of Montenegro prescribes that everyone has the right to legal remedy against the decision ruling on the right or legally based interest of that person<sup>85</sup>, as well as that everyone has the right of recourse to international institutions for the protection of own rights and freedoms<sup>86</sup>. According to international standards, state is obliged to envisage the right to compensation or some specific legal remedies, in addition to efficient legal remedy, for violations of human rights. For instance, the UN Convention on the Rights of the Child<sup>87</sup> obliges the state to secure appropriate support to child who was a victim of abuse, neglect and armed conflicts, for purpose of recuperation and social reintegration.

Determining individual legal means, such as a regular or extraordinary legal remedy for needs of internal law is completely irrelevant for the assessment of those means from the aspect of international law. Legal means can be considered as efficient in general, but the efficiency of legal remedies is estimated depending on circumstances of each individual case. Hence, in theory, any other procedural action prescribed by the law, which could result in the achievement of a specific right or in provision of compensation for violation of that right, can be deemed as legal remedy. Such procedural action can be undertaken in litigation, extra-judicial proceeding, misdemeanor, criminal, administrative and bankruptcy proceeding as well as in proceeding for protection of constitutionality. It is important to differentiate the right to efficient legal remedy from the right of access to court.

## *Constitutional complaint*

Based on the Constitution of Montenegro, direct constitutional and judicial protection of rights and freedoms of a man and citizen has been delegated to Constitutional court of Montenegro through the institute of *constitutional complaint* for violation of human rights and freedoms, guaranteed by Constitution, once all effective legal remedies have been exhausted.

Proceeding in accordance with constitutional complaint has been regulated by Law on Constitutional Court<sup>88</sup>, which prescribes that constitutional complaint can be submitted by every natural and legal person, organization, community, group of persons and other forms of organizations who do not have the property of legal person, if they believe that their human right or freedom, guaranteed by Constitution, has been violated by an individual act, action or inaction of some state body, state administration body, local self-government body, or local administration, legal person or other subject that exercises public authorities. Constitutional complaint can be submitted once all effective legal remedies

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85 Article 20 of the Constitution of Montenegro, "Official Gazette", no. 1/2007

86 Article 56 of the Constitution of Montenegro, "Official Gazette", no. 1/2007

87 Article 39 of the Convention on the Rights of the Child [http://www.unicef.org/serbia/Konvencija\\_o\\_pravima\\_deteta\\_sa\\_fakultativnim\\_protokolima%281%29.pdf](http://www.unicef.org/serbia/Konvencija_o_pravima_deteta_sa_fakultativnim_protokolima%281%29.pdf)

88 Article 68, Law on the Constitutional Court of Montenegro, "Official Gazette", no. 11/2015



have been exhausted, which implies that the submitter of constitutional complaint previously used all legal means to which he had the right in accordance with the law. However, constitutional complaint cannot be submitted until all legal means are exhausted, and if the submitter of constitutional complaint proves that legal mean to which he/she has the right in particular case is not or would not be effective.

In practice, proceeding of Constitutional court, based on constitutional complaints, should represent national legal mechanism of preventing international legal proceedings against Montenegro based on submissions which individuals, natural and legal persons and non-governmental organizations submit to European Court of Human Rights, in accordance with Article 34 of ECHR. Constitutional complaint is submitted within 30 days from: the day of submitting of individual act against which a constitutional complaint can be submitted in accordance with law; the day of termination of current action which violated human right or freedom guaranteed by Constitution, if there is no efficient legal mean against that action; last day when the inaction, which violated human right or freedom guaranteed by Constitution, could have been avoided, if there is no efficient legal mean against that inaction. If it is about the action or inaction that has been lasting for some time continuously, constitutional complaint can be submitted even while that action or inaction lasts, if the submitter explains in constitutional complaint why that action or inaction causes permanent violation of his/her human right or freedom guaranteed by Constitution, details of that permanent violation of right or freedom and evidence that there is no efficient legal mean against those actions or inactions. If it is about the inaction of court within reasonable period, constitutional complaint can be submitted only if legal means for protection of right to trial within reasonable period have been previously used, or if submitter of constitutional complaint proves that those were not or would not be efficient.

Constitutional complaint contains first and last name, permanent or temporary residence and address, i.e. name and seat of office of submitter of constitutional complaint, reasons for constitutional complaint with an explanation of allegations regarding the violation of human right or freedom guaranteed by Constitution, request on which the Constitutional court needs to decide and signature of submitter of constitutional complaint, or of person to whom letter of attorney has been issued in order to submit constitutional complaint. In addition to this information, constitutional complaint, which is being submitted against an individual act, contains the number and date of individual act against which it has been submitted and the name of the body which adopted it. If it is submitted due to inaction, or action, it contains the name of the body that did not act, or acted according to action which is the subject of constitutional complaint. Copy of the disputed individual act is submitted in addition to constitutional complaint, as well as the evidence that all efficient legal means have been used, facts on which the claim for existence of violation of right and freedom is based, as well as all other evidence which is of significance for deciding<sup>89</sup>.

Even though constitutional complaint, in general, does not prevent the execution of individual act against which it has been submitted, Constitutional court can suspend the execution of this individual act, at the request of the submitter, until final decision is rendered, if the submitter shows beyond doubt that unavoidable adverse consequences may occur. Once Constitutional court determines that disputed individual act violated human right or freedom guaranteed by Constitution, it will adopt the complaint and annul that act, completely or partially, and pass the case to a body which adopted the annulled act for a retrial. If during the decision-making process, based on constitutional complaint, legal effect of individual act which is a subject of the complaint terminates, and Constitutional court determines that human right or freedom guaranteed by Constitution has been violated by that act, it will adopt a decision based on which the constitutional complaint is adopted and determine the manner of fair compensation to submitter due to suffered violation of human right or freedom guaranteed by Constitution<sup>90</sup>.

Therefore, constitutional complaint is the ultimate legal mean which should be used within the legal system of Montenegro, as a procedural submission for addressing European Court of Human Rights, or as a precondition for acceptability of submission, but only if that legal mean is efficient, in the sense provided by Court practice.

### *What does it look like in practice?*

According to report on work of Constitutional court for 2013<sup>91</sup>, the court worked on 1,529 cases based on constitutional complaints (770 transferred from previous years and 759 newly received cases). During regular

<sup>89</sup> Article 72, Law on the Constitutional Court, "Official Gazette of Montenegro", no. 11/2015

<sup>90</sup> Article 76, Law on the Constitutional Court, "Official Gazette of Montenegro", no. 11/2015

<sup>91</sup> Report on work of Constitutional Court for 2013 from April 2014, <http://www.ustavnisudcg.co.me/>

sessions, 362 constitutional complaints were reviewed, with: 195 decisions (53.89% of total number of reviewed cases), out of which constitutional complaint was adopted in 16 decisions (4.42% of total number of reviewed cases) and 179 decisions whereby the constitutional complaints were rejected (49.45% of total number of reviewed cases), out of which 165 are solutions on the rejection of constitutional complaint and 2 solutions on the dismissal of the case. Out of total number of decisions adopted based on constitutional complaints, 159 relate to area of civil law (81.54%), 22 to area of criminal law (11.26%), 13 to area of administrative law (6.67%) and 1 decision from a misdemeanor case. The percentage of adopted constitutional complaints amounted to 4.42%, compared to total number of reviewed constitutional complaints from the reporting period.

Decisions based on which constitutional complaints were adopted relate to violations of the following constitutional rights and freedoms: right to equal protection of rights and freedoms from Art. 19 of the Constitution (1 decision); right to personal freedom from Art. 29, paragraph 1 and 2 and Art. 30 of the Constitution, based on which the length of detention is determined (1 decision); right to fair and public trial from Art. 32 of the Constitution (12 decisions); right to freedom of expression from Art. 47 of the Constitution (1 decision) and right to property from Art. 58 of the Constitution (1 decision).

In addition to violation of constitutional rights, violations of rights guaranteed by the European Convention for Protection of Human Rights and Fundamental Freedoms were also determined, and those are: Art. 5, p. 1 and 3 (right to freedom and security of personality), Art.6, p. 1 (right to fair trial), Art.10 (right to freedom of expression) and Art.1 of Protocol no. 1 to Convention (protection of property). Decisions based on which constitutional complaints were adopted relate to area of civil right (13 decisions) and area of criminal law (3 decisions).

Constitutional court passed 179 decisions based on which constitutional complaints were rejected, out of which 146 decisions relate to area of civil law, 19 decisions to area of criminal law, 13 decisions to area of administrative law and 1 decisions which related to misdemeanor proceeding.

What can be noticed is the selectivity when cases are assumed and reviewed by the Constitutional court. For instance, Centre for Civic Education (CCE) submitted the Initiative to Constitutional court, on 18 September 2011, regarding the assessment of constitutionality of Articles 71,72 and Articles 80 to 93 of Law on offenses, along with a request for Constitutional court to abolish the provisions of Law on Misdemeanors, based on which the executive bodies, not the judicial, passed prison sentences to perpetrators of specific offenses<sup>92</sup> in an illegal and unconstitutional manner. And in spite of numerous urgencies CCE submitted during last three years, this initiative was not reviewed until first quarter of 2015. Resolution of European Parliament for 2015 expressed concern in relation to great number of unresolved cases pending in Constitutional court, particularly to those that relate to possible systemic human right violations, such as the initiative for the assessment of constitutionality of the Law on Misdemeanors<sup>93</sup>. Nevertheless, on 30 May Constitutional court adopted a decision<sup>94</sup> on the initiative for the assessment of constitutionality of the Law on Financing of Political Parties, submitted by five ruling coalition MPs on 28 February 2014<sup>95</sup>, accepting it for the most part.

By acting in cases against Montenegro, European Court of Human Rights *determined that constitutional complaint still does not present an efficient legal remedy in legislation of Montenegro*, in the sense provided by the practice of the European Court. Consequently, in great number of cases, citizens of Montenegro bypass the Constitutional court, and address the European instead when they file their submissions, which thereby fails to filter and reduce the number of cases that the European Court receives against Montenegro. In this manner, Montenegrin legal system lacks the regulation needed.

### *Regular and extraordinary legal remedies in Montenegrin legal system*

92 Three years from the violation of Constitution: who is responsible?, CCE, Podgorica, 2014, [http://media.cgo-cce.org/2014/09/three-years-of-violations-of-the-Constitution\\_who-is-responsible\\_.pdf](http://media.cgo-cce.org/2014/09/three-years-of-violations-of-the-Constitution_who-is-responsible_.pdf)

93 <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2015-0211&format=XML&language=EN>

94 Decision of U-I no. 13-14, <http://www.ustavisudcg.co.me/>

95 Miodrag Vuković, Marta Šćepanović and Zorica Kovačević from the Democratic party of socialists (DPS) Almer Kalač from Bosnian party (BS) and Ljerka Dragičević from Croatian civil initiative (HGI) submitted the Initiative for the assessment of constitutionality of provisions of Art. 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 18, 19, 20, 21, 22, 23 and 24 of Law on financing of political parties

According to Law on Civil Procedure (LCP)<sup>96</sup>, parties may file a complaint against the decision adopted in the first instance within 15 days from the day it was adopted, or from the submission of copy of verdict, if no other deadline is stipulated by this law. In cases of bill exchange and check disputes, this deadline is eight days. Timely submitted complaint prevents the verdict to become final in part, which is being challenged based on complaint. Second instance court decides on complaint against verdict.<sup>97</sup> Also, the LCP prescribes that a complaint against the decision of first instance court is admissible, if this law does not prescribe differently. If this Law explicitly prescribes that interlocutory appeal shall not be allowed, the ruling of the court of first instance may be contested only in the appeal against the final decision.<sup>98</sup>

In addition to regular, the LCP prescribes extraordinary legal remedies as well, and those are: review, request for protection of legality and reopening of the procedure. Parties may file request for review of the final and enforceable judgment of the court of second instance within 30 days from the day of the delivery of the judgment. The review shall not be allowed in property disputes where the statement of claims relates to an amount of money, delivery of an object or committing some other action if the value of the disputed matter in the contested part of the final and enforceable judgment does not exceed the amount of 10,000 EUR. Particularly, review is always admissible in: 1) disputes on maintenance support when the maintenance support has been determined for the first time or reversed; 2) disputes regarding the compensation of damage for the lost maintenance support due to the death of supporter of the maintenance and due to the loss of earning or other income from work when those compensations have been determined for the first time or reversed; 3) property disputes arising from unconstitutional and illegal individual acts and actions by which legal or natural persons are placed in an unfair position in the market due to their seat or place of permanent residence or the market is violated in some other manner, involving disputes on the compensation of damage caused by it. The review is considered to be an efficient legal remedy for the purposes of international bodies for protection of human rights.

LCP prescribes that the prosecutor can file a request for protection of legality against a final and enforceable court decision only in case of a substantial violation of provisions of civil procedure from Art. 367, paragraph 2, item 7 of this law within period of three months. Deadline for filing the request for protection of legality counts: 1) against which appeal has not been filed – as of the day when it was not possible to contest that decision by an appeal; 2) against the decision made in second instance as of the day when that decision has been delivered to the party to which it has been delivered later. Request for the protection of legality shall not be allowed against the decision rendered upon review by the court competent to decide on that legal remedy.

Procedure completed by a final court decision may be reopened if:<sup>99</sup>

- 1) a party has not been given the possibility to be heard before the court by some illegal action, particularly omission of delivery;
- 2) the personal delivery of the first writ has been conducted in accordance with article 141 of this Law and the party was continually absent longer than three months;
- 3) he person who may not be a party to the procedure participated in the procedure in capacity of plaintiff or defendant or a legal person in capacity of party has not been represented by an authorised person, or a party without litigation capacity was not represented by legal representative, or if legal representative or agent of the party has not had necessary authorisation for conducting the procedure or particular litigation actions, unless conducting the procedure or particular litigation actions, has been subsequently approved;
- 4) the court decision is based on false testimony of a witness or expert witness;
- 5) the court decision is based on a document that has been falsified or in which false content was discovered;
- 6) rendering the court decision involved a criminal act of the judge, legal representative or the agent of the party, adverse party or any third party;

<sup>96</sup> "Official Gazette of Montenegro", no. 22/2004 and 76/2006, and the decision of the Constitutional Court no. 78/04 and 102/04 - 28 / 2005-31

<sup>97</sup> Article 361 LCP, "Official Gazette of Montenegro", no. 22/2004 and 76/2006, and the decision of the Constitutional Court no. 78/04 and 102/04 - 28 / 2005-31

<sup>98</sup> Article 393 ZPP, "Official Gazette of Montenegro", no. 22/2004 and 76/2006, and the decision of the Constitutional Court no. 78/04 and 102/04 - 28 / 2005-31

<sup>99</sup> Article 421 LCP, "Official Gazette of Montenegro", no. 22/2004 and 76/2006, and the decision of the Constitutional Court no. 78/04 and 102/04 - 28 / 2005-31

- 7) the party acquires possibility to use the final and enforceable decision of the court which has already been rendered on the same dispute and between the same parties;
- 8) the court decision is based on some other court decision or on decision of some other body, and that decision is effectively overruled, reversed and annulled;
- 9) the party discovers new facts or finds or gains the possibility to use new evidence based on which a more favourable decision could have been adopted for the party had those facts or evidence been presented in the previous procedure.

Criminal Procedure Code, also, prescribes the right to an appeal against a decision adopted in first instance within 15 days from the day the copy of the decision was delivered, as well as that a timely submitted appeal postpones the execution of the judgment<sup>100</sup>. Thus, the appeal can be submitted by: parties, defence attorney, legal representative of the defendant and injured party. Further, the appeal can be submitted, to the benefit of defendant, by his/her spouse, relative in blood, adoptive parent, adopted child, brother, sister, foster parent and extramarital partner, and the deadline for complaint, in that case as well, expires from the day when the copy of the judgment was delivered to the defendant, or to his/her defence attorney. State prosecutor can file an appeal to the benefit or to the prejudice of the defendant. The injured party may contest a judgment only regarding the court's decision on the costs of the criminal proceedings, but if the state prosecutor assumed the prosecution from the subsidiary prosecutor, or if the judgment acquitting the defendant is rendered, the injured party may file an appeal for all the reasons for which the judgment may be appealed. The appeal can also be filed by a person from whom the object or the property gain obtained by a criminal offence was forfeited. Finally, the defence attorney, spouse, relative in blood, adoptive parent, adopted child, brother, sister, foster parent and extramarital partner may file an appeal without the special authorization of the accused, but not against his/her will, except when the most severe punishment of imprisonment is imposed on the accused.

An appeal may be filed against the decision of a second instance court with a third instance court, if: the second instance court has imposed the most severe punishment of imprisonment or if it has confirmed the first instance decision that imposed such a punishment; if the second instance court, upon conducting the main hearing, has established the state of facts differently from the first instance court and has based its decision on the newly established state of the facts; if the second instance court has revised the decision of acquittal rendered by the first instance court and rendered a decision declaring the defendant guilty; A third instance court shall decide on the appeal filed against the second instance decision pursuant to the provisions of the present Code regulating the second instance proceedings.

Article 414 of the Code prescribes that parties and persons whose rights were violated may file an appeal against a ruling of the investigating judge and against other rulings of the first instance court, unless the appeal is explicitly declared to be inadmissible by this Code,. Rulings rendered by the Panel prior to and in the course of the investigation are not subject to an appellate review, except when determined otherwise by Code. Rulings rendered for the purpose of preparing the main hearing and the decision may be contested solely in an appeal against the decision. Rulings rendered by the Supreme Court are not subject to an appellate review.

According to the Criminal Procedure Code, extraordinary legal remedies are: request for the protection of legality, request for extraordinary mitigation of punishment and request for repetition of procedure.

Similar provisions on right to complaint can also be found in Law on General Administrative Procedure and in Law on Extra-judicial Proceedings. Complaint cannot be filled against the decision rendered in administrative proceeding, which is in line with the request for several instances of proceeding, given that the administrative dispute is always initiated against the decisions on which it was previously decided in administrative proceeding.

Efficiency of legal remedies primarily depends on quality of implementation of regulations, standardisation and certainty of court practice. There is the issue of standardisation of court practice in Montenegro, as well as

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<sup>100</sup> Article 381 of the Code of Criminal Procedure, "Official Gazette of Montenegro", no. 57/2009, 49/2010, 47/2014 and Decision of the Constitutional Court of Montenegro, No. UI. 34/11

the delay in grasping and interpreting certain legal institutes, assumed during the process of harmonization of regulations on the national level with the EU *acquis*. General views of the Supreme Court, related to particular specific cases, are not the sufficient mean necessary for standardisation and legal certainty of court practice. Resolving this issue presents fundamental prerequisite required for increasing of trust of citizens in the judiciary system in Montenegro.



## INSTITUTIONS AND BODIES FOR EXERCISING, PROMOTION AND PROTECTION OF HUMAN RIGHTS IN THE LEGAL SYSTEM OF MONTENEGRO

The institutions and bodies for exercising, promotion and protection of human rights in the legal system of Montenegro can be *independent* or be a part of one of the branches of government: *legislative, executive or judicial*.

The ***independent institutions***, which represent a focus of this publication, are: Constitutional Court, Protector of Human Rights and Freedoms of Montenegro and Agency for Personal Data Protection and Free Access to Information. Additionally, publication provides an overview of the: Fund for protection and exercising of minority rights and Minority Councils, as well as of the Council for civil control over the work of the police.

### *The Constitutional Court of Montenegro - selection of judges, jurisdiction and powers*

During 2014, new composition of the Constitutional Court was elected in accordance with Article 5, paragraph 2 of the Constitutional Law for implementation of Amendment I to XVI to the Constitution of Montenegro<sup>101</sup>.

The President of Montenegro and the Constitutional Committee of the Parliament of Montenegro, announced a public call (the President for two and Constitutional Committee of five judges of the Constitutional Court), and then proposed to the Parliament seven candidates for these functions. The Parliament of Montenegro, at its session held on 27 December 2013, elected all seven proposed candidates by two-thirds majority vote. Thus, the term of office of the former President and judges of the Constitutional Court has expired. Expert public had divided opinions regarding the legitimacy of the elected judges, i.e. regarding expiry of the office of judges and the President of the Court who previously performed these functions. Namely, the provision of Article 93a of the Law on the Constitutional Court and Article 5, paragraph 2 of the Constitutional Law for the implementation of Amendment I to XVI to the Constitution of Montenegro, President and judges of the Constitutional Court of Montenegro, who previously held these positions, shortens the term of office and determines the termination of office contrary to the conditions and procedures specified in Article 154 of the Constitution of Montenegro. Paragraph 1 of this Article stipulates that duty of the President and the judge of the Constitutional Court shall cease prior to the expiry of the period for which he/she was elected at his/her own request, if he/she fulfills the requirements for retirement or if he/she was sentenced to an unconditional imprisonment sentence, while paragraph 2 stipulates that the President and judges of the Constitutional Court shall be released from duty if he/she has been found guilty of an offense that makes him/her unworthy of the duty, if he/she permanently loses the ability to perform the duty or if he/she expresses publicly his/her political convictions. In paragraph 3 of the same article it is stipulated that the Constitutional Court shall establish the emergence of reasons for cessation of duty or release from duty, in its session and shall inform the Parliament of that case. The procedure for termination of office of the President and judges of the Constitutional Court is prescribed by the provisions of Article 7, 8, 9 and 10 of the Law on the Constitutional Court of Montenegro.

The Constitutional Court decides on:

- Conformity of laws with the Constitution and confirmed and published international agreements;
- Conformity of other regulations and general enactments with the Constitution and law;
- Constitutional complaints for violation of human rights and freedoms guaranteed by the Constitution, after exhaustion of all effective remedies;
- Whether the President has committed a violation of the Constitution;
- Conflict of competencies between courts and other state authorities, between state authorities and local

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<sup>101</sup> "Official Gazette of Montenegro" no. 38/13



- self-government and between the units of local self-government;
- Banning of a political party or non-governmental organization;
- Electoral disputes and disputes connected with the referendum, which are not within the competencies of the regular courts of law;
- Compliance with the Constitution of measures and actions of state authorities taken during the state of war;
- Performs other tasks prescribed by the Constitution.

If in the course of proceedings to review the constitutionality and legality of the regulation this regulation ceases to be valid but consequences of its application have not been removed, the Constitutional Court shall determine whether the regulation was in conformity with the Constitution i.e. with the law during its validity.

Furthermore, the Constitutional Court monitors achievement of constitutionality and legality and on the instances of unconstitutionality and illegality informs the Parliament of Montenegro<sup>102</sup>.

In 2013, the Constitutional Court received a total of 860 cases, of which 101 cases in the field of normative control, three proposals for resolving conflicts of jurisdiction and six electoral appeals, or 11.74% and 759 constitutional complaints, or 88.26%. Additional 917 cases were transferred from 2008, 2009, 2010, 2011 and 2012, so in the previous year the Constitutional Court had to work on a total of 1,777 cases. In addition, in 2013 it received 24 submissions of citizens which, relating to the issues on which the Court does not initiate a procedure. The number of newly received cases in 2013 has increased by 15.13% in comparison with the number of cases received in 2012 (747). Considering the percentage of submitted constitutional complaints in relation to the total number of cases received, as well as the importance of this mechanism for the prevention of international legal proceedings against Montenegro by petitions which natural and legal persons submit to the European Court of Human Rights, there is a concern regarding efficiency and effectiveness of the Constitutional Court, which is elaborated in more detail in the section on the effectiveness of legal remedies for the protection of human rights in the legal system of Montenegro.

### *Protector of Human Rights and Freedoms of Montenegro*

On 8 July 2003 the Parliament of Montenegro adopted the Law on the Protector of Human Rights and Freedoms. The first Ombudsman was elected in October 2003, and the institution officially started its work on the Human Rights Day on 10 December 2003. By the Constitution of Montenegro enacted in 2003, the Ombudsman became a constitutional category and thus it gained institutional stability. According to the Constitution the President of Montenegro proposes the Ombudsman to the Parliament of Montenegro, which appoints him/her by the majority vote of the total number of MPs. This has opened up the question of harmonizing of legislation with the Constitution and international documents, and thus in August 2011 a new Law on the Protector of Human Rights and Freedoms of Montenegro was adopted. This Law was amended in 2014<sup>103</sup>, and through the change this institution became national preventive mechanism for protection of persons deprived of liberty against torture and other forms of cruel, inhuman or degrading treatment or punishment in accordance with the Optional Protocol to the UN Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment. Additionally, the Law on Prohibition of Discrimination<sup>104</sup> has become an institutional mechanism for protection against discrimination. This has caused a need to strengthen administrative capacities of this institution. The Rulebook on internal organization and systematization of the Administrative and Professional Service envisages 33 civil servants and employees. Furthermore, the same document stipulates that research duties in the Administrative and Professional Service are divided into four groups led by the Deputies of the Ombudsman in order to provide specialization for certain tasks. Currently, there are 30 civil servants and employees working in the Administrative and Professional Service, of which eight are performing administrative and technical duties. For more than a year (December 2013 - December 2014) the institution did not have two Deputies<sup>105</sup>, after one Deputy's term of office ended and the other Deputy transferred to another position, because since then the Ombudsman did not propose new candidates to the

<sup>102</sup> Article 149 of the Constitution of Montenegro "Official Gazette of Montenegro" no. 1/2007, Amendments I to XVI

<sup>103</sup> Law on the Protector of Human Rights and Freedoms, "Official Gazette of Montenegro", no. 42/2011 and 32/2014

<sup>104</sup> "Official Gazette of Montenegro", no. 46/2010

<sup>105</sup> The Parliament of Montenegro has appointed two Deputies at a session held on 27 December 2014, and Ombudsman sent a proposal to the Parliament of Montenegro for their appointment just a few days prior to this



Parliament of Montenegro, which affected the overall performance of the institution. Additionally, the deadlines stipulated by the Action Plan for Chapter 23, which relate to the dynamics of employment in Ombudsman institution, have been significantly exceeded. Namely, the Action Plan envisaged that in 2013 one civil servant should have been employed (not realized), and in 2013 three civil servants (one adviser has been employed), in 2015 four civil servants should have been employed (vacancy announcement has not been advertised), and in 2016 three civil servants should be employed. In the meantime the Action Plan was revised and the new dynamics foresees: employment of 4 new persons in 2015, four in 2016 and three persons in 2017.

The European Commission Progress Report for 2014<sup>106</sup> points out to the problem of a limited number of those dealing with human rights and fight against discrimination in the overall structure of employees, and expressed concern that the Ombudsman did not propose to the Parliament of Montenegro for a longer time period two deputy positions and did not fill other vacant positions. The lack of deputy who was dealing among other things with minority rights directly reflected into the lack of promotion of legislation and standards of protection against discrimination, as previously this institution was active in this fields. After publication of the Report, on October 13, 2014, public vacancy was announced for five advisor positions in the institution<sup>107</sup>. As mentioned above, only one advisor was employed.

Ombudsman, as National Preventive Mechanism against Torture (NPM), has only in December 2013 adopted a four-year plan of regular visits to detention facilities, even though this responsibility fell under jurisdiction of this institution in August 2011 already. The first annual report on the work of the institution as NPM has been submitted to the Parliament of Montenegro in June 2014 for 2013, and competent Committee for Human Rights considered the report only in the first quarter of 2015, and no information are available as to when would the report be deliberated by the Parliament during plenary session. Furthermore, NPM is still not functioning in line with the Optional Protocol to the UN Convention against Torture.

Amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro, which came into force in August 2014 have brought some positive changes, but also some big steps back in comparison to the previous solutions. For example, the procedure, which relates to NPM is not in line with the Optional Protocol to the UN Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment. Namely, the provisions of the Article 43 stipulate that, after a visit to a detention facilities and interview with persons deprived of liberty, minutes are prepared and the aforementioned minutes should be signed by persons who visited the facilities and representative of the body, institution or organization which has been visited. By this the Ombudsman assumes a role of an inspection body and not NPM in accordance with the Optional Protocol to the UN Convention. More complete achievement of independent office of the Ombudsman as the NPM in accordance with the Optional Protocol has not been provided by the Law due to the fact that the Law fails to realize measure from the Action Plan for Chapter 23 which relates to establishment of the so-called model "Ombudsman plus", that stipulates participation of NGOs in Advisory body composed of experts from different fields (psychology, criminology, forensic medicine, social work...), which together with Ombudsman conducts an overview of situation in the detention facilities or facilities for persons with restrictions of freedom of movement.

In terms of the *transparency of work* and *availability of information to citizens*, the Website of the institution is not regularly updated, and it does not contain by-laws of the institution (e.g. Rulebook on internal organization and systematization of the Administrative and Professional Service), or those which relate to the functioning of the institution as NPM (Decision on establishment of the Advisory Body, four-year plan of visits to detention facilities and facilities for persons with restrictions of freedom of movement, etc.). There are very few press releases or comments of the Ombudsman regarding human rights violations. The Ombudsman does not have a hotline citizens could call in case of emergency, as is the case with Ombudsman institutions from the region. Direct access to citizens outside of Podgorica is difficult due to the lack of offices outside of the seat of the institution, in spite of the fact that Ombudsman visits other cities within "Days of Ombudsman", which is insufficient for citizens to get informed about the responsibilities of the institution and possibly to file a complaint.

According to the *statistics* from the Report on work of the Ombudsman for 2013,<sup>108</sup> during that year institution had 705 complaints, of which 611 received in 2013 and 94 transferred from 2012, and the procedure was concluded in

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106 <http://www.gov.me/naslovna/vijesti-iz-ministarstava/142896/Ministarstvo-vanjskih-poslova-i-evropskih-integracija-objavilo-prevod-Izvjestaja-o-napretku-Crne-Gore-za-2014-godinu.html>

107 Available at the website of Human Resources Management Authority: [http://uzk.co.me/index.php?option=com\\_wrapper&view=wrapper&Itemid=209&lang=sr](http://uzk.co.me/index.php?option=com_wrapper&view=wrapper&Itemid=209&lang=sr)

108 [http://www.ombudsman.co.me/docs/izvjestaji/Final\\_Izvjestaj\\_za\\_2013\\_05042014.pdf](http://www.ombudsman.co.me/docs/izvjestaji/Final_Izvjestaj_za_2013_05042014.pdf)

594 cases (84.26%), i.e. 512 from 2013 and 82 cases from the previous year. In 2014, 111 cases (15.74%) have been transferred, of which most has been formed in the second half of December 2013. However, of the transferred cases, in 31 cases (28%) the procedure has not been completed in 2013 due to the failure of state bodies and other entities to submit a written statement of facts, and complaints related to ignoring the requests and urgencies of the Ombudsman. Almost all cases relate to the right to free access to information. In 165 cases it was found that this right was violated, and of this number in 143 cases the violation was remedies during the examination procedure, so in 22 cases the Ombudsman issued an opinion with recommendation to the competent authorities to remedy the established violation of rights, leaving the appropriate deadline to do so. In 23 cases the procedure was suspended. The complaints related to: 91 to children's rights, 71 to the right to trial within a reasonable time, 78 to the right to free access to information, 51 to prohibition of discrimination, 28 to the employment rights, etc.

During 2014, the institution had 687 complaints of which 576 were received in 2013 and 113 complaints have been transferred from 2013.<sup>109</sup> The procedure was concluded in 649 cases (94.46%), of which 547 were cases from 2014, and 102 cases from 2013, whereas 35 cases (5.53%) have been transferred to 2015. The complaints related to: violation of the right to trial within a reasonable time (69), other civil rights (270), economic, social and cultural rights (179) and to children's rights (131). In 198 cases the Ombudsman found there were no violation of the rights (30.51%), and in 56 cases found the case to be out of its competence (8.63), in 45 cases did not act due to a lack of procedural requirements (6.93%), and in 192 cases (25.58%) it stopped the procedure and in 84 cases (12.94%) suggested other legal remedies. In only 60 cases (9.24%) after conducting the investigation it found that there was a violation of human rights and freedoms and issued recommendations to the competent authorities, and of this number 32 have been respected, in 16 cases the deadline for implementation of recommendations is still ongoing, and in 12 cases the Ombudsman's recommendations have not been respected. 14 cases (2.16%) have been solved in some other manner or through joining together of different cases.

Some groups have publicly demonstrated lack of confidence in Ombudsman, such as NGO LGBT Forum Progress, in many different ways, including withdrawal of submitted complaints on the grounds that Ombudsman did not act on them for months.<sup>110</sup>

The Ombudsman does not have a systematic approach when it comes to human rights violations, as it is mostly acting on individual complaints. Furthermore, very rarely it initiates proceedings on its own initiative, and seldomly uses its power to initiate amendments of the laws and regulations in order to harmonize them with international standards in the field of human rights and give proposals to the Constitutional Court to review the constitutionality and legality of regulations and give opinions on the draft laws. In 2013 the Ombudsman submitted two legislative initiatives and two proposals for the review of constitutionality and legality, whereas in 2014 it only repeated its proposal to the Parliament of Montenegro for adoption of one law which was already submitted in 2010 and gave six opinions on draft laws. Additionally, in 2014 Ombudsman did not apply Article 21 of the Law on prohibition of discrimination<sup>111</sup>, regarding its competence for promotion of equality. Namely, the reports on work of Ombudsman for 2011, 2012 and 2013 clearly list activities of the then Deputy Ombudsman of Montenegro in relation to promotion of equality, despite the fact that this obligation was imposed to Ombudsman only through amendments of the Law on prohibition of discrimination from 2014, and just in that year there are no activities in this area. According to this Law, the Ombudsman should conduct a procedure of reconciliation of the person who is considered to be discriminated, with his consent, and a body, company, other legal person entrepreneur or natural person referred to in the complaint for discrimination. In 2014, this legal norm has not been applied in any of the cases. According to the same provision of the Law, the Ombudsman is authorized to initiate a procedure for protection from discrimination before the court, if it finds that conduct of the respondent can be viewed as discrimination against a group of persons with the same personal characteristics. Finally, the same Law sets forth an obligation of the Ombudsman to warn the public about occurrence of serious forms of discrimination. None of these possibilities was used in 2014.

Analysis of the data on obtained and spent funds of the Protector of Human Rights and Freedoms of Montenegro indicates that this institution returned to the Budget of Montenegro a substantial portion of funds approved for its work every year in the period from 2010 to 2014, or since the appointment of the current Ombudsman.

109 [http://www.ombudsman.co.me/docs/izvjestaji/Izvjestaj\\_za\\_2014.pdf](http://www.ombudsman.co.me/docs/izvjestaji/Izvjestaj_za_2014.pdf)

110 Press release of NGO LGBT Forum Progress: <http://lgbtprogres.me/2014/11/ombudsman-nastavlja-sa-manipulacijama-gradana/> and <http://lgbtprogres.me/2014/06/podrzan-nerad-ombudsmana/>

111 "Official Gazette of Montenegro", no. 46/10, 40/11, 18/14

Year	Approved Budget	Spent by Ombudsman	Returned to Budget	% of spent Budget
2010.	374.103€	333.694€	40.409€	89,20%
2011.	485.945€	417.087€	68.859€	85,83%
2012.	544.210,44€, (rebalance 531.324, 32€)	429.711,14 €	101.613.18€	78,30% (i.e. 80.20% in relation to the rebalance)
2013.	528.924,32€	458.103,66 €	70.820,66€	86,61%
2014.	526.160,26 €	423 192.26 €	102.968 €	80,43%

At the same time, the annual reports on the work of the institution states that there is not enough funding for the work, which is contradictory. Also, Chairman of the Committee for Human Rights and Freedoms<sup>112</sup> expressed lack of trust in the way of spending funds, stating that spending in 2013 was non-transparent.

### *Agency for Personal Data Protection and Free Access to Information*

The importance of protection of personal data can be seen through the fact that one of the essential conditions for the establishment of visa liberalization in Montenegro was adoption of this legal text. The Law on Personal Data Protection<sup>113</sup> ensures the respect of the right to privacy with regard to processing of personal data. The Law establishes the basic principles of protection of personal data, such as the right to processing, the purpose of processing, transferring data abroad, safety of data, as well as establishment of an independent supervisory authority, i.e. the Agency for Personal Data Protection.

On 10 December 2009, The Parliament of Montenegro adopted the Decision on the election of the President and two members of the Council of the Agency for Personal Data Protection. On the basis of the public announcement for the election of Director, Agency Council at its meeting held on 21 April 2010, appointed the Director of the Agency. After the expiry of the four-year term the same Director was reappointed by the Council and the Parliament elected the new President of the Council and reelected same members of the Council of 27 December 2014.

Law on Free Access to Information<sup>114</sup> was adopted in 2005, and the amendments to that law were adopted in 2011. The new Law<sup>115</sup> was adopted in July 2012, and it came into force on 17 February 2013. According to the Law, A complaint may be presented against any document of a first instance government agency deciding upon any request for the information, before the authority performing supervision of such first instance agency's work. If such authority does not exist, an administrative dispute may be instituted against such document. Also, citizens can complain to the Ombudsman, in accordance with the Law on the Protector of Human Rights and Freedoms. Thus, the key innovation of the Law is delegating authority to the Agency who as an independent and autonomous supervisory authority can decide in the second instance about access to information, so it changed its name into Agency for Personal Data Protection and Free Access to Information. Entrusting two very important competences to one body is not a specialty of Montenegro. This practice is used by many European countries, including countries from the region such as Serbia and Slovenia.

New Law prescribes very short deadlines, which is a unique quality of the legal text, as the public's right to know requires an efficient response of all stakeholders, and especially of the supervisory mechanisms. The Agency has an electronic database about the situation in the field of free access to information. This database of submitted appeals against decisions on requests for access to information is not harmonized with the Law and Action Plan prepared in accordance with the principles of Open Government Partnership, i.e. there is no categorization according to different criteria, but there are only decisions published by the Agency, without a name and categorization. In this way it is very

112 32th session of the Committee for Human Rights and Freedoms of the Parliament of Montenegro, <http://www.skupstina.me/index.php/me/odbor-za-ljudska-prava-i-slobode/aktuelnosti/item/2426-32-sednica-odbora-za-ljudska-prava-i-slobode-16-6-2014>

113 "Official Gazette of Montenegro", no. 79/2008, 70/2009 and 44/2012

114 "Official Gazette of Montenegro", no. 68/2005

115 "Official Gazette of Montenegro", no. 44/2012

difficult, almost impossible, to find relevant information, and information which may have already been submitted to another requestor, need to be requested again from the institutions.

The Agency has a supervisory role and possibility to requests initiation of infringement procedures against the authorities that have not adopted and published guides for access to information and do not update it, as well as against bodies which do not proactively publish those information required by law, and all of those who do not respect the obligation to submit data to the Agency's information system.

However, the Agency does not decide in cases where institutions fail to provide a response to the request for free access to information, i.e. in cases of silence of administration, therefore in this part the Law should be improved because this is a fairly common practice of avoiding the appliance of the Law by public sector bodies.

According to the European Commission opinion regarding the protection of personal data, highlighted in the Montenegro Progress Report for 2014<sup>116</sup>, a proper balance needs to be established between the right to free access to information and rules on personal data protection, taking into consideration the need to ensure accountability and transparency of work of public institutions and officials. In this sense, it is necessary to continue with the training of employees in the Agency.

In the Report for 2013<sup>117</sup>, the Agency estimated that the norms of the Law on Personal Data Protection are generally respected and that international standards are applied in this area, as well as that the individual violations of this right is a consequence of insufficient knowledge of the provisions of the aforementioned Law, as well as the application of certain laws have been passed earlier, and have still not been harmonized with the Law on Personal Data Protection. Namely, the Law on Free Access to Information is still not in compliance with the Law on Personal Data Protection, and the Law on Amendments to the Law on Classified Information<sup>118</sup> entered into force on 19 April 2014.

Just prior to the start of the application of the Law on Free Access to Information the Administrative Committee of the Parliament of Montenegro approved the Statute and the Rules on internal organization and job classification. Council of the Agency proposed delaying implementation of the Law, due to lack of capacity to carry out this competence, however, since they did not receive a response in relation to requested delay, they began working on cases. Due to this fact, the Agency started working on the first cases in mid-March 2013.

*From a statistical standpoint*, according to the Report of the Agency for 2013, from mid-March until the end of the year, the Agency received 754 cases related to lack of access to information of citizens. Agency Council solved all of them and closed 721 cases. Of this number, 552 complaints were adopted, 67 were rejected, and 10 complaints were partially adopted. In 92 cases the procedure was suspended due to the withdrawal of the complainant, because the first instance authority in the meantime provided the requested information.

In 2013, Protector of Human Rights and Freedoms also received 111 complaints due to violation of the right to free access to information, and 14 complaints has been transferred from the previous year. Almost all of the complaints have been submitted by the NGO Network for Affirmation of NGO Sector (MANS). As in previous year, the complaints mainly related to the state bodies, state administration bodies and local government authorities. The complaints pointing to a long duration of administrative procedures, failure to comply with the requests for free access to information or complaints within the statutory period, as well as judgments of the Administrative Court of Montenegro and the dissatisfaction with the decisions of the bodies. In most cases, it the complaints were found to be justified and that complainant's right to free access to information was violated due to failure of the competent authorities to act on requests for access to information, appeals and judgments. In these cases, the Ombudsman issued recommendations to redress the violation of the right to free access to information (13). In 2013, in the majority of cases (63) the authorities have during the complaint procedure noticed their faults and remedied the violation indicated in the complaint. In one case no violation of rights was found. There have been cases where

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116 <http://www.gov.me/naslovna/vijesti-iz-ministarstava/142896/Ministarstvo-vanjskih-poslova-i-evropskih-integracija-objavilo-prevod-Izvjestaja-o-napretku-Crne-Gore-za-2014-godinu.html>

117 Report of the Agency on the state of personal data protection in Montenegro for 2013, <http://azlp.me/images/stories/izvjestajoraduza2012g/IZVIJESTAJ%20O%20RADU%20AGENCIJE%202013-8.pdf>

118 Law on Classified Information, "Official Gazette of Montenegro", no. 14/08, 76/09, 41/10, 40/11, 38/12, 44/12, 14/13, 18/14

cooperation with the authorities was realized only after request was submitted or after telephone contacts with officials from those bodies. Some authorities (Ministry of Finance, Ministry of Foreign Affairs and European Integration, Ministry of Economy) even after several requests from the Ombudsman did not submit the statements in connection to the allegations contained in the complaints, nor did they inform the Ombudsman about the reasons for their failure to act. Due to failure to submit statements and ignoring requests and repeated requests of the Protector, in 24 cases the procedure could be completed in 2013. In the first eight months of 2014, out of 390 received complaints, 26 related to the violation of the right to free access to information.

When it comes to *transparency of work and availability of information to citizens*, it is noticeable that the website of the Agency is not regularly updated, and that it does not contain all the information citizens need in order to get familiarized with the responsibilities of the Agency, and in particular the possibilities of addressing the Agency in accordance the Law on Free Access to Information. In this light, it is necessary to develop adequate information campaign so that the citizens, and particularly those from the North and South of Montenegro, can get familiarized with powers and authorities of the Agency, as well as to significantly improve the website of the institution.

### *Fund for Protection and Exercising of Minority Rights and Minority Councils*

Based on the Law on Minority Rights and Freedoms<sup>119</sup>, in February 2008 the Parliament of Montenegro adopted the Decision on establishing the *Fund for Minorities*. The Fund was established for the purpose of supporting the activities important for preserving national, i.e. ethnic specificities of minorities and persons belonging to them in terms of their national, ethnic, cultural, linguistic and religious identity<sup>120</sup>. Once a year, the Fund is obliged to submit report on its work and allocation of funds to the Parliament of Montenegro.

On its 35th session, Committee on Human Rights and Freedoms considered the Report on the work of the Fund for protection and exercising of minority rights for 2012 and on the work of the Fund for protection and exercising of minority rights for 2013. After a dynamic discussion and voting with three votes for and three against, the Committee did not propose adoption of these reports to the Parliament. Also, the Administrative Court of Montenegro has annulled the decision of the Fund on the allocation of funds for 2012, but the judgment was never enforced. The State Audit Institution has made recommendations in 2011, and during 2012 control audit it has been determined that the Fund is still not functioning properly and that they did not comply with recommendations<sup>121</sup>; a report on this was prepared and submitted to the competent committee of the Parliament of Montenegro.

Non-governmental sector and media have continuously indicated to the problems in work of the Fund, both in terms of allocation of resources and the quality and nature of supported projects. European Commission Progress Report for 2014 states: "Minority Fund continues to operate with significant shortcomings, notably regarding the allocation of funds and proper implementation and overall management of projects; Annual activity reports were not submitted to parliament in 2012 or 2013. A report from the State Audit Institution has also questioned the capacity of the Ministry for Human and Minority Rights to supervise the legality of work of the national minority councils. Most of them appear to lack work programs and financial plans..."<sup>122</sup>

These issues should be addressed systematically, in the framework of the announced amendments to the Law on Minority Rights, and further elaborated through bylaws. In this way the issue of control over the performance of the Fund by the competent ministry, as well as the competent parliamentary working body would also be regulated. Furthermore, it should be regulated that the appeal against specific administrative acts passed in the first instance by the Fund, should be decided by the competent ministry. This does not imply exclusion of internal control over operations of the Fund by the Supervisory Board, if at all its establishment is deemed justified. Also, it is important to envisage in the by-law all the persons (legal or

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119 "Law on Minority Rights and Freedoms, "Official Gazette of Montenegro", no. 31/06 and 38/07

120 Article 1, Law on Minority Rights and Freedoms, "Official Gazette of Montenegro", no. 31/06 and 38/07

121 <http://www.dri.co.me/1/doc/Izvjestaj-o-kontrolnoj-reviziji-Fonda-za-zastitu-i-ostvarivanje-manjinskih-prava.pdf>

122 <http://www.gov.me/naslovna/vijesti-iz-ministarstava/142896/Ministarstvo-vanjskih-poslova-i-evropskih-integracija-objavilo-prevod-Izvjestaja-o-napretku-Crne-Gore-za-2014-godinu.html>



natural) that can participate in the competition for the allocation of the Fund's resources, clear criteria for allocation of resources, the methodology for evaluation of projects and monitoring of their implementation.

Law on Minority Rights and Freedoms has enabled the establishment of *national minority councils* - a total of six (Serbian, Bosnian, Muslim, Albanian, Croatian, Roma), who have shown considerable dedication to the preservation of the overall national identity and improvement of freedoms and rights of each minority people or minority ethnic community they represent. Overall, the course and outcome of the process of establishment and constitution of the council of minority people and other national minority groups, as well as implementation of their activities did not cause major controversies. In addition, these councils worked together during the public debate on the Draft Law on Amendments to the Law on Minority Rights and Freedoms in July 2014. In a joint statement of the Croatian National Council, Roma Council, the National Council of Albanians, Bosniaks and Serbian National Council it is stated that joint action is in the best interest of Montenegro and all minority peoples<sup>123</sup>.

Through greater participation of minorities in public life and increased participation of national councils, through different forms of consultation in the decision-making process on issues that are of interest to them, we can contribute to a better quality of decisions, their wider acceptance and legitimacy as well as strengthening of the overall public trust in the institutions of the system. In this context, the minority councils have significant room for action and contribution to overall social cohesion, more accountable governance and creation of preconditions for enhancement of opportunities for the adoption of standards in the field of human and minority rights, as well as further political and democratic consolidation of Montenegrin society.

However, the process of consultation of executive power with the minority councils is limited. Educational authorities do not have established practice to consult the national minority councils before the adoption of curricula which reflects specificities of minority people and other minority ethnic communities. Minority representatives have stated that official opinion of one of the national councils have never been respected in the selection of directors of schools established by the state with education in the language and script of national minorities and other minority ethnic communities.

Proposed Law on Public Display of National Symbols stipulates that it is in the jurisdiction of national minority councils to determine in their statutes what are the dates that would represent a national holiday of Serbian, Bosniac, Albanian, Muslim, Croatian or Roma people. Ministry for Human and Minority Rights previously gives consent to the statutes of the Councils. According to the same law, the national symbols of minorities in Montenegro cannot be used on buildings and premises of the Parliament of Montenegro, the President, Government and Constitutional Court of Montenegro, the courts, the State Prosecutor's Office, Ombudsman Institution, the Army of Montenegro, the Central Bank of Montenegro and the State Audit Institution. Also, the Law stipulates that national symbols cannot be used even during international meetings, political, scientific, cultural, artistic and sporting events.

Finally, it is important that the legal framework is accompanied by consistent implementation and efficient monitoring. In the process of monitoring the implementation of minority policy, NGO sector is visible and active, but quality and sustainable cooperation and communication between state bodies, the national minority councils and non-governmental organizations is still not developed enough.

### *Council for civil control over the work of the police*

According to the Law on Internal Affairs<sup>124</sup>, affairs of civilian oversight of police work is performed by the Council for civil control over the work of the police, as an expert oversight body, which on behalf of the citizens of Montenegro, monitors and improves the respect of human rights in the case of exercise of police powers. Council assesses the use of police powers and investigates complaints of citizens, police officers, but also it can act on its own initiative. Proceedings before the Council can be initiated by other entities if they relate to the violation of human rights and freedoms in the exercise of police powers. This option is especially used by non-governmental organizations for the protection of human rights, trade unions and political parties.

The police shall, at the request of the Council, provide necessary information and notifications, whereas professional tasks

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<sup>123</sup> <http://skalaradio.com/2014/07/31/predstavnici-nacionalnih-manjina-u-cg-zajedno-za-unaprijedenje-svog-statusa/>

<sup>124</sup> Article 112, Law on Internal Affairs, "Official Gazette of Montenegro", no. 44/12, 36/13, 01/15



for the Council's work is done by the Service of the Parliament of Montenegro. When conducting internal control activities, the authorized officer shall act upon analysis of assessment and recommendations of the Council for civil control over the work of the police<sup>125</sup>. The Council, finally, gives assessments and recommendations to the Minister of the Interior, who is obliged to inform the Council about the undertaken measures.

The Council primarily performs control, but also educational and preventive function, so that the police can learn from its past work, became a democratic public service which professionally serves and protects all citizens of Montenegro.

In the period 2009 – 2013<sup>126</sup> the Council worked on a total of 176 cases, with 41% of complaints initiated by the members of the Council, and 8% by the citizens through the Council members. The civil sector initiated 20% of complaints, deputies 2%, the Council collectively 4%, while the citizens directly submitted 23% of complaints. This indicates that members of the Council often act proactively, which is not the case with many other institutions and bodies involved in protection of human rights and freedoms.

In the observed period from 2009-2013, individual or group complaints and initiatives include a total of 211 citizens and relate to more than 190 police officers or in, over 60 complaints, generally to the Police Directorate. In addition, one initiative related to the property damage of several hundred of citizens.

The complaints or initiatives received in the period 2009-2013 related to: unethical and unconscionable conduct of police officers (16 complaints / initiatives or 8.9%); corruption, different forms and levels, in police organization (4 complaints / initiatives or 2.2%); abuse and torture by police officers (44 complaints / initiatives or 24.5%); exceeding police powers (46 complaints / initiatives or 26%); discrimination (5 complaints / initiatives or 2.7%); check the timeliness and efficient implementation of police powers or failure of police to act (40 complaints / initiatives or 22.2%); removal from the police of officers who are unworthy of police work (11 complaints / initiatives or 6%); improvement of application of police powers, improving of communication and cooperation between the police and the community and its work in the community and in communication with other state bodies (14 complaints / initiatives or 7.5%).

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Within the **legislative branch**, Committee for Human Rights and Freedoms of the Parliament of Montenegro plays an important role.

### *The Committee for Human Rights and Freedoms of the Parliament of Montenegro*

The Committee on Human Rights and Freedoms is a permanent working body of the Parliament of Montenegro, which is, according to Article 44 of the Rules of Procedure of the Parliament, responsible for:

- Considering draft laws, other regulations and general acts and other issues related to: freedoms and rights of man and citizen, with special view on minority rights, application of ratified international acts related to exercise, protection and improvement of such rights;
- Monitoring exercise of documents, measures and activities for improvement of national, ethnical and other equality, particularly in the area of education, health care, information, social policy, employment, entrepreneurship, decision-making process and the like;
- Preparing and drafting documents and harmonizing legislation in this area with European legislation standards;
- Cooperating with relevant working bodies of other parliaments and non-governmental organizations from this area.

The Committee consists of nine members from different parliamentary groups of which five from the ranks of the opposition and four (including the chairman) from the ruling coalition. During 2014, they have been disproportionately dedicated to the work of the Committee, so some deputies had a lot of absences (over 40%) and only the chairman of the Committee was present at all sessions, while there is an extreme case of a member of the Committee who did not participate in a single session.

<sup>125</sup> Article 117, Law on Internal Affairs "Official Gazette of Montenegro", no. 44/12, 36/13, 01/15

<sup>126</sup> Police and human rights: civil control over the work of the police, Aleksandar Saša Zeković and Zorana Bačović, Council for civil control over the work of the police, Podgorica, 2014.

Work Plan of the Committee for 2014 envisaged 35 activities, with a focus on issues of protection against discrimination, prevention of torture, children's rights and the protection of personal data. During 2014, the Committee held 20 sessions (one was held in two sittings), whereat they discussed 56 items of the Agenda, realized 26 planned activities, but also a number of other activities that were not initially planned. This included: review of eight draft laws<sup>127</sup>; eight reports<sup>128</sup>; three information<sup>129</sup>; one control hearing; one regional meeting of the parliamentary working bodies responsible for human rights and children's rights and the Ombudsman for Children of the countries of the region; one public forum; one round table discussion on "Draft Law on Amendments to the Law on Protector of Human Rights and Freedoms of Montenegro"; three meetings (with the NGO Association of Parents of Children and Youth with Developmental Disabilities "Our initiative", the UNICEF Representative in Montenegro and the Head of the OSCE Mission to Montenegro); six visits (Retirement home in Bijelo Polje, Prison in Bijelo Polje, the Detention Unit of the Police Directorate in Podgorica, Prison in Germany, the Institute for Enforcement of Criminal Sanctions in Spuž and Group home in Bijelo Polje); international activities (12), but also numerous participations in seminars, round tables and conferences organized by international and local non-governmental organizations dealing with human rights and freedoms, etc. Three activities that were envisaged by the Plan (consideration of the Draft Law on Freedom of Religion, the Draft Law on Amendments to the Law on Minority Rights and Freedoms and the Draft Law on Amendments to the Law on Prohibition of Discrimination against Persons with Disabilities) have not been realized because the draft laws have not been prepared by the Government or submitted to the Parliament and the Committee in envisaged timeframe. Unrealized activities from 2014 have been transferred to 2015, and already in the first months of 2015 some of them have been realized.

By the Decision on Amendments to the Rules of Procedure of the Parliament of Montenegro<sup>130</sup>, the competence of the Committee for Human Rights and Freedoms of the Parliament of Montenegro has been extended by the provision that the Committee: "considers and takes positions on petitions of citizens and legal entities related to the exercise of the rights of citizens". From mid-2012 until the end of 2014, the Committee has received nine petitions, and in line with its own conclusion on the treatment of petitions, the Committee has submitted these petitions to the Protector of Human Rights and Freedoms of Montenegro for further action. In two cases the Ombudsman found there have been no violations of the rights of the applicant, in two cases declared the cases are out of its competence, in three cases it stopped the procedure because, in the meantime, the procedure has ended or because the applicant failed to provide additional documentation, and in two cases the Committee did not receive any feedback from the Ombudsman. The question is: what is the purpose of the competence of the Committee, if the Committee only forwards the petitions to Ombudsman and for two years none of submitted petitions have been resolved in favor of the applicant.

The work of the Committee for Human Rights and Freedoms is transparent. On the website of the Parliament, in the section relating to the Committee notices of the sessions, records, reports on the work, and other information about the activities of this body are duly published. Committee meetings are open to public and are often attended by representatives of interested non-governmental organizations and international representative offices in Montenegro. Also, the work of the Committee receives considerable press coverage. In the Progress Report on Montenegro for 2014<sup>131</sup> it is stated that the Committee continued to promote human rights in accordance with its competencies. However, in 2014, while organizing a conference on the occasion of International Human Rights Day on 10 December

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127 Draft Law on Amendments to the Law on Identity Cards, Draft Law on Acquisition and Transplantation of Human Organs for Therapeutic Purposes, the Draft Law on Execution of Suspended sentence and the Sentence of Community Service, the Draft Law on E-government, the Draft Law on Selection, Use and Public Display of National Symbols, the Draft Law on Amendments to the Law on Protector of Human Rights and Freedoms of Montenegro, the Draft Law on Amendments to the Law on Public Gatherings, Draft Law on Budget of Montenegro for 2015.

128 Report on the protection of personal data in Montenegro for 2013, Report on access to information in Montenegro for 2013, Report on the work of the Protector of Human Rights and Freedoms of Montenegro for 2013, Report on the work of the Fund for the protection and realization of minority rights for 2012, Report on the work of the Fund for the protection and the exercise of minority rights for 2013, Report on the development and protection of the rights of minorities and other minority ethnic groups in 2013, Report on the work of the Centre for development and preservation of culture of minorities in 2013, Report on the work of the Centre for the development and preservation of culture of minorities in the first 10 months of 2014 and Annual Report of the National mechanism for prevention of torture for 2013.

129 Information on spending from the Fund for Vocational Rehabilitation and Employment of Persons with Disabilities, Information on international legal procedures against Montenegro before the European Court of Human Rights in 2013 and Information on representation of minorities and other minority ethnic groups in the state authorities and state administration bodies

130 "Official Gazette of Montenegro", no. 25/12

131 <http://www.gov.me/naslovna/vijesti-iz-ministarstava/142896/Ministarstvo-vanjskih-poslova-i-evropskih-integracija-objavilo-prevod-Izvjestaja-o-napretku-Crne-Gore-za-2014-godinu.html>

on: “The accessibility of persons with disabilities” the Committee has shown insufficient sensitivity towards persons with disabilities by organizing this meeting in an inaccessible area.

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In the *executive branch*, the Ministry for Human and Minority Rights of the Government of Montenegro plays the primary role, but the Council for Protection against Discrimination is also an important body.

### *Ministry for Human and Minority Rights*

Ministry for Human and Minority Rights performs the task of administration pertaining to: protection of human rights and freedoms, if this protection is not within the jurisdiction of other ministries; protection from discrimination; monitoring implementation and protection of the rights of minorities and other minority ethnic groups in the field of national, ethnic, cultural, linguistic and religious identity; improvement of relationships of minorities and other minority ethnic groups; improvement of inter-ethnic tolerance in Montenegro, as well as establishing and maintaining undisturbed contacts between minorities and other minority ethnic groups with citizens and organizations out of Montenegro with whom they share national and ethnic origin, cultural and historical heritage and religious beliefs; relations between the state and religious communities in Montenegro; gender equality; improvement of position of Roma and Egyptians and their integration into all aspects of social life; and other activities that fall within their jurisdiction<sup>132</sup>.

The Ministry consists of eight organizational units: Directorate for the promotion and protection of human rights and freedoms; Directorate for the promotion and protection of the rights of minorities and other minority communities; Directorate for relations with religious communities; Department for gender equality; Department for promotion and protection of rights of Roma and Egyptians; Department for European Integration, programming and implementation of EU funds; Cabinet of the Minister; and General affairs and finance service. The Ministry should have 37 employees<sup>133</sup>, but this number has never been filled, thus on average during 2013 and 2014 it had 15 employees (Minister and 14 civil servants /state employees), which significantly limits the capacity of this body.

In addition, there is a noticeable negative trend in terms of capacity building of the institution, in particular of the Department for gender equality and the Directorate for promotion and protection of human rights and freedoms. Thus, contrary to the Action Plan for Chapter 23, which stipulates employment of one additional person until March 2014, the Department for gender equality has lost two employees who were carriers of the activities related to the implementation of the National Action Plan for Gender Equality, whose implementation is coordinated by this Ministry. After they left, new employees have been hired who need additional training in this field. In order to respond to the challenges of membership in the European Union, Directorate for promotion and protection of human rights and freedoms should have more trained personnel, which requires additional training of employees in this department. Situation is similar in the Directorate for promotion and protection of rights of minorities and other minority ethnic communities. Also noticeable is inadequate monitoring of realization of measures from the Strategy for improvement of position of Roma and Egyptians in Montenegro for the period 2012-2016, which is a responsibility of this Directorate.

Furthermore, there have been some noticeable delays when it comes to drafting of laws or amendments of legal texts, in relation to the measures envisaged by the Action Plan, such as: Law on Prohibition of Discrimination against Persons with Disabilities, Law on Minority Rights and Freedoms, Law on Selection, Use and Public Display of National Symbols and others.

In principle, this ministry has a problem with selection of professional staff that could fulfill the obligations prescribed in the work programs of the Government, Ministry's work programs, as well as in some other documents. The Ministry did not respond to the important obligation imposed by the Council for protection from discrimination regarding preparation of the analysis of anti-discrimination legislation in terms of its compliance with international documents that deal with this issue, as well as analysis of compatibility of national legislation, i.e. its consistency.

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<sup>132</sup> Article 24 of the Decree on organization and manner of work of public administration, “Official Gazette of Montenegro”, no. 5/12, 25/12 and 61/12

<sup>133</sup> Rulebook on internal organization and systematization of the Ministry for Human and Minority Rights

In addition, one of the measures from the Action Plan relating to the establishment of hotline for reporting domestic violence open 24 hours a day has still not been realized, and according to the Action Plan the deadline was September 2014. Implementation of measure relating to the design and implementation of training programs for teachers of civic education on domestic violence has also started late.

The Ministry cooperates with non-governmental organizations, but this cooperation could be significantly improved and based on program requirements, with full transparency of the Ministry in terms of availability of information and the criteria based on which cooperation is realized.

### *Council for Protection against Discrimination of the Government of Montenegro*

The Council was established on 28 July 2011, pursuant to the Decision on establishing of the Council for Protection against Discrimination of the Government of Montenegro<sup>134</sup>. The Council has the following duties:

- to monitor and coordinate the activities of state authorities, state administration bodies and other relevant institutions in applying the antidiscrimination mechanisms and measures provided for in the law;
- to screen the applicable legislation in terms of its alignment with ratified international conventions on human rights and freedoms and generally recognized international legal standards in the area of protection against all types of discrimination and, where appropriate, initiating amendments to these pieces of legislation;
- to analyze the administrative measures taken by the competent authorities taken by competent authorities in relation to the provision of protection against all forms of discrimination; identifying problems that arise in practice and proposing the measures for addressing them;
- to propose and take appropriate measures to promote non-discrimination, as one of the basic and common principles of protection of human rights and freedoms;
- to establish necessary cooperation with national and international bodies and organizations dealing with protection of human rights and freedoms;
- to propose other measures of importance for protection of human rights and freedoms.

Council is composed of the President and 11 members<sup>135</sup>, appointed by the Government for a four- year term. Until June 2014<sup>136</sup>, President of the Council was Prime Minister of Montenegro, when the Decision on establishing of the Council was amended in that part and the Government appointed the Deputy Prime Minister for European Integration for the President of the Council. The tasks of the Secretary of the Council are performed by the Adviser of the Prime Minister of Montenegro for human and minority rights and protection against discrimination, and part of the administrative support is provided by the Ministry for Human and Minority Rights. Council does not have its own budget and members of the Council do not receive compensation for their work. From the establishment till the first quarter of 2015, ten meetings were held (one was held in two sittings), whereas the constituent session was held in March 2012, and it was planned that the Council would regularly meet quarterly i.e. have mandatory sessions four times per year, and more if needed. However, the dynamics was not respected, and the total number of sessions is lower. The Council adopted two reports on its work (for 2013 and 2014), for which a part of the members from NGO sector did not vote concluding that the reports were prepared without a clear methodology, that they do not faithfully represent the sessions held, or offer assessment of the situation in the field of human rights in Montenegro with recommendations for improvement.

Despite continuous efforts of the representatives of NGOs to make the work of this advisory body more effective, little progress has been made and it seems that the Government approach is extremely formalistic without an essential desire to utilize the mandate of the Council. Thematically, heretofore the Council mostly dealt with LGBT rights, adopting a Strategy for improvement of the quality of life of LGBT persons for the period 2013-2018, with accompanying annual Action Plans for 2013, 2014 and 2015. Unfortunately, rights and freedoms of other marginalized groups have not been

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134 Decision on establishing of the Council for Protection against Discrimination, "Official Gazette of Montenegro", no. 50/11, 53/11, 32/13, 31/14

135 The ministers of justice, human and minority rights, labor and social welfare, health, education, then advisor to the Prime Minister of Montenegro for human and minority rights and protection from discrimination, four representatives of NGO sector (NGOs whose field of interest is protection and promotion of human rights; NGOs whose field of interest is protection from discrimination in the field of education and vocational training; NGOs whose field of interest is protection from discrimination based on gender identity and sexual orientation; NGOs involved in the protection and promotion of women's rights) and one representative of the trade union

136 The Government of Montenegro on 19 June 2014 adopted the Decision on Amendments to the Decision on establishing of the Council for Protection against Discrimination



adequately addressed, and suggestions by representatives of NGO sector were mostly rejected by a majority vote of the representatives of the Government and trade unions<sup>137</sup>. Especially in the period when the Council was led by the Prime Minister Milo Đukanovic situation deteriorated, in terms of disruption of the established dialogue with the NGO sector, and initiatives coming from the critically oriented members of the Council from civil society were almost automatically rejected. The work of the Council was practically left without rules when Prime Minister abolished its Rules of Procedure<sup>138</sup>. Additionally, insufficient level of consultation with members from the NGO sector culminated during the organization of the only public gathering of the Council entitled: "Human rights and protection from discrimination in the EC Progress Report for Montenegro 2013" held in January 2014, which prompted two members of the Council to publicly react<sup>139</sup>.

When it comes to the transparency of work of the Council, this body has extremely poor results. Although the law provides that sessions are public, media is allowed to record only the beginning and journalists, as well as other interested public, cannot monitor the work of the Council or participate in its work if they do not inform the President of the Council about this intent before the session, and President practically has a discretion right to decide on the issue. Also, on the website of the Government, in the section dedicated to reporting on the work of the Council<sup>140</sup>, of 66 news items published since the beginning of the work of the Council until the first quarter of 2015, 22 news relate to brief announcement of the sessions and press summaries from the sessions, even 30 to the activities of the Advisor to the Prime Minister of Montenegro for human and minority rights and protection from discrimination, eight to events that are related to the work of the Council (but with no selection criteria and also with the participation of the Advisor to the Prime Minister of Montenegro for human and minority rights and protection from discrimination), whereas there are only three documents of the Council that can be downloaded<sup>141</sup> and one publication<sup>142</sup>, and two calls for opinions of civil society representatives<sup>143</sup>. Apart from the fact that this section of the website of the Government of Montenegro, which was intended for presentation of Council for Protection against Discrimination, is practically used to promote the Advisor to the Prime Minister, among the 30 news items directly related to him also published is his reaction to the joint statement by several NGOs, among which are two members of the Council from NGO sector; their response was not posted although they demanded it. Formally and legally all members of the Council have the same rights and obligations<sup>144</sup>. Other documents from the work of the Council, as well as minutes and agendas, are not available on the official website of the Council, but only on the website of the Centre for Civic Education (CCE)<sup>145</sup>, which has a representative in the Council and in this way, among other things, it contributes to the transparency of the work of the Council.

In general, although the intention of the establishment of the Council during the previous Government's Prime Minister Igor Lukšić was aimed at sending a message that government deals with issues of discrimination at the highest level, essentially and systematically, in practice this body did not meet the expectations of various stakeholders. Đukanović's management significantly contributed to its catalepsy, and it remains to be seen whether in the upcoming period it will manage to get out of a marginalized position it was pushed in by the will of the majority in the Council and back into the zone from which it will influence creation of public policies that will act as an incentive for improving of the legislative and institutional framework and the practice in the field of fight against

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137 For more information see the minutes from the session of the Council for Protection against Discrimination <http://cgo-cce.org/programi/ljudska-prava/ljudska-prava-relevantni-dokumenti/#.VSutR2TLeCI>

138 [http://www.monitor.co.me/index.php?option=com\\_content&view=article&id=4767:po-vladinom-poslovniku-&catid=3270:broj-1203&Itemid=4530](http://www.monitor.co.me/index.php?option=com_content&view=article&id=4767:po-vladinom-poslovniku-&catid=3270:broj-1203&Itemid=4530)

139 <http://www.vijesti.me/vijesti/propaganda-nece-sakriti-probleme-u-radu-savjeta-174320>, <http://www.vijesti.me/vijesti/cgo-ekviza-organizovati-novi-okrugli-sto-savjeta-za-zastitu-od-diskriminacije-175330>, <http://www.dan.co.me/?nivo=3&rubrika=Povodi&datum=2014-01-23&clanak=416841&naslov=Jaukovi%E6%20kao%20da%20radi%20za%20Vladu>

140 [http://www.gov.me/naslovna/Savjetodavna\\_tijela/Savjet\\_za\\_zastitu\\_od\\_diskriminacije/](http://www.gov.me/naslovna/Savjetodavna_tijela/Savjet_za_zastitu_od_diskriminacije/)

141 Strategy for improvement of the quality of life of LGBT persons for the period 2013-2018, Action Plan for 2014 for implementation of the Strategy for improvement of the quality of life of LGBT persons in Montenegro for the period 2013-2018 and Guide for access to information held by the Council for Protection against Discrimination

142 Practical introduction in European standards of discrimination, IRZ (Deutsche Stiftung für internationale rechtliche Zusammenarbeit e.V.) – German Foundation for International Legal Cooperation, Belgrade, 2013.

143 Call for proposal of activities for implementation of the Strategy for improvement of the quality of life of LGBT persons in 2014, i and Call for providing opinions and comments to the Draft Action Plan for 2014 for implementation of the Strategy for improvement of the quality of life of LGBT persons in Montenegro

144 [http://www.gov.me/naslovna/Savjetodavna\\_tijela/Savjet\\_za\\_zastitu\\_od\\_diskriminacije/134728/Reagovanje-dr-Jovana-Kojicica-sekretara-Savjeta-za-zastitu-od-diskriminacije-na-Zajednicku-izjavu-nekoliko-nevladinih-organizaci.html](http://www.gov.me/naslovna/Savjetodavna_tijela/Savjet_za_zastitu_od_diskriminacije/134728/Reagovanje-dr-Jovana-Kojicica-sekretara-Savjeta-za-zastitu-od-diskriminacije-na-Zajednicku-izjavu-nekoliko-nevladinih-organizaci.html)

145 <http://cgo-cce.org/programi/ljudska-prava/ljudska-prava-relevantni-dokumenti/#.VSu6pGTLeCI>

discrimination. In this context, it is necessary to make the work of the Council more transparent, more taking into account initiatives of the members from NGO sector and insisting that the conclusions of the Council are applied consistently by public sector bodies.

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In context of this publication, *judicial institutions* are composed of the courts and State Prosecution.

### *Courts in Montenegro*

The judiciary as a part of the government is the backbone for the development of the system of protection of human rights in one country, and trust in this branch of government often reflects the overall confidence in the country, because the judiciary should be the most effective means for the protection of human rights. If the quality of the judiciary is not satisfactory then it calls into question the overall state mechanism as a lever of the social development. In order to obtain this quality, it is necessary to provide independent, impartial and professional judiciary, which has appropriate social and material position.

The most important issues in the field of human rights are decided in this branch of government. In the process of protection of citizens from various forms of usurpation, the court has a particular obligation to respect the right to appeal and the right to a fair trial within a reasonable time. Thus, courts in Montenegro should constitute the primary mechanism for protection of the rights of citizens and the widest pillar of the institutional system for protection of the rights of citizens. Accordingly, in part of the conditions it creates the state is obliged to guarantee and in practice apply the principle of independence of the courts; to ensure that judges decide impartially, based on facts and in accordance with the law, free from any influence, political repression, threats or interventions of any person or for any reason; to obtain the necessary resources for normal functioning of the courts; to ensure that justice is carried out without inappropriate interference or revision of court decisions outside of the court system, except as regards the revision of the penalties of convicted persons; and to provide safeguards against unjustified appointments and provide access to function without any form of discrimination.

Functioning of the judicial system in line with these principles requires fulfilment of the following preconditions:

- Existence of *de facto* division of power, which is based on the balance of political forces and factors;
- Absence of autocracy, arbitrariness, political influence, nepotism, protectionism, i.e. genuine willingness of all political actors to accept this concept of judiciary and judicial control over all other authorities acting and actors of public policy, as well as readiness to respect and apply all decisions of the courts;
- Existence of appropriate material and financial preconditions for smooth functioning of this branch of the government.

In the past period, a number of objective and subjective weaknesses have affected the work of the judiciary, and for that reason this branch of government received bad evaluation of work and the need for improvement was identified. Thus, a new Strategy for the reform of the judiciary for the period from 2014 to 2018 was adopted, and it sets forth the following basic principles:

- Strengthening independence, impartiality and accountability of the judiciary;
- Improvement of criminal and civil law;
- Realization of the process of streamlining of judicial network;
- Reduce the backlog of cases;
- Enhance the judicial management and administration system;
- Enhancement of alternative methods of dispute resolution;
- Further development of the Judicial Information System (JIS);
- Further development of international and regional judicial cooperation;
- Further development of institutional cooperation at the international and regional level;
- Improving the capacity of judicial officials and employees of the judicial institutions in the field of implementation of the EU acquis;
- Strengthening the accessibility, transparency and public trust in the judiciary;
- Further harmonization and publishing of the case law;



- Developing and improving the legal aid system;
- Improving accessibility of judicial bodies, i.e. ensuring access to justice;
- Enhancing transparency in judicial institutions;
- Improvement of the system infrastructure and security of judicial buildings and physical access to judicial institutions for special categories of persons;
- Develop policies and practices that apply to vulnerable categories of persons;
- Strengthening of the Judicial Training Centre.

Election of the President of the Supreme Court was conducted in accordance with the constitutional amendments, the Law on Courts and the Judicial Council, according to which the President of the Supreme Court is elected by the Judicial Council of Montenegro by two-thirds majority in the first vote. President of the Supreme Court in accordance with the constitutional amendments is elected for five years with the possibility of re-election. However, the constitutional amendments did not bring forth personnel changes, and the same person was re-elected (who performs this function from 2007), which resulted in different views in public. Constitutional amendments have eliminated the dilemma, because the Law on Courts was incomplete, but there are still no apparent substantial changes in practice.

From January 2013 to June 2014, the Commission for monitoring of compliance with the code of ethics of judges received seven initiatives for violation of the Code of Ethics of Judges. Of this number, only in one case a decision was made about a violation of the Code by a judge of the Commercial Court in Podgorica. In five cases, the Commission did not establish a violation of the Code, whereas in one case the initiative related to the review of the decision of the panel of judges of the Basic Court in Podgorica, which is not in the competence of the Commission.

Statistical data of the Judicial Council in the Report for 2013 show that the courts had a total of 149,674 cases, and managed to solve 112,549 cases or 75.20%, while remaining are 37,125 cases or 24.80%. In total, in 2013, the courts managed to solve much more cases (17% increase) than in 2012. On December 31, 2013, in all courts there were 4,089 active cases older than three years. The Administrative Court has reduced the number of pending cases for 17%, while the number of cases pending before the Commercial courts remained more or less the same. The backlog of cases in 2013 has decreased.

A report from 2014 notes some improvements in the efficiency of courts. Thus, in 2014 the courts worked on 134,241 cases, whereat resolved were 97,247 cases (72.44%), and unresolved 36,994 (27.56%) cases, and of this number there are 1,297 of delegated cases, so taking this into account the total number of unresolved cases is 35,697 (26.58%). Also, of the total number of appeals 66.13% was confirmed, 22.68% suspended, 6.15% partially confirmed, and 4.66% modified. The backlog of cases older than three years, compared to 2013, decreased by 21.65%. This tendency to reduce the number of backlog (old) cases should be continued. Therefore, in addition to increasing the efficiency of regular courts in 2013, there are still cases when proceedings last for several years, which is not in line with the standpoint of the European Court of Human Rights. Special attention should be paid to these cases and all necessary measures should be taken to ensure that the procedures are finalized as soon as possible.

Office for complaints with the Supreme Court of Montenegro receives complaints from the constantly declining number of people. In 2013, 293 complaints were filed, and in 2014 -69 complaints, these mainly relate to dissatisfaction of the parties with judgments of first and second instance courts, while some complaints relate to inefficiency of certain judges in the cases and lengthy procedures.

Of the total of 576 complaints that were submitted to the Ombudsman in 2014, four (4) complaints referred to the work of the Constitutional Court, and 90 complaints (15.62%) to the work of the ordinary courts. Received complaints referred to: the Supreme Court of Montenegro (6), Appellate Court (4), Commercial Court in Podgorica (4), Administrative Court (1), High Courts (16) and Basic Courts (59). The procedure was completed in 95 cases, in 93 cases from 2014 and two from the previous year.

Law on protection of the right to trial within a reasonable time<sup>146</sup> in Montenegrin legal system introduces two remedies for the protection of the right to trial within a reasonable time: the request to expedite the proceedings (control request) and just satisfaction claim. According to the Judicial Council of Montenegro, in 2013, 56 control requirements were submitted. Two requests have been adopted, 20 rejected as unfounded, and there are 32 outstanding requests. Additionally, in 2013 the Supreme Court of Montenegro received 45 just satisfaction claims. Claims were dropped in 11 cases, rejected in seven, and in 24 cases claims were accepted and compensation was

<sup>146</sup> "Official Gazette of Montenegro", no. 11/07

awarded, and in three cases it was decided otherwise. Comparative figures for 2012 and 2011 indicate a decrease in the number of control requests and just satisfaction claims in 2013, but also that the success of parties that have used these remedies is small, especially as regards in the control requests.

Statistical data of the Judicial Information System (JIS) are still not used to analyze the shortcomings in work of the judicial system and finding of the proper solutions. In 2014, no budgetary funds were allocated for improvement of JIS, but funds from donations have been used for this purpose. Regulations concerning the procedure, methodology and time frames for the collection of statistical data in accordance with the guidelines of the European Commission for the Efficiency of Justice still need to be adopted.

Judicial Training Centre continues to implement training of judicial officials, in cooperation with state bodies, international institutions and non-governmental organizations on topics and activities related to the priorities of the courts, the application of national and international standards, and in particular, attitudes and practices of the European Court of Human Rights. In the future it is planned to enable the judges to follow the training and lectures by local and international experts via video link. There is a need to strengthen administrative capacities as well as to acquire appropriate technical equipment for the Centre.

As regards the exercise of the right of access to court, services for providing free legal aid operate in all courts, in line with the Law on Free Legal Aid<sup>147</sup>, and the necessary by-laws have been adopted. According to the Judicial Council, 564 applications for approval of free legal aid were submitted in 2013, of which 464 requests were accepted, 58 were rejected, denied nine, the procedure was suspended in 11 requests, and the procedure is ongoing in 11 cases. In 2014, 700 requests for free legal aid has been submitted, of which 570 have been adopted, where the lawyers received compensation for providing legal services to applicants in the amount of 64,860.33 EUR, of registered 84,390.82 EUR<sup>148</sup>.

Law on Free Legal Aid should be improved, particularly in terms of types of procedures for which free legal aid can be granted. Specifically, this law does not cover representation in administrative matters, and this is very important, especially for persons with low income, who cannot use the institute of free legal aid in the procedures that define the right to social security benefits, benefits from pension and disability insurance, labor rights, until eventually it reaches the stage of the administrative dispute, when it can already be too late for an effective protection. The Law does not envisage the criteria under which a defense attorney may refuse to provide free legal aid. Apart from defense attorneys, free legal aid should be provided by trade unions, NGOs, which already provide this type of assistance in practice. Also, this Law does not recognize children whose parents do not pay child support, victims of torture or abuse, as well as victims of discrimination. Such legal solution is not in line with the views and practice of the European Court of Human Rights. In contrast to this Law, the Law on Internal Affairs provides free legal aid to the police officer against whom the proceedings for the "use of force"<sup>149</sup> has been initiated. Financial threshold prescribed by the Law on free legal aid is high. Finally, the law has not been promoted adequately among the potential users, especially among victims of domestic violence, potential victims of discrimination and the poor segments of the population. Mediation is rarely used in practice, and when applied it generally does not yield results and it should be promoted both before members of the judiciary and citizens. Promotion campaigns should continue as this is very important institute in which parties actively participate and through an agreement in a swifter and more economical way come to a satisfactory solution.

When it comes to dealing with war crimes at the state level, according to the European Commission's opinion expressed in the Progress Report for Montenegro for 2014 and 2013 is that serious efforts to combat impunity have not been shown. The report criticized the Montenegrin judiciary on rather formalistic approach when it comes to these cases. Until the end of 2014, only in one of the war crime cases processed before Montenegrin courts final convicting judgment was adopted for citizens of Montenegro (case "Morinj").<sup>150</sup>

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147 "Official Gazette of Montenegro", no. 20/11

148 Annual Report on the work of courts for 2014.

149 Article 60, Law on Internal Affairs, " Official Gazette of Montenegro ", no. 44/12, 36/13, 01/15

150 More on this case in the publication "Dealing with the past in Montenegro - Morinj case", Centre for Civic Education, Podgorica, 2014. Available at: <http://media.cgo-cce.org/2014/12/cgo-cce-proces-suocavanja-sa-prosloscu-u-cg-slucaj-morinj.pdf>

## State Prosecution

Constitutional definition of the position of the state prosecution and its role in the justice system still does not provide a guarantee of a sufficient degree of autonomy and independence. Election of the members of the Prosecutorial Council and the Supreme State Prosecutor, has shown that this process is still to a large extent burdened by political factors. On the basis of constitutional amendments and the amended Law on State Prosecution, the Prosecutorial Council has completed the process of selection of the heads of state prosecutions. All former holders of this function who applied for the position have been appointed.

Constitution from 2007 envisages that “the State Prosecution shall be a unique and independent state authority that performs the affairs of prosecution of perpetrators of criminal offenses and other punishable acts that are prosecuted ex officio.” The Constitution also stipulates that the affairs of the State Prosecution are performed by the State Prosecutor who has his/her deputies. The Law on State Prosecution, which was passed and amended after the Constitution of 2007, stipulates that deputy state prosecutors have all powers to carry out all actions as the state prosecutor in the proceedings before a court or other state body. That law also provided the permanent function of deputy public prosecutors, which was fully in accordance with the Constitution that was in force at the time. Amendments to the Constitution of Montenegro, adopted on July 31, 2013, amended, inter alia, provisions on state prosecution in part that the affairs of state prosecution are performed by heads of state prosecutors and state prosecutors, and that the function of the State Prosecutor is permanent, as it was regulated by the Law on State Prosecution from 2008. Thus, according to the new amendments, work in the state prosecution is performed by the heads of state prosecutions, instead of state prosecutors, and state prosecutors instead of deputy state prosecutors.

Amendments to the Law on State Prosecution prescribe general election of all state prosecutors and deputies (109 prosecutors), because the constitutional amendments changed the name of those who perform prosecutorial functions. For this reason, state prosecutors have addressed the Constitutional Court of Montenegro with an initiative to review the constitutionality of Article 135 paragraph 2 of the Law on State Prosecution, regarding it to be an unconstitutional provision of the Law. On its session held on July 30, 2014, the Prosecutorial Council adopted a decision on the postponement of the general election for state prosecutors until the election of the Supreme State Prosecutor (SSP), or the decision of the Constitutional Court of Montenegro. The very selection of SSP lasted for quite a long time, starting in December 2013 with first unsuccessful attempt of the Montenegrin Parliament to elect the SSP by a two-thirds majority. The second round of voting was unsuccessful in March 2014, when SSP did not receive required three-fifths majority. The third round of voting in April which required three-fifths majority was also unsuccessful. Legal basis for a third round represented the provisions prescribed by the Rules of Procedure of the Parliament of Montenegro from October 2013. Constitutional Court declared these provision to be unconstitutional in July 2014. A new procedure for the selection of SSP was initiated in May 2014, and in the first round of voting in July, the candidate proposed by the Prosecutorial Council did not receive the required majority. After several unsuccessful attempts, in October 2014 the Parliament of Montenegro appointed the new SSP.

Transparency of the work of prosecution is still unsatisfactory, although recently (from the beginning of 2015) its website was significantly improved. Citizens are not adequately informed about the work of the State Prosecution, NGOs and the media have problems in obtaining information from the Prosecution in accordance with the Law on Free Access to Information, and representatives of prosecution are rarely present in media. Also, Supreme State Prosecution still does not have public relation service or persons in charge of public relations at lower levels of prosecutorial organization.

Although the Commission was established to monitor the Code of Prosecutorial Ethics, according to available data, there were no new dismissal procedures, although some initiatives were submitted for review of professionalism of prosecutors and there were allegations in public concerning the misuse of office of certain prosecutors, amongst which of those related to the fight against the opponents of authorities<sup>151</sup>.

The concept of prosecutorial investigation has been in force for over three years, which is a short period for relatively

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151 For more information concerning the case against the CCE and conduct of prosecutor Šoškić please visit: <http://cgo-cce.org/en/2014/07/29/cgo-dokazao-zakonitost-svog-rada/#.VTQsSmTLLeCL>, as well as about the late reporting on the assists of the same prosecutor <http://www.vijesti.me/vijesti/tuzilac-soskic-krsio-zakon-nije-prijavio-9550-eura-816427>

large and inert systems, as are the police, prosecution and judiciary, to get properly adapted to the changes this concept brought. Prosecution was faced with most of the changes, as it took over many new duties. On the other hand, the police is also adapting to its new role, as it has lost some independence in its work on account of the prosecution, as according to the new Criminal Procedure Code prosecutors are opening, managing and directing the investigation. This requires high-quality responses to a very sensitive requirement to maintain communication with prosecutors as the central subjects of investigation. Of course, communication is a two-way process, and such obligation applies to prosecutors in relation to the police. The concept of prosecutorial investigation was relieved the courts from a part of obligations related to investigation. All of these changes should have been accompanied by capacity building of staff (the number of staff and training), space and technical capacities, as well as with more efficient organization of the Prosecution from which the most is expected in this process and which is quite slow in adapting to the new circumstances. Finally, apart from all other challenges, the prosecution had an acting Supreme State Prosecutor for a long time (for more than a year and six months) which is not a prerequisite for good organization.

There are numerous examples of the lack of effective and timely coordination with the Police Directorate, as well as the inability of prosecutors and police to timely access appropriate databases of other state bodies, which has an additional impact on the effective implementation of the Criminal Procedure Code. In that regard, on April 9, 2014 the Agreement on Cooperation between the Supreme State Prosecution and the Police was signed, and this agreement additionally regulates cooperation in pre-trial and criminal proceedings. The agreement specifically solves potential dilemmas, which have been a source of contention about the jurisdiction of the two institutions, i.e. issues that were the joint responsibility of the police and prosecution. However, findings of NGO Institute Alternative, which conducted research on cooperation between prosecutors and police in the three municipalities (Bar, Podgorica and Pljevlja) during May and June of 2014, show that out of the 11 interviewed heads of state prosecutions and state prosecutors 10 police officers, almost none of them knew the contents of the Agreement.

Furthermore, there are problems in the qualification of criminal offenses with elements of organized crime by the prosecutors, as well as withdrawal from prosecution just before closing arguments, which indicates to poor quality and scope of evidence, which should support the indictments. This is because there is a need for a clear qualification of the offence, which must be justified understandably in the indictment and supporting evidence must be the basis for its confirmation by the court, which often is not the case. Special Prosecution still does not have direct access to databases, as well as human and financial resources, especially when it comes to knowledge in the field of finances. European Commission Progress Report on Montenegro for 2014 points to a need for specialized training at all levels and improving the capacity for the implementation of systematic financial investigations in corruption cases. Also, there is an evident lack of the necessary results of proactive investigations and final convictions in organized crime. However, the formation of a multidisciplinary team in the special prosecution, including the financial and economic experts, has been postponed until the establishment of a new special state prosecution. When it comes to war crimes, so far there have been no prosecutions for command responsibility, complicity or aiding and abetting, and almost all war crimes charges have been dropped in court. Non-governmental organizations dealing with this issue have often pointed out to structural defects in these indictments. In April 2014, the State Prosecution of Montenegro and Bosnia and Herzegovina signed the Protocol on cooperation in prosecution of perpetrators of war crimes, crimes against humanity and genocide, whose purpose is to facilitate the exchange of evidence and information related to war crimes cases.

In October 2014, Human Rights Action (HRA) notified in a letter the Supreme State Prosecutor about 12 cases of human rights violations which, as stated, have neither been investigated nor punished for unprofessional conduct of competent state prosecutors<sup>152</sup>, and which has drawn the attention of not only Montenegrin, but of international public as well.

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152 1) Beating of detainees in the pretrial detention by special units of the Ministry of Interior (2005); 2) continuous death threats to Aleksandar Zeković, researcher of human rights violations (2007); 3) allegations of torture of members of a group of SDA in 1994, which one of the members of the group Ibrahim Čikić published in a book in 2008; 4) claims about illegal application of secret surveillance measures against the judges of the High Court in Podgorica, investigated by journalist Petar Komnenić; 5) murder of editor-in-chief of daily Dan Duško Jovanović; 6) attack on author Jevrem Brković and murder of his companion Srđan Vojišić; 7) beatings of journalist Tufik Softić; 8) reports on the activities of „football mafia" in Montenegro, after which journalist Mladen Stojović who spoke about it was assaulted; 9) claims of veterinary inspector Mirjana Drašković on high-level corruption in the field of licensing for importing of food in Montenegro, after which she was suspended from work for a period of one year; 10) beating of Aleksandar Pejanović at the detention facility in Security Center Podgorica; 11) reported abuse of the persons arrested during police action "Eagle's Flight"; 12) inhuman and degrading treatment of residents PE Komanski most.



## CITIZEN AND STATE ADMINISTRATION

The state can not be the state of rule of law if public administration does not respect principles of legality, accountability, efficiency and rationality. Public administration must develop professional and managerial capacities in line with the European standards, and strive to establish high ethical standards of work in order to prevent or severely sanction such phenomena as bribery or other corruptive acts, as well as negligent performance of duty and misconduct (abuse of official position). Therefore, conditions for efficient, fast and inexpensive administration, as foundations of a modern legal state, are as follows: high level of professionalism, expertise and individualized accountability, improvement of the material status of employees in public administration and loyalty of public officials to their job, not to the party or interest group.

Strategy of Public Administration Reform for the period 2011-2016 refers to the reform of civil service, reform of income from the public sector, improvement of quality of legislative and strategic planning, including introduction of regular impact studies, modernization and administrative procedures for better service delivery, reform of the inspection control system, local organizations and administration, encompassing financial management and public finance management. Mechanism for coordinating and monitoring of implementation of the Strategy through establishment of inter-ministerial body under the leadership of the Ministry of Interior, whilst Deputy Prime Minister performing the overall coordination has been strengthened. Revised Action Plan for the period 2014-2015 as well as reports on implementation during the previous period and during the first half of 2014 were adopted in December 2013 and in July 2014, respectively. However, a proper ie. systematic reform of state administration should be intensified in the forthcoming period. Such as it is nowadays, according to the assessment of the European Commission, it is cumbersome, politicized, and with limited human resources capacities.

NGO Institute Alternative has, in cooperation with Ipsos Strategic Marketing, conducted a public opinion survey in 2012, on a representative sample of 840 citizens older than 18 years regarding their views on the work of state administration institutions. Citizens have been evaluating the quality of state administration on a scale of 1 to 10, where a higher score meant a higher level of quality. The average score that citizens assess with the quality of state administration was 4.5, which is a lower score compared to preceding surveys. This tendency and the perception of citizens refer to decline of confidence in the institutions of state administration.

This research, as well as direct experience of numerous non-governmental organization with public administration bodies and the institution of Protector of Human Rights and Freedoms as a control mechanism for violations of human rights by the public administration bodies, indicates that public administration bodies often do not decide upon requests of citizens within the prescribed period or they are conducting proceedings in an unreasonably long period of time. In some cases, the authorities are passing several times the same or a similar decision upon a specific request of a citizen, even though the immediate superior court or court in an appeal proceedings, ie. complaint against this act has established certain irregularities and ordered their removal. Due to this, citizens are forced to repeatedly challenge specific administrative acts in administrative proceedings or administrative dispute, and expose themselves to financial expenses and to wait for a long time for a decision based on the law. This situation imposes a conclusion that services of the public administration are still not sufficiently organized and professional to decide upon requests of citizens regarding exercise of their rights in a lawful manner and within the legal timeframe. These weaknesses in the work of public administration bodies adversely affect exercise of the citizens' rights.

A special type of unlawful conduct of the public administration bodies represents the so called "administrative silence", or failure to act upon requests of citizens which also influences violation of their dignity.

In order not to delay the procedure, ie. for the body to pass a legal decision as soon as possible, the Law on Administrative Procedure should limit multiple repetition of the proceedings before the first instance, ie. the second instance administrative body, in a manner that the body that decides on legal remedies would be obliged to meritoriously resolve the administrative matter, eg. after the second return for retrial. Furthermore, it is equally



important to establish a system of accountability for possible breaches of law and rights and freedoms of citizen by public administration officials.

Therefore, during the organization of work in the state administration bodies as well as local self-governments' bodies, persons who are at the forefront must insist on respect for the principles of transparency and intelligibility of the procedure, availability, legality and intelligibility of decisions, respect for the rights of applicant and him/her as citizen, respect for human dignity and the obligation of responsible conduct towards persons.

### ***Transparency and intelligibility of the procedure***

For the procedure to be characterized as transparent and intelligible, it is necessary to:

- explain every decision and reasons due to which it was decided so, in a manner the citizen understands;
- verify that the citizen understood the information;
- make available to every citizen the information on what are his/her rights, options and legal remedies, including informal forms of protection of rights;
- during preparation and execution of projects, carried out by local authorities, it is necessary to include persons concerned by that project, in a manner that they truly express their opinions and attitudes;
- advocate for a greater transparency of public administration bodies' and local authorities' work;
- advocate that the public has updated, complete and accessible information;
- all notifications addressed to the public should be clear and easy to understand.

### ***Availability***

For the availability to be represented, it is necessary to:

- bodies that come in contact with parties must have a reception and information service that will address everyone with respect, especially the elderly, the sick and disabled persons, and information over the phone must be provided;
- manner of addressing the parties and appropriate facilities should be adapted in such a manner that discretion is guaranteed;
- ensure that entries are adapted to persons with disabilities;
- working hours shall be adapted to the needs of the parties;
- enable the formulation of requests at one place in a simplified manner.

### ***Legality and intelligibility of decisions***

For decision to be legal, it is necessary to:

- consistently uphold laws and other regulations;
- check every decision in terms of respect for human rights and freedoms;
- imperfection and incompleteness of regulations must not be used to the detriment of a party;
- in deciding upon simple issues a decision must rely on objectively verifiable terms and conditions;
- decisions must not only be in accordance with the regulations, but also understandable and simple;
- narrow interpretation of laws and other regulations shall be avoided.

### ***Respect for the rights of applicant***

The right of the applicant is deemed to be respected if the following conditions are met:

- decisions shall not be passed unless the party is given opportunity to explain his/her viewpoint and to give useful explanations;
- when submitting requests the party shall be warned about all shortcomings of documents and information;
- the party shall be helped so that his/her request is complete, that decision would be justified taking into account all relevant facts and circumstances;
- any kind of partiality shall be avoided upon deciding, as well as use of extralegal means and treatment of the parties in a different manner.

### ***In the service of citizen***

For the conduct to be in the service of citizen, it is necessary to:

- adjust the organization and number of employees to actual needs;
- determine needs and expectations of the parties;
- provide legal assistance to parties to the extent necessary and in an intelligible manner;
- not to require written documents from parties that authority already have or can easily obtain them;
- abolish all unnecessary procedures, formalities and forms.

### ***Respect for human dignity***

Respect for dignity of the party is one of main objectives. Thus, the conduct shall be adjusted to it:

- not to treat people like numbers, try to find out their particularities and difficulties;
- if the party is seeking his/her right, he/she is not to be treated as if asking for a privilege, or something that does not belong to him/her;
- a state official shall not do anything he/she would not want to happen to him/her;
- a party shall not be sent from door to door if he/she can be provided with an explanation or information.

### ***Obligation of responsible conduct towards persons***

For the conduct to be deemed responsible towards persons, it is necessary to:

- establish such possibilities for submitting an appeal, to be available to everyone and made by the services which they are being submitted to;
- establish a possibility to conclude the settlement whenever possible;
- all promises given to the parties shall be respected;
- avoidance of decision-making and accountability with the pretext to managers or other services is unacceptable;
- all proceedings shall be completed within reasonable time;
- act promptly and shorten the wait;
- identify the real reasons for any error or negligence;
- discontent of parties should not be valued as criticism, but as constructive critique, which should serve to the improvement of work;
- parties shall be treated with respect, and good work of state officials shall be appreciated.



## PROHIBITION OF DISCRIMINATION

By accepting the international treaties in the area of human rights, Montenegro has committed itself to respect them with no discrimination on any ground for all citizens within its jurisdiction. These are binding documents for Montenegro as a member of the United Nations and the Council of Europe.

Article 7 of the Constitution of Montenegro prescribes that inciting or encouraging hatred on any grounds, hence also on the basis of personal attributes of an individual or a group is prohibited, while the first paragraph of Article 8 specifically prohibits any direct or indirect discrimination, also, on any grounds. Second and third paragraph of Article 8 of the Constitution of Montenegro prescribes the rule on excluding the so-called affirmative action measures from the legal concept of discrimination. Limitations to enjoyment of certain guaranteed rights and freedoms are determined taking into account the need to ensure effective implementation of the constitutional guarantees of equality. The largest part of the constitutional guarantees of certain rights and freedoms shall be provided to all persons, in a non-discriminatory manner.

Guarantees given by the highest legal act (Constitution of Montenegro) are elaborated with a series of laws prohibiting discrimination in various areas of social life: work, work safety, education, media, healthcare, employment and other areas. These are, first of all the Law on Prohibition of Discrimination, but also Law on Prohibition of Discrimination against Persons with Disabilities, Law on Social and Child Welfare, Labour Law, Law on Civil Servants and State Employees, Media Law, Law on Electronic Media, Law on Vocational Rehabilitation and Employment of People with Disabilities, Law on Gender Equality, Law on the Movement of Persons with Disabilities with the Help of a Guide Dog, Law on Election of Councillors and Representatives, Law on Minority Rights and Freedoms, Law on Health Insurance, Law on Health Protection, General Law on Education, Law on Domestic Violence, Law on Free Legal Aid, Law on Protector of Human Rights and Freedoms etc.

Law on Prohibition of Discrimination<sup>153</sup> is considered an umbrella law since it regulates the area of protection from discrimination in a systematic manner. Within it, protection against discrimination is elaborated and concretized, while institutional mechanisms of protection are also defined: Protector of Human Rights and Freedoms, to whom citizens can address with a complaint; courts, ie. the right to file a lawsuit before a court; authorities for misdemeanors; as well as inspections in terms of control in the following areas: provision of services, construction, healthcare, education and sports, labour and employment, occupational safety, transport, tourism and other fields. Amendments to this Law from 2014 introduced promotion of equality as a significant activity in order to prevent discrimination. The promotion of equality, according to the Law, is performed by Protector of Human Rights and Freedoms in Montenegro. Article 2 of the consolidated text of the Treaty on European Union 2012/C 326/01 speaks in favor of this legal solution. The obligation to promote equality derives from provisions of the EU directive on equality which were used as substantive legal basis for amendments to this law in the part concerning realization of the principle of equality and institutions responsible for its implementation. In accordance with the Council Directive 2000/43/EC the definition of direct discrimination was also amended. Furthermore, in the context of these changes, discrimination is considered to be also assisting, as well as announcement of discriminatory treatment, in terms of of Council Directive 2000/78/EC, 2004/113/EC, 2006/54/EC. Restatement of the principle of prohibition of harassment as a special form of discrimination was also conducted, in a manner that this principle was given a characteristic of peremptory norm (prohibition). Mobbing has been deleted as a specific form of discrimination and thus defining the same legal concepts in different manner was avoided. The institute of segregation was

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<sup>153</sup> "Official Gazzete of Montenegro", No. 46/10, 40/11, 18/14

redefined, since the concept has been added a term »forced«, by which the definition of segregation is harmonized with standards of the European Commission against racism and intolerance (General Recommendation No. 7), according to which the voluntary act of separation from other persons by any of discriminatory grounds does not constitute segregation.

Furthermore, prohibition of racial discrimination and discrimination based on religion or belief has been defined, as well as terms of gender identity and sexual orientation, for better understanding and more adequate application of the law. Provisions of the Law relating to judicial protection from discrimination were supplemented and enhanced, while jurisdiction and powers were given to the institution of Protector of Human Rights and Freedoms. Also "testers" directly guarantee a right to complaint, ie. complaint may be filed even by a person intending to directly verify application of the rules on protection against discrimination. The role of inspections that perform inspection in accordance with the Law on Inspection Control and can not go out of their frame matter jurisdiction has been clarified, while refinement of the legal norm represents the essence of this legislative intervention. Special jurisdiction is given to inspection bodies, which are not regulated by the Law on Inspection Control, due to specificity of the inspection control procedure, when it comes to discriminatory conduct.

Keeping of records by the courts, state prosecutions, misdemeanors' authorities, authorities responsible for police affairs, and inspection bodies is stipulated, as well as deadlines in which these bodies are obliged to submit records to the Protector of Human Rights and Freedoms of Montenegro. Appropriate misdemeanor protection is also provided, on the basis of constitutional and legal principles of equal protection. By this Law, misdemeanor liability is prescribed only for two cases of discriminatory behavior: prohibition of discrimination in the provision of public services and the use of public facilities and areas. In addition, discriminatory conduct in the use of public buildings and spaces is being sanctioned only in relation to persons with disabilities, and not other persons who may be victims of discrimination on the basis of some other personal feature (eg. ban on access to public facilities to Roma citizens), which is not in accordance with the abovementioned principle. Finally, penalty provisions are significantly enhanced by these amendments.

Practice has proved that the Law on Protector of Human Rights and Freedoms of Montenegro, Law on Prohibition of Discrimination against Persons with Disabilities Montenegro, Law on Minority Rights and Freedoms, Law on Gender Equality, were needed to be improved, and therefore amendments of also these three important laws were introduced. Thus, the Law on Amendments to the Law on the Protector of Human Rights and Freedoms came into force in July 2014. It has neither prescribed procedure of the Protector of Human Rights and Freedoms in cases of discrimination, nor mechanisms which Protector may use, when he/she determines discrimination by legal entities, entrepreneurs and individuals, which will significantly complicate acting of Protector upon citizens' complaints.

In order to ensure more severe punishment, and thus increase criminal justice protection in relation to certain, especially vulnerable social groups, whose members were victims of various criminal offenses committed out of hate, precisely due to this background, in 2013 amendments to the criminal legislation were adopted. Protection against discrimination requires an effective criminal justice response in all cases of so called "*hate crimes*". The Criminal Code has been linking crimes whose incentive is hatred, as a qualifying circumstance, to criminal offense of violation of equality under Article 159 of the Criminal Code, but this qualification does not possess a general character. Therefore, amendments to the Criminal Code, which Parliament of Montenegro has adopted in July 2013, prescribe as an aggravating circumstance, *if the crime was committed out of hatred due to affiliation to a race, religion, national or ethnic origin, gender, sexual orientation or gender identity of another person, the court will assess this circumstance as aggravating, unless it is prescribed as feature of a basic or a more serious form of the criminal offense.*

In addition, within the group of criminal offenses against rights and freedoms of a human and a citizen, amendment to the criminal offense of violation of equality (Article 159) was adopted by extending to two more grounds of discrimination - on the basis of sexual orientation and gender identity. Namely, even according to the previous solution, these two grounds can be subsumed under the phrase "*other personal feature*", but in this manner this norm was more precisely defined in order to avoid different interpretations of "*other personal feature*" and possible judicial arbitrariness and abuse in the application of aggravating circumstances. When it comes to *the criminal offense of endangering safety* (Article 168), *in addition to previously existing three aggravating circumstances, namely*

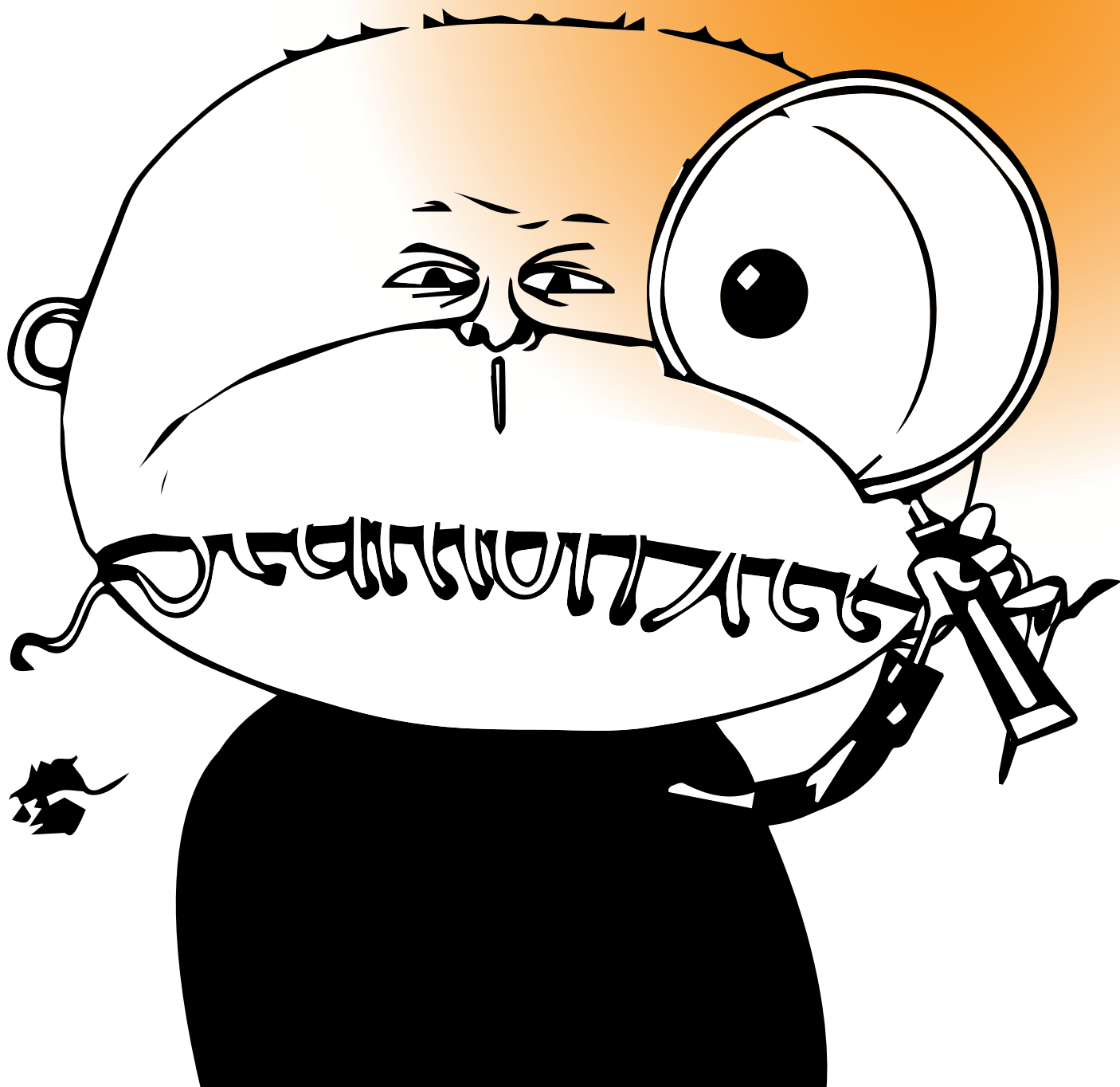
*that the offense was committed against several persons or that by commission of this criminal offense citizens' distress or serious consequences were caused, a new qualifying circumstance was adopted: "...if the act was committed out of hate," as a mark of severe form of criminal offense. The act committed out of hate shall be interpreted as motivated by hatred on any grounds.*

Within the group of criminal offenses against public order and peace, a new criminal offense of violent behavior at a sport event or public gathering was introduced (Article 399a). Law on the Prevention of Violence and Misbehavior at Sport Events of 2007 provided a series of measures to prevent this type of violence, and prescribed certain misdemeanors. Having in mind the social harmfulness, as well as the presence of this phenomenon, even despite the existence of aforementioned legal measures, it was necessary to resort to the criminal justice protection, therefore, a new criminal offense which has a greater number of acts of commission is prescribed.

Also, within the group of criminal offenses against humanity and other goods protected by international law, amendment to the criminal offense of racial and other discrimination (Article 443) was proposed and adopted, in a manner that a form referred to in paragraph 3 sanctioning spreading ideas of superiority of one race over another or promoting hatred or intolerance on the basis of race, gender, disability, sexual orientation, gender identity or other personal feature, or incitement to racial or other discrimination has been specified. In addition to this change, within the same criminal offense, a more severe form (paragraph 4), in case that the offense is being committed by abuse of position, or if those acts resulted in riots or violence was introduced.

It is particularly important in the forthcoming period to ensure full implementation of legislation solutions at all levels and strengthen institutional capacities in terms of knowledge and skills for identification of incidents and hate crimes. It is obvious from the aforementioned, as well as from reports of relevant national and international institutions, that Montenegro is working on creation of a favorable legal framework for combating discrimination and its harmonization with international documents. However, this is only a prerequisite, while in practice it is different. Namely, citizens are not sufficiently acquainted with regulations governing protection against discrimination and they often do not recognize discrimination. Furthermore, there still exist difficulties in the realization of human rights and freedoms and inadequate attitude of public officials, as well as legal and natural persons towards citizens in the exercise of their rights and freedoms without discrimination on any grounds. Awareness of the need to ensure equality in the enjoyment of human rights and freedoms in the broadest sense, with no privileged individuals or groups and the understanding of non-discrimination as not only a legal but a moral imperative of a democratic society is still insufficiently developed. In this regard, as a priority objective, there is a need for greater degree of development of the awareness of citizens, and especially public officials regarding objectives and legal means for prevention and prohibition of discrimination, human resources and technical capacities of authorities for fulfilling their obligations, planning and programming of short-term and medium-term objectives, consistent and controlled implementation and further development of legislation in this area.





# SPECIFIC ISSUES IN THE FIELD OF HUMAN RIGHTS IN MONTENEGRO

## *Freedom of expression and the media*

In Montenegro, the Constitution guarantees the freedom of the press and of other forms of public information<sup>154</sup>. It guarantees, among other, the right to establish newspapers and other media of public information without seeking permission, upon registration with the relevant institution. It also guarantees the right to respond and the right to the correction false, incomplete or incorrectly rendered information that violates one's rights or interests, as well as the right to compensation of damages caused by publication of incorrect information. It also prohibits censorship. The responsible court can prevent the spread of information and ideas via the public media only if this is necessary to: prevent calls to violent overthrow of the constitutional order; protect the territorial integrity of Montenegro; prevent propagation of war or incitement of violence or crime; prevent propagation of racial, national or religious hatred or discrimination<sup>155</sup>. Nevertheless, in the race for publicity and viewers, and under direct influence or pressure from the various power centres, the media often proffers, alongside genuine information, incomplete or selective information, and sometimes disinformation.

A huge problem is created by two mutually related issues: pressure on the media and their freedom of work, as well as the leaks of confidential information and the shift of institutional processes to the privileged media outlets, which are none too rarely used as a basis for attack on various subjects. Consequently, all of this negatively reflects on the overall professionalism of reporting.

In the recent years Montenegro saw several physical attacks on the journalists and the property of the media. Murder of an editor of a newspaper still remains entirely unresolved, all of which gravely undermines the freedom of the media and of journalism. Several cases of attacks and threats against journalists have been processed, but a large number of cases of violence against journalists and attacks on the property of the media remain unresolved or are inadequately addressed. Following attacks on two journalists, the police provided, as a preventive measure, police protection for the two individuals and the property of one media establishment.

In late December 2013 the Government of Montenegro adopted the decision to establish a Commission to monitor activities of responsible bodies that investigate threats and violence against journalists, murders of journalists and attacks on the property of media. The Commission consists of representatives of the Ministry of Interior, prosecution, police, Agency for National security, non-governmental organisations, as well as media representatives. The Commission is chaired by a representative of the media. This means that among the members of the Commission are also the leaders and representatives of public institutions that ought to be supervised by the Commission, and which are in the first line responsible for resolving the murder and bringing the perpetrators and their superiors to justice – none of which guarantees the independence and impartiality of the Commission. The Commission's record to date is fairly modest, and it remains to be seen whether this body will grow to justify the expectations, above all of those who were directly affected by the attacks, but also to influence development of a different atmosphere in which the journalists can do their job free of threats and interferences.

Montenegrin authorities are frequently urged by domestic and international organisations to put more effort into resolving the cases of attacks against journalists and the property of media and bring perpetrators to justice. However, there has been no genuine progress in this area.

Moreover, in the recent years the so-called "soft censorship" was documented in the way the public funds are allocated to the media on various grounds. The data show the lack of clear criteria for the distribution of such funds, as well as an obvious bias towards certain media<sup>156</sup>.

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154 Article 49 of the Constitution of Montenegro, "Official Gazette of Montenegro", no. 1/2007

155 Article 50 of the Constitution of Montenegro, "Official Gazette of Montenegro", no. 1/2007

156 For more information see "Equal chances for all media", Centre for Civic Education (CCE), Podgorica, 2014.

Information on ongoing investigations that should by law be confidential often leaks into the public, usually extracted out of context, selective, incomplete and targeted against certain individuals or organisations, which inflicts substantial damages on these subjects. It has happened, for example, that information from preliminary investigations was delivered to some of the media. Procedures to establish the source of such information, which ought to be available only to the official personnel, and punish the sources and their associates for unauthorized disclosure of official secrets and other crimes, misdemeanours or procedural violations they may have committed in the process have never been initiated, despite several complaints. In addition to the right to privacy, this undermines the presumption of innocence of targeted individuals and their organisations. In the course of 2013 and 2014, this was especially the case with the defenders of human rights and critics of the government, whose information was widely abused by pro-government media to mount dirty campaigns and exert pressure on critically minded non-governmental organisations and media. Such attempts were also quickly identified and condemned by the interested international public. One such reaction came from the US Embassy to Montenegro in February 2014, which said, among other: “Any attempt to vilify or demean members of the media or civil society for their political opinions and brand them as traitors or state enemies is totally unacceptable in a democratic society”<sup>157</sup>.

The media community is still divided on the issue of establishing a body to monitor and uphold professional and morals standards in journalism. Progress was made in appointing individual ombudsmen in some media, and most of the key media now have some form of self-regulation. Reports of the Media council for self-regulation and of NGO Human Rights Action which implemented the project “Monitoring of journalists’ self-regulation bodies in Montenegro” (September 2012-September 2014) suggest that the Montenegrin media frequently violated the Law on Media and the Journalists’ Code, but there is a large variation in the extent of violations perpetrated by different organisations<sup>158</sup>. In the 2014 Progress Report on Montenegro, the European Commission noted with concern the lack of profession and ethical standards among media representatives, judging that this only contributes to further tensions in the media environment.

### *The position of minority peoples and other minority national communities*

Montenegrin Constitution provides extensive guarantees for the members of minority peoples and other minority national communities<sup>159</sup>. Article 79, for instance, guarantees the rights of members of minority peoples and other minority national communities, including those related to the preservation of identity, use of language and script, education in their mother tongue, use of personal name, organisation of political participation, information etc. Article 80 guarantees the members of minority peoples and other minority national community freedom from forced assimilation. Amendments to the Law on the Prohibition of Discrimination<sup>160</sup> define racial discrimination and discrimination on grounds of religion or belief as special forms of discrimination.

Article 1 of the Law on Minority Rights and Freedoms states that minority peoples and other minority national communities and their members are guaranteed protection of their human rights and freedoms just like any other citizens. This fundamental guarantee is further specified by additional clauses regulating the overall legal position of minority peoples and other national minority communities in Montenegro.

Montenegro also adopted documents of the Council of Europe – Framework Convention for the Protection of National Minorities and European Charter on Regional and Minority Languages. The Government of Montenegro has adopted a Strategy for Minority Policies.

Progress in this area does not mean that members of minority peoples and other minority national communities have been able to realise full and equal access to participation in the public life, especially with regard to the employment in the public sector, proportional representation in the institutions of the legal and political system, political representation, as well as in education, culture, information and publishing. This will require more intensive work on the part of responsible authorities, organisations and institutions in order to improve their position. It will also require various preconditions, normative and institutional, a high level of political will, favourable socio-economic and socio-

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<sup>157</sup> [http://podgorica.usembassy.gov/statement\\_regarding\\_vijesti\\_attack\\_pr.html](http://podgorica.usembassy.gov/statement_regarding_vijesti_attack_pr.html)

<sup>158</sup> For more information see: <http://medijskisavjet.me/> and <http://www.hracion.org/>

<sup>159</sup> Constitution of Montenegro, “Official Gazette of Montenegro”, no. 1/2007

<sup>160</sup> “Official Gazette of Montenegro”, no. 46/10, 40/11, 18/14

democratic environment, continuous improvements in the democratic civic awareness, as well as democratic legal and political culture. Clearly, these are demanding processes and will still take some time.

One of the issues that is often brought to the fore is the participation of minority peoples and other minority national communities in public bodies and units of local administration. Recommendation of the Protector of the Human Rights and Freedoms in Montenegro that Montenegrin public institutions should seek to ensure proportional representation of minority peoples and other national minority communities did not receive support from the MPs when it was first presented at a plenary session of the Parliament in 2008. However, the need to resort to this approach has been since underlined by the Ministry of Human and Minority Rights. The Ministry and the Human Resource Office found that among the employees of the public sector there are 60% Montenegrins, 20% Serbs, 26.06% Bosniaks, 3.85% Albanians, 2.44% Muslims, 0.86% Croats and 0.03% Roma. Consequently, in July 2014 the Agreement was signed between the Ministry of Human and Minority Rights, Human Rights Office and national councils of minority peoples to ensure proportional representation of the minorities in public services, public administration and local governments.

Electoral laws were designed to provide authentic political representation of minorities on the state level, and the recent amendments<sup>161</sup> do the same on the local level. However, the electoral legislation does not guarantee allocation of seats in the lists for election of parliament members from the Roma minority community, and this should be regulated accordingly.

The position of Roma, Ashkali and Egyptian communities is particularly precarious. Many of their adult members came to Montenegro after the armed conflict in Kosovo in 1999, and remain “legally invisible.” The majority of them live in very difficult conditions, in the so-called “informal” settlements. The largest such settlement is Konik (Podgorica).

In the past years many programmes have been implemented to provide legal and practical aid in completing documentation necessary to obtain identification documents and regulate the status of refugees in Montenegro. Following amendments to the Law on Foreigners, all persons who obtained the legal status as foreigners with permanent residence have been issued work permits and were registered with the State Employment Agency. This provided them, first of all, with access to social and health protection. The Law extended the deadline to submit applications for a permanent or temporary residence in Montenegro has been extended three times, and the final one expired on 31 December 2014. The new draft law abolishes the legal category of internally displaced persons as of January 2015. It is necessary to continue awareness-raising and information campaigns about registration, especially in Romani and Albanian languages, as around 1 500 individuals still remain unregistered, most of them refugees from Kosovo.

On 15 September 2014, Ministry of Labour and Social Affairs, UNHCR, the Danish Council and NGO HELP handed the keys to their new houses to the families that by September 2014 returned from settlements in camp Konik and municipality of Nikšić to their countries of origin. During September 2014, the return to municipality of Klina, Kosovo of 12 families with 54 persons has been supported, as well as 1 internally displaced family with 10 persons to Peja in Kosovo; 10 internally displaced families, 50 members in November 2014 returned to the village Naklo, nearby Peja in Kosovo. These persons, as stated from UNHCR, who were in Konik 1 camp in Podgorica from 1999, returned to the state of origin, where they found their houses rebuilt. Until May 2016, it is planned the support in transport and return packages for additional 30 families who will return to Kosovo. This activity is continuation of cooperation of governmental, international and non-governmental organisations working on implementation of more sustainable solutions for displaced persons. Nevertheless, it is necessary to accelerate implementation of measures to help displaced persons as set out in the 2011 Strategy for permanent resolution of the issue of displaced and internally displaced persons, with a special focus on Konik settlement, which was to be completed in the period August 2011- December 2015.

National strategy for employment and development of human resources for the period 2012-2015 establishes as one of priorities the promotion of social inclusion and poverty reduction, through the improvements in the welfare system and social services, and assisting the members of this population in finding employment. However, the number of members of this community that are in employment still remains very low.

It is true that most administrative barriers to access of such persons to the labour market have been removed, except

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<sup>161</sup> April 2014

for the legally invisible individuals. There remain, however, barriers in terms of skills and qualifications which make it very difficult to increase employment rates of this community, and thus provide them with a market income. Long-term neglect of this population is reflected in the overall levels of inclusion. Many of the members of Roma and Egyptian communities are functionally illiterate, without formal qualifications, which significantly reduces their chances in the labour market. The educational system failed to return and re-integrate a large number of children and young people who are now at risk due to illiteracy, lack of education and skills, and are likely to remain so in the future. It is therefore essential to develop a programme that would ensure a basic level of functional literacy in order to provide them with entry-level skills to access the Montenegrin labour market. Government of Montenegro adopted a special “National programme for functional literacy of the population” which allows the participants to receive an equivalent of the certificate for the first four grades of primary school upon completing an intensive training programme. This further allows them to take part in trainings leading to qualifications in basic professions.

On 24 July 2012 a fire erupted in a settlement which housed 800 members of Roma and Egyptian populations. The event galvanized many public institutions, representatives of international organisations and the civil sector into action to help the residents of the settlement. Temporary housing was provided in the “Konik I” camp, in the form of tents, which was to serve as a temporary solution for accommodating the families in need. In 2012 the visibility of high quality and sustainable initiatives for Roma and Egyptian communities increased. Since 2012, the number of persons from these communities enrolled at the University of Montenegro also increased, thanks to a programme of stipends for high school and university students. The number of Roma children attending primary school grew significantly compared to the previous years. However, the drop-out rate remains high, and the number of Roma girls attending school is still very low. Montenegro has also seen a positive trend in high-school education of Roma and Egyptians, and the drop-out rates have been decreasing.

Despite these positive developments in the position of this community, more effort is needed to attain genuine improvements. It is necessary, among other, to focus more on raising the public awareness and promoting education and empowerment of this minority, as its members are still insufficiently familiar with their rights. At the same time, the broader public should be better educated to recognise and fight discrimination against this population.

In September 2014, the construction of apartments began in the Zverinjak settlement in Nikšić for 10 Roma families with 60 members, who found refuge in Montenegro escaping the wars in the neighbouring countries. Four buildings with 10 apartments are meant to provide a permanent accommodation to the families which received eviction ordinances several years ago and are currently living in the Zverinjak settlement<sup>162</sup>. In April 2012 Government of Montenegro adopted the Strategy for the improvement of the situation of Roma and Egyptians in Montenegro for 2012-2016. In April 2014 a new Action Plan for the implementation of the Strategy for the improvement of the situation of Roma, Ashkali and Egyptians was adopted.

The use of the official language and script has been regulated by the Constitution, General Law on Education, Law on Travel Documents, Law on Identity Card and Law on the Rights and Freedoms of Minorities. Article 13 of the Constitution, for instance, stipulates that “The official language of Montenegro is Montenegrin. Cyrillic and Latin scripts are equal in use. Other languages in official use are Serbian, Bosniak, Albanian and Croatian”. These constitutional provisions are in line with the International pact on civic and political rights and the European Charter on regional and minority languages.

In addition to the basic constitutional principles on the use of language and script, several additional laws regulate different aspects of this issue, but this form of regulation leaves many legal loopholes. The situation could be improved with the adoption of a separate and comprehensive Law on the use of the official language and script, as is the practice in most other countries in the region. This law would have to clarify a number of issues, such as: what is considered the official language and script and languages and scripts in official use; use of the official language and script in the communication of public institutions, local administrative bodies, public services and other public authorities with the citizens, including in the procedures that are taking place before these bodies (administrative, court procedures etc.); use in public announcements and signs, traffic and road signs (national and international), names of places and other geographic designations, other issues relevant to the overall regulation of the use of the official language and script and languages and scripts in official use.

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<sup>162</sup> The project, worth 290.000 euro, is implemented by UNHCR, Help, municipality of Nikšić, Government of Germany and the Ministry of Labour and Social Affairs.

## *Gender equality*

Research indicates that discrimination on gender grounds is still common in Montenegro, most frequently against women, and is deeply rooted in the traditional, patriarchal stereotypes about gender roles of women and men in the family and the wider community. Women members of marginalized groups: Roma, refugees and displaced persons, migrants, women with disabilities, drug users, inhabitants of rural areas, older women, the poor, single mothers etc. are especially vulnerable.

The most common forms of discrimination against women are in the areas of work and employment. It is noted that the employers violate the rights of working women by failing to offer them renewal of temporary contracts if the woman in question gets pregnant, illegally cancelling open-ended employment contracts and generally discriminating against women employees by shifting them to worse positions after they return from parental leave. Women with disabilities are in an even worse position. According to the reports of the civil sector, mobbing is increasingly perceived as a problem, and the perpetrators are usually superiors.

Local action plans for gender equality have been adopted in 5 municipalities out of a total of 23, and two of them also set up offices for gender issues. Institutional capacities are still weak. Office of the Protector of the Human Rights and Freedoms is supposed to have an advisor for gender equality, but the position remains unfilled. Moreover, for an entire year the Office neglected to appoint a Deputy for minority rights, protection against discrimination and gender equality. Ministry of Human and Minority Rights, i.e. the Department for Gender Equality Affairs is also facing a shortage of staff. An informal network of coordinators for gender equality, which consists of representatives from ten municipalities, was established in October 2013.

In the interest of consistent implementation of the national legislation and international standards of gender equality, it is necessary to invest more and more systematic effort into gender sensitisation and awareness-raising with the wider public.

Participation of women in decision-making and government is another important issue. The Law on the Election of Councillors and Members of Parliaments<sup>163</sup> stipulates that all political parties must have at least 30% of the less represented gender among the candidates on their electoral lists. The Parliament of Montenegro has 81 members, but the number of women MPs is currently 13 or 16.05%, one less than last year. The Speaker and the deputy Speakers of the Parliament are all men. In the Government of Montenegro, women head three ministries. There are, however, significantly more women in the leading administrative positions in other executive bodies (directors of administrative units, secretaries of state, heads of ministry directorates, deputy heads of administrative units etc.) – 38.60% of all such functionaries, whereas their share in the similar positions in the Parliament is 55%. Women make up 38% of the faculty in higher education institutions. At the University of Montenegro, out of 21 university units 16 are headed by men and 5 (31.6%) by women. Of 23 Montenegrin municipalities, only two have women at the position of presidents of the municipality. 14% of local government councillors are women. Women make up a much larger share of judges and lower-level executive functionaries – closer to their overall proportion in the population. All of this suggests that the above rule on electoral lists has not been consistently implemented, and that women should be guaranteed greater participation in the decision-making bodies, in line with the international standards in this area.

Recent amendments to the Law on the Election of Councillors and Members of Parliaments<sup>164</sup> go a step further, stipulating that at least every fourth candidate on the electoral list must be of the less represented gender. Moreover, if the term in office of a councillor or MP of the less represented gender expires ahead of the general elections, he or she can only be replaced by the next candidate of the less represented gender. Only if the list contains no more candidates of the less represented gender, the next candidate with the highest number of votes can be appointed. Adequate implementation of these legal provisions can ensure a balanced representation of women and men in political life, and thereby a socially accepted and justified participation of women in the representative bodies, which guarantees effective equality and the principle of equal opportunities of men and women. There are some reasons to believe that a more effective participation of women in elections (active voting rights) could make the structure of the representatives more similar to the gender distribution of the society as a whole. However, this proposition is not yet fully studied,

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163 "Official Gazette of Montenegro", no. 4/98, 05/98, 17/98, 14/00, 18/00, 09/01, (FRY) 09/01, 41/02, 46/02, 45/04, 48/06, 56/06, 46/11, 14/14, 47/14

164 Adopted in March 2014.



and may therefore be necessary to systematically monitor the participation of women in the elections and the links to electoral results; monitoring women's turnout and analyse electoral results from the gender perspective; and organise campaigns to bring voters to the ballot boxes.

Much progress has been noted in the participation of women from Roma and Egyptian communities in the social life of Montenegro, despite the fact that their overall position could hardly be described as favourable. In that sense, we should especially commend the efforts of non-governmental organisations "Centre for Roma Initiatives" and "Women's RAE Network – First" which are both dealing with this problem, among many others.

Concerning violence against women, it is important to note that in March 2013 Montenegro ratified the Istanbul Convention which obliges the signatories to undertake specific steps in the fight against sexual violence and harassment, rape, domestic violence, forced marriages and female genital mutilation.

According to the information collected from the Police, the courts, public prosecutors and municipal violations bodies and published in the third Report of the Coalition of NGOs for the monitoring of negotiations on Chapter 23 – Judiciary and Fundamental Rights<sup>165</sup>, there was an increase in the number of crimes against women and domestic violence in Montenegro in 2013. In that year, 183 cases of domestic violence and violence in the family were registered, 18.8% more than in the previous year. Public prosecutors received 179 complaints concerning 184 individuals, 94.5% of them men. Among the investigated individuals 20.3% have already been subject to investigations on similar crimes. Data from the Supreme Court reveal a high number of cases being rejected by the court or the defendants cleared of charges, or only received suspended sentences. Records of the bodies in charge of prosecuting municipal violations which oversee the highest number of cases concerning violence (1124) also reveal a lenient approach, with the highest frequency of suspended sentences and fines as well as of release verdicts and warning. It is very rare that the perpetrators receive restraining orders. Data from the centres for social work shows a very different picture from that available to the police and courts. According to them, only 280 cases of violence against women were registered in 2013, far fewer than that recorded by the other institutions. Given that the centres for social work ought to be the frontline for the protection against family violence, such records suggest the lack of capacities for identification of the problem of violence and its effective reporting and prosecution.

Since 2010, Montenegro has a Law on the Protection against Family Violence, which obliges all institutions to report violence. Strategy for eradication of family violence and Protocol on the measures to be undertaken by institutions in case of family violence have been adopted in 2011 and in August 2012 the Handbook of regulations on the cease and desist and restraining orders came into force. However, despite a solid legal framework and the efforts to implement it, victims of violence cannot count on a satisfactory level of protection. It is therefore necessary to secure adequate resources for a consistent implementation of the Law and the accompanying strategic documents. In that sense, it is necessary to: support the work of services for women victims of violence, in order to empower them to leave the violent situations and, in some cases, save their lives; improve the performance of all institutions, and ensure effective and timely implementation of the Protocol on procedures, prevention and protection against family violence; establish an effective system of monitoring of the implementation of protective measures stipulated by the Law on the protection against family violence and ensure fast-track response to all reports of violations; provide free legal assistance to victims in all procedures that follow the filing of a report of violence; provide adequate protection to the victims; improve material support to the victims of violence by establishing a Fund for support to the victims of violence.

In the 2014 Progress Report on Montenegro, the European Commission notes that progress with regard to women's rights and gender equality remains limited.

In addition to being present at all levels of society, violence against women is especially common among the most hidden groups of women such as sex workers, injection-drug users and partners of drug and alcohol addicts. Among these, sex workers are the most vulnerable to violence. However, this form of discrimination is very rarely mentioned. Violence against them is multi-layered and comes from the working, private, social and institutional environment. This problem is not featured in any of the national strategies and action plans concerning the fight against violence and for gender equality in Montenegro. Sex workers are often women from the lowest social strata – those with the least social influence. In 2010 and 2012 NGO Juventas conducted surveys to collect information on the socio-

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165 For more information see [www.crnvo.me](http://www.crnvo.me)

economic characteristics of sex workers, as well as on the frequency of violence against them. 200 sex workers from all over Montenegro participated in the survey, and the published results indicate that persons who sell sex in Montenegro are highly discriminated and stigmatized, that they exist at the very margin of society and are as such exposed to continuous violence, to the point that even their lives are often threatened. This social exclusion, which stems from the stigmatization of sex workers, results in the lack of access to healthcare, housing, alternative work, and at the same time to isolation and separation of their children. In Montenegro sex work is not legalized and sex workers remain a hidden population. Intermediation in prostitution, trafficking of human beings, as well as slavery and transport of enslaved persons are criminal activities, whereas engaging in prostitution is considered a municipal violation. “Voluntary” sex work also forms part of the debate on human rights. For some, sex work is equivalent to exploitation and trafficking in human beings. Others admit that some people choose to sell sexual services in order to respond to pragmatic constraints of their opportunities, or because they were forced to do so as victims of trafficking. Some argue that sex workers should have the right to work and adequate legal protection that would prevent sexual or physical violence, harassment or other violations of their human rights. These issues have so far received very little institutional attention from the Government of Montenegro.

Furthermore, Montenegro has no place where women drug addicts could go for a treatment. This fact directly violates the Constitution of Montenegro, which guarantees all its citizens the right to health and social care. NGO “4 Life” reports that there is a large number of women drug users, and the data from Centre for Mental Health from Podgorica confirm these findings. Unable to fully access their right to medical treatment in Montenegro, a few of these women go to one of the treatment centres in the wider region. However, due to difficult material circumstances, children, or other causes, many more of women drug users remain and continue using drugs, bringing harm to themselves and their families. Some of them have children or are pregnant. “National strategic response to drugs 2008-2012” and Action plan for this period was to produce solutions that would ensure the right of access to treatment of women drug users, but in practice this right remains beyond their access. The country should therefore urgently establish a Centre for treatment of women drug users.

### *Rights of children*

Children should be recognised as active and full members of the society and be offered broader horizons for participation in all areas of life. Poverty caused by the general state of the society has an enormous influence on the rights of children. It not only affects their quality of life, but also many of their rights. Poverty increases the risk of neglect and abuse and undermines access to the health, social, educational and cultural services that are essential for children’s development. Children cannot wait for better times to attain their rights to healthy development. This is especially true of the vulnerable groups, such as children without adequate parental care, children with behavioural disorders, victims of violence, members of national minorities, children with difficulties in development, ill children and those whose parents are in prison. This is why it is essential to recognise their needs, identify difficulties and obstacles in access to their rights, increase social sensitivity of the local communities and the state and find solutions and resources necessary to provide them with better conditions and opportunities in growing up.

In that sense, it is necessary to ensure continuous education of all persons who are directly working with children on issues of the prevention of harassment, violence and abuse of children, and ways to provide them with adequate protection of their rights. Despite certain measures undertaken by the Government of Montenegro to ensure a proper standard for students, the country is far from the optimal results. There is a lack of incentives to enable all children who are able to do so to continue education in line with their capacities and interests, especially children from materially and economically disadvantaged families.

The problem of begging among Roma and Egyptian children is still visible, as is the lack of institutional response to it.

In January 2014, Council for the Rights of Child was established, with 12 members headed by the Minister of Labour and Social Affairs. One of the key tasks of the Council is to monitor implementation of the national action plan for children for 2013-2017. Law on Social and Child Protection<sup>166</sup> has not yet been adequately implemented, as necessary regulations on access to services in the area of social and child protection that were supposed to accompany the Law are still missing.

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<sup>166</sup> Law on Social and Child Protection, “Official Gazette of Montenegro”, no. 27/13, 01/15

Deputy Protector of the Rights of Child conducted an analysis of capacities and activities of the Centre for Social Work, and parts of this analysis have been published in the 2013 Annual Report of the Protector of Human Rights and Freedoms. The Report states, among other: *“In the course of this study the Protector found that none of the Centres has adequate working space when we take into account the number of employees, the number of clients and the range of services they are supposed to provide. The most prominent is the lack of space and equipment for work with clients, especially children and families. We also found that none of the Centres have a specially equipped area for work with children or a room adapted for children that would ensure a pleasant stay of a child in the centre. This places a question mark over the quality of work with children and families that contact the Centres... As for enabling controlled encounters between children and parents on the Centre’s premises, under supervision and with assistance of the employees, the lack of space and inadequate equipment only make this task more difficult. Families that ought to be getting help from the Centres in normalising their relations are often unable to use Centres to this purpose. Encounters on the premises of the Centres are unpleasant to both the children and the parents, as well as to the staff, as inadequate conditions make the whole exercise meaningless. In addition to the lack of space, according to the Centres’ employees, every centre has a pronounced shortage of material and technical resources... Such conditions limit the activities of the Centres’ employees and prevent them from performing the mandatory supervision of clients, and monitoring of families. In addition to shortages of space and equipment, there is also a notable lack of qualified staff... this puts a question mark over the quality of procedures and provision of adequate protection to the clients...”*

Non-governmental organisations also contribute to improvements in this area. Among other, the Montenegrin educational system saw the introduction of a comic-book “The trouble with Roki and other stories about children’s rights” as a teaching aid in the subject Civic Education. The comic book was made by NGO Human Rights Action in cooperation with the Protector of Human Rights and Freedoms<sup>167</sup>, and was approved for use by the National Council for Education in December 2013, as a means of helping to educate children about human rights and motivate them to fight for the rights of children.

### *The positions of persons with disabilities*

Among other things, Constitution of Montenegro guarantees special protection of rights to persons with disabilities. In addition to the Law on Prohibition of Discrimination, constitutional provisions are regulated with a set of special laws that prohibit discrimination of this category of persons and these are: Law on Professional Rehabilitation and Employment of Persons with Disabilities<sup>168</sup>; Law on Movement of Persons with Disabilities with the Assistance of Guide Dog<sup>169</sup>; Law on Benefit of Persons with Disabilities in Domestic Transport<sup>170</sup>; Law on Education of Children with Special Educational Needs<sup>171</sup>; Law on Prohibition of Discrimination against Persons with Disabilities<sup>172</sup>.

Law on Prohibition of Discrimination against Person with Disabilities does not provide sufficient guarantees for the protection of rights of these persons. Namely, that Law does not contain penal provisions, and instead it refers to the Law on Prohibition of Discrimination. Hence, provisions of these laws, in this part, have to be improved and harmonised. With its Plan of activities for 2013, Government of Montenegro envisaged the adoption of Proposal of Law on the Amendments of Law on Prohibition of Discrimination against Persons with Disabilities and this law was at the stage of proposal during the preparation of this publication.

Persons with disabilities in Montenegro are still in a very difficult position despite numerous activities undertaken by state bodies, local self-government bodies, public services, civil sector and other subjects on all levels. Persons with disabilities cope with discrimination on a daily basis. For instance, in spite of solid legislative framework, all public buildings and institutions still lack the access needed, even though those are the institutions to which they are referred in everyday life. When it comes to accessibility, not only the architectural aspect is implied, but

<sup>167</sup> The comic book was made as part of the project “Children, write to Ombudsman” with support of UNICEF Montenegro, the Embassy of Switzerland in Belgrade and the UK Embassy in Podgorica.

<sup>168</sup> Law on Professional Rehabilitation and Employment of Persons with Disabilities, "Official Gazette of Montenegro", no. 49/08, 73/10, 39/11

<sup>169</sup> Law on Movement of Persons with Disabilities with Assistance of Guide Dog, "Official Gazette of Montenegro", no. 76/09, 40/11

<sup>170</sup> Law on Benefit of Persons with Disabilities in Domestic Transport, "Official Gazette of Montenegro", no. 80/08, 40/11, 10/15

<sup>171</sup> Law on Education of Children with Special Educational Needs, "Official Gazette of Montenegro", no. 80/04, 45/10

<sup>172</sup> Law on Prohibition of Discrimination against Persons with Disabilities, "Official Gazette of Montenegro", no. 39/11

availability of information, communications and technologies as well, as they are very important segments needed for achievement of rights and equal treatment of persons with disabilities in society. Some, yet still insufficient, progress was registered in architectural field in recent years, but the thing that is of concern is that, contrary to the law, in some newly-built buildings standards have not been met, both in terms of access ramps and in terms of accessibility to inner parts of objects. Basic reason for this state of affairs is reflected in lack of awareness of the most part of public, as well as in insufficient coordination of institutions, organisations and experts in overcoming problems in this area, as well as the sanctioning of violation of the law.

Additionally, persons with hearing impairment are not able to achieve their rights because the institutions lack sign language interpreters.

When it comes to availability of information, Ministry for Information Society and Telecommunications organised a conference in October 2014, in cooperation with Association of Youth with Disabilities of Montenegro and the Association of the Blind of Montenegro, called "E - accessibility for everyone", on the subject of web accessibility with particular reference to Montenegrin circumstances. During the conference, persons with disabilities spoke about specific examples that limit or prevent their access to information and communications. Also, since persons with disabilities fall under the category of poor population, modern technological devices are seldom available to them. Ministry for Information Society and Telecommunications announced preparation of guidelines for customizing of websites.

In order to improve the status of persons with disabilities, in 2007, Government of Montenegro adopted the Strategy for Integration of persons with disabilities, for the period 2008-2016. This Strategy includes the following areas: health care; social protection; pension and disability insurance; education; professional training and employment; culture; sport and recreation, etc.

It was envisaged that Action plans are to be adopted every two years, thus, Government of Montenegro adopted Action plans based on which it determined priority activities for the next two years. Council for the Care of Persons with Disabilities is no longer a body of Government of Montenegro, and instead it is formed as a body of the Ministry of Labour and Social Welfare, which caused turbulent reaction by non-governmental organisations that deal with the improvement of rights of persons with disabilities, but did not prevent the Government to reduce the level from which it deals with this issue.

Law on Professional Rehabilitation and Employment of Persons with Disabilities defines the manner and process of achieving the right to professional rehabilitation of persons with disabilities, measures and incentives for their employment, manner of financing and other issues of importance for professional rehabilitation and employment of these persons. At the beginning of 2013, there were 1,967 persons with disabilities in the evidence of Employment Bureau of Montenegro (disability caused by injury at work 1,380 and categorised persons 587). Resources of Fund for professional rehabilitation and employment of persons with disabilities are allocated from special contributions, donated by the employers, on the special account of Budget of Montenegro. Fund is not specified as a special budget item in revenue and expenditure side of the Budget of Montenegro, i.e. it does not possess the status of special legal person. Instead, it was established as the organisational unit within the Employment Bureau of Montenegro. It was not until 2014 when 465,791.91 € were allocated for those purposes, for the first time, out of 2,000,000.00 € that were allocated based on the Law on Budget for 2014. Based on special contributions made during the period from 23 May 2009, when Fund was first formed, to December 31, 2014, a total of 33,160,05.59€ was paid, out of which less than two millions were spent for implementation of the programme for special rehabilitation and employment of persons with disabilities (only about 6%). During, or at the end of the each calendar year, due to necessary reduction of the balance to zero, from 6 to 8.5 million EUR were allocated for other purposes that are not in line with the Law on Special Rehabilitation and Employment of Persons with Disabilities.

According to the information of Association of Youth with Disabilities of Montenegro, Commission for establishment of disability and Commission for evaluation of the remaining working ability and possibility of employment do not meet regularly and still are not established in every city. Moreover, where these Commissions exist, according to their information, many persons with disabilities still do not have determined percentage of their disability. This is seldom one of the reasons why assistants are not assigned to persons with disabilities in work, because the validity of assigning the assistant in work is estimated by the contractor of professional rehabilitation, based on the request of person with disability.

What is important is that persons with disabilities are familiar with their rights, as well as with the institutions they can address in order to achieve and protect their rights. In this sense, Centre for Anti-Discrimination - Ekvista

published two manuals for the needs of citizens regarding their access to institutions with the emphasis on inspection services as well as inspection services regarding the broadening of knowledge in the area of antidiscrimination. Also, additional trainings are of significance for inspection services, as well for forums organised in three cities, whereby citizens were provided with the information on presence of this occurrence, as well as the information on how to address these institutions. Additionally, the Association of parents of children and youth with difficulties in development "Our Initiative" Podgorica held 15 workshops during 2014 in 10 Montenegrin cities based on which parents of children with difficulties in development, as well as local self-government representatives, have been informed about the ways of achieving rights of these parents and children. Numerous other organisations, that advocate rights of persons with disabilities, continuously work on the education of citizens about rights of persons with disabilities, as well as about the education of persons with disabilities, so they can fight for rights that are rightfully theirs.

### *The position of persons of different sexual orientation and gender identity*

Montenegro is still a fertile ground for stereotypes and prejudices, especially when it comes to LGBT people. There is still a very small number of publicly declared members of LGBT community, which speaks in favor of a negative climate that exists towards this marginalized group.

Centre for Civic Education (CCE) has, in cooperation with LGBT Forum Progress<sup>173</sup>, conducted a public opinion survey on inclinations of citizens of Montenegro towards discriminative behavior, especially homophobia. The survey lasted for three days, from 31 January to 2 February 2012, and by random sample, via telephone, 803 adult respondents were included. Survey results indicated that the greatest distance and unacceptability, citizens show towards HIV positive persons and sexual minorities. More than a quarter of the citizens does not want such persons in their neighborhood, half of them would not want them to be friends to their children, and nearly nine out of ten respondents would be opposed to such a person marrying someone from their family. First impression of the 47.8% of population about homosexuals was negative, 29.7% had a neutral attitude, and 22.4% of respondents had positive one. Unfortunately, majority of population has a negative attitude towards LGBT community, and thus 59.9% of respondents believes that homosexuality is a disease, and 31.9% of respondents thinks the opposite. However, to the question of whether they would mind that their child attends lectures in which the talk is about homosexuals from a scientific point of view, 74% said they had nothing against, and 23% would have problem with that. Research has further shown that citizens believe that persons with different sexual orientation are entitled to publicly express their sexual orientation, ie. 52%, while 40% is opposed. Only 17% of population mostly or entirely agrees with the statement that homosexuality does not exist in Montenegro, while 77% does not share this opinion.

Homosexuality and rights of LGBT persons remain, for a considerable part of the population, a taboo topic, which is evidenced by the fact that almost a third of population would cease to vote for the political party currently supporting if it would start speaking about rights of homosexuals, although slightly more than a half of the citizens, around 52%, does not perceive homosexuals as vulnerable group who needs help to realize their rights, and more radical methods of behavior towards LGBT persons do not have broad public support. Around 58% of citizens does not justify verbal, and 92% physical violence against this population. LGBT persons are considered to be the second most threatened category, after persons with disabilities. Juventas has, in cooperation with the NGO Centre for Monitoring (CEMI), implemented a research in 18 municipalities in Montenegro with a sample of 1,049 respondents, which speaks in favor of abovementioned situation. Namely, according to the results of this research, in Montenegro, 68.5% citizens believe that homosexuality is a disease, while 50% of respondents believe that homosexuality can not be cured. Furthermore, 75% of parents would feel unsuccessful, if they would found out that their child is homosexual, while around 45% of questioned citizens would feel threatened if they saw two men or two women expressing their homosexuality publicly. Half of the respondents believe that the state should take steps to suppress homosexuality.

Research of the LGBT Forum Progres "Discrimination against LGBT people in the labor market"<sup>174</sup> conducted in 2014, indicates the frequency of discrimination against LGBT people in the workplace, as well as during search for employment.

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<sup>173</sup> The research was conducted within the project «It's OK to be different», which was supported by the Canadian Embassy, while professional part was done by the agency Ipsos Strategic Marketing

<sup>174</sup> <http://lgbtprogres.me/2014/10/lgbt-zajednica-i-trziste-rada-istrzivanje/>



One of prejudice, which contributes to formidable occurrence of discrimination against LGBT people, is that all persons who are not heterosexual, are sick persons. This prejudice has had a basis in the fact that homosexuals and transgendered persons were represented on the list of mental disorders, composed by the World Health Organization (WHO) based on the International Classification of Diseases (ICD), were represented. From this list, homosexuals were removed in 1990. Regarding transgender persons, by the institutions of the European Union, an initiative was launched to remove them from the list, and solution of this issue is expected during 2015. According to standards of the World Health Organization, people are born as persons of a particular sexual orientation, therefore when it comes to persons from the LGBT community, it is not a disease, but a variety of belonging to the population in relation to sexual orientation. Likewise, sexual orientation is not a feature that is acquired (except birth), or transferred. These persons themselves become aware of their sexual orientation at different ages and different occasions. And since homosexuality is not a disease, a disorder, or anything that is in itself bad, therefore it can neither be cured nor corrected, but should be accepted in its givens.

Law on Prohibition of Discrimination explicitly prohibits discrimination against persons on the basis of their gender identity and sexual orientation<sup>175</sup>. Also, by amendments to the Law, these two concepts were defined, due to lack of understanding them by professionals who apply the Law, as well as the citizens themselves.

Deputy Protector of Human Rights and Freedoms for the area of minority rights, protection against discrimination and gender equality issues has, at the beginning of 2012, submitted an Initiative for adoption of the Law on Same-Sex Unions to the Parliament of Montenegro, which would regulate status of these persons in a unique manner. The Parliament of Montenegro has not yet been considering this initiative. However, the Strategy for Improvement of Position of LGBT Persons of the Government of Montenegro (adopted in May 2013), provides for the adoption of this draft law. By adoption of the said Law, rights of extramarital same-sex unions would be equated with extramarital heterosexual ones and thus, in this regard, the unhindered joint life of all citizens who live in Montenegro. Such a legal solution would further reflect in a whole sequence of special legal regimes of enjoyment of rights and freedoms, which are currently reserved solely for members of heterosexual communities. Among them, legal regime of property relations of community members should be singled out, and especially the rights in relation with the acquisition and disposition of common property and mutual support, legal inheritance rights, including those relating to the rights of social and pension insurance, followed by rights of the employment group of rights, the right to protection from domestic violence, rights that are enjoyed in special cases, such as rights of members of the community in relation to another member of the community who is hospitalized, or serving prison sentences, and others.

In the last few years, in comparison to the previous period, not a single case of improper qualification of LGBT people by senior government officials was registered, which can be considered a progress. The Supreme Court of Montenegro, the Government of Montenegro, the Protector of Human Rights and Freedoms of Montenegro, the Council for Protection against Discrimination, the Council for Civilian Control over Policework, NGOs and international agencies and organizations active in Montenegro, have invested a significant and visible efforts for establishment and development of communication and cooperation. Thus, needs, challenges and shortcomings, but also weak points in the institutional protection against discrimination for all vulnerable groups were identified. This resulted in realization of numerous professional trainings and specializations, creating corresponding scientific and practical literature for the subject area, to building capacities and competence, institutionalization of mutual cooperation and, finally, to a better interpretation and application of anti-discrimination legislation.

When it comes to transgender people, a dialogue of civil society organizations with healthcare authorities in Montenegro is being led in order to prevent discrimination and to improve access, health-treatment and treatment of citizens regardless of their sexual orientation and gender identity. Especially significant progress has been made regarding the treatment of transgender people in healthcare system. In March 2012, amendments to the Law on Health Insurance entered into force, which, among other things, allows the triad process of gender confirmation of transgender persons. Thereby, it was ensured that insured persons are paid, from the mandatory health insurance, a 80% of the cost of three stage (triadic) process of gender confirmation, which consists of psychotherapy, hormone treatment, estrogen or testosterone, and sex-change surgery, which involves alteration of genitals. A direct contact of healthcare authorities and transgender people who have interest in the adaptation of the sex with their gender has also been achieved.

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<sup>175</sup> Article 19, Law on Prohibition of Discrimination, "Official Gazzete of Montenegro", No. 46/10, 40/11, 18/14



The right to freedom of assembly for LGBT people is still limited but is slowly being conquered. So far three pride parades have been organized (two in 2013, organized by LGBT Forum Progress in Budva and Queer Montenegro in Podgorica, and one in 2014, organized by Queer Montenegro in Podgorica). These gatherings were secured by strong police force, and it was evident that there is a political will to conduct them in best possible order. However, these also represented an opportunity to measure the pulse of homophobia that is still quite strong, which is reminiscent of the need to work more on raising awareness and developing tolerance in Montenegrin society. Thereby, it should be emphasized that a far greater degree of hostility was expressed during 2013 than in 2014. However, the number of reported cases of violence against LGBT persons is concerning, as well as a large number of attacks on LGBTIQ Social Centre, and even more the slow or inadequate processing of these cases. Hatred and violence against LGBT persons can not be prevented by ignoring the problem, without initiating criminal proceedings, and without adequate sanctioning the perpetrators of crimes.

In addition, the Strategy of Improving the Quality of Life of LGBT Persons for the period 2013 - 2018 is applied inconsistently, and there are especially absent activities in the field of education, which is essential in order to act preventive and systemic on reducing homophobia and generally unacceptance of LGBT persons in the Montenegrin society. LGBT Forum Progress reacted several times on this occasion. Furthermore, it is necessary to invest more effort in improving the legislative framework, in particular adoption of the Law on Same-Sex Unions, as indicated by Queer and Montenegro. State authorities have established cooperation with civil society, especially in terms of improving positive environment for the LGBT community. However, it is necessary that all competent authorities intensify the promotion of tolerant attitudes in society based on gender identity and sexual orientation. Hence, discrimination against persons of different sexual orientation and gender identity in Montenegro is evident and alarming. Without change of awareness and cultural context, there can be no qualitative change and progress in respect for human rights and especially the rights and freedoms of persons of different sexual orientation and gender identity.

### *Rights of persons deprived of their liberty, prohibition of torture and other inhuman or degrading treatment or punishment*

Despite being deprived of their liberty by a public authority, citizens who find themselves in this position possess a range of rights and freedoms that are not revoked, and the state is obliged to respect and protect these rights and freedoms. The position of persons deprived of their liberty is determined by the Constitution, ratified and published international treaties and generally accepted rules of international law, as well as laws and other regulations and general acts. Thus, Article 28 of the Constitution of Montenegro guarantees dignity and security, inviolability of physical and mental integrity of persons, their privacy and personal rights. No one shall be subject to torture or to inhuman or degrading treatment and no one shall be held in slavery or in a position of slavery. Article 27 guarantees the right to a person and dignity of a human being with regard to the use of biology and medicine, while Article 28 guarantees respect of human personality and dignity in criminal or other proceedings, in case of deprivation or restriction of liberty and during execution of a sentence. It also forbids maltreatment of persons who are deprived of their liberty or whose freedom is restricted, as well as extortion of confessions and statements. Montenegro does not allow death penalty.

Montenegro has also ratified numerous international treaties which prescribe prohibition of torture and other forms of abuse, as well as certain mechanisms of protection and prevention of abuse, both those adopted under the auspices of the United Nations, such as the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention, and those adopted under the auspices of the Council of Europe, such as the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. As a member of the Council of Europe and signatory to the European Convention on Human Rights, Montenegro is obliged to harmonize its legislation and legal practice with the practice of European Court of Human Rights, which has made a huge contribution to defining and improving legal standards relating to the prevention and punishment of torture and other forms of abuse.

Criminal Code of Montenegro prohibits abuse and torture. If the criminal offense of torture is committed by an official while on duty or the offense is committed with the explicit or tacit consent or if the official incites another person to commit acts of torture, he/she shall be sentenced to imprisonment of one to eight years. Extortion of confession is

prohibited, too, and if done by an official on duty, he/she is threatened with a sentence of three months to five years in prison. However, if the extortion of confession or statement is accompanied by severe violence or entails particularly grave consequences for the accused in criminal proceedings, the penalty will be from two to 10 years in prison.

Within the reform of the penitentiary system in Montenegro, the Law on the Execution of Suspended Sentence and Sentence of Community Service has been adopted. In order to enable prisoners to serve alternative sentences through community service, the agreement on the sentence of community service was signed between the Ministry of Justice and five municipalities. So far, two judgments were passed in which the defendants were sentenced to community service.

In the area of prevention of torture, as mentioned previously, Montenegro has ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Protector of Human Rights and Freedoms also has the mandate to act to prevent torture and other inhuman treatment or punishment, which includes executing regular and ad hoc visits to the locations that hold or could hold persons deprived of liberty or persons whose freedom of movement was restricted by a decision of the competent authorities. However, this system is yet not properly functional, as described in more detail in the report of the Protector's Office. Among other, it notes that the Office of the Protector could not identify presence of torture in any of the cases for which it has received such complaints. Moreover, 2013 and 2014 Reports of the Protector's office further note that incidence of torture is sporadic and isolated and that the administration of the Department for Execution of Criminals Sentences reacts to such cases by initiating disciplinary proceedings, and submitting the information to the competent prosecutor.

After the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), urgent recommendations of the Committee have been implemented and a plan made to keep track of the remaining recommendations. In the May 2014 report<sup>176</sup> the CPT expressed concern that some of the recommendations it issued after the 2008 visit to Montenegro have not yet been implemented and that combating torture remains a major problem in Montenegro. CPT has found serious allegations of abuse. It underlined the problem of violence among prisoners, as well as need to recognise and prevent violence by officials of the DECS. It also noted poor hygiene in pavilion A. There are further allegations of DECS being overcrowded, as well as of inadequate conditions for serving prison sentences of persons with disabilities. Furthermore, it was noted that more work is needed on the infrastructure and programmes of rehabilitation and social reintegration. Police detention facilities still do not meet the standards prescribed by the CPT also, including neither providing the minimum daylight, nor conditions in respect of square footage per inmate.

Cooperation of the Department for Execution of Criminal Sanctions (DECS) with civil society is good, and the prison administration has signed several memoranda of cooperation with non-governmental organizations in order to facilitate their access to detention facilities.

### *Restitution*

The Law on Restitution of Property Rights and Compensation<sup>177</sup> was adopted in 2004, and amended in 2007. Before the 2007 law came into force, it was the responsibility of municipal commissions to answer requests of former property owners. With the new law, this responsibility was transferred to regional restitution commissions established in Podgorica, Bar and Bijelo Polje.

Of the total 10.847 applications by former property owners, 5.780 or 53% cases were settled the regional commissions – 3.360 by 1 January 2013, and another 805 between 1 January 2013 and 31 December 2013. There remain 1.286 cases before the regional commission in Podgorica, 905 in Bar and 2.876 in Bijelo Polje.

Compensation Fund received from commissions on restitution and compensation 1.339 final decisions by 1 January 2014, for a total value of EUR 211.2 million. The amount that was paid in currency and bonds by the Compensation Fund to former owners was EUR 120.9 million, leaving EUR 90.3 million in outstanding obligations to former property owners. Annual rate payments to the former owners are executed through the Compensation Fund in accordance with the law, at a pace set each year by the Government of Montenegro.

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<sup>176</sup> <http://www.cpt.coe.int/documents/mne/2014-16-inf-eng.htm>

<sup>177</sup> Law on Restitution of Property Rights and Compensation, "Official Gazzete of Republic of Montenegro", No. 21/04, 49/07, 60/07 and "Official Gazzete of Montenegro", No. 12/07, 73/10

Bearing in mind the statistical indicators on the number of pending cases, unpaid obligations to former owners, as well as the fact that 10 years have passed since the entry into force of this Law, it is obvious that the commissions for restitution and compensation must intensify their work on the remaining cases, while ensuring fair consideration of each case. In this regard, the Ministry of Finance should provide adequate professional staff for commissions, and undertake other measures that would ensure continuous functioning of the commissions.

Delays in the restitution of property and compensation for citizens who are entitled to restitution are preventing enforcement of titles and property rights and thereby the productive use and sale of land and property. Furthermore, citizens who are entitled to compensation are denied the exercise of right to compensation within a reasonable time. Finally, applicants for restitution and compensation whose requests will be refused or rejected are subjected to legal uncertainty, i.e. prevented from using appropriate legal means to protect their rights.

Even the European Commission in its report on the progress of Montenegro in 2014 notes the lack of administrative capacities of commissions, as well as a large number of pending cases, particularly in cases concerning displaced persons in Montenegro.

### *Other issues*

#### ***Corruption***

The fight against corruption has not yet delivered results in the form of final court verdicts despite numerous efforts to improve regulatory and institutional framework. Weak impulse coming from the political level did little to open doors to the relevant public authorities to ensure a degree of institutionalisation, comprehensiveness and longevity to the fight against corruption.

Too many institutions in charge, with poor communication and exchange of information, lack of alignment with the international legal standards, insufficient level of international cooperation of the prosecution in criminal matters and insufficient level of staff training, as well as inappropriate political influence, represent the key obstacles to achieving results in this area.

Montenegro is lagging behind in the implementation of commitments set out by the Action Plan for Chapter 23, both in terms of legislation, and with regard to tangible results on the ground.

The non-governmental sector has been the leading force behind efforts to uncover, investigate and regulate many open issues on the anti-corruption agenda.

#### ***Protection of „whistleblowers“***

More effective protection of “whistleblowers” must be ensured to encourage citizens’ reporting of corruption. “Whistleblowers” are an important mechanism of anti-corruption, and are essential to prevent and combat fraudulent activities, and uphold the rule of law. Fundamental to this mechanism is respect for human rights, especially the right to information, privacy and freedom of expression. These persons are often exposed to numerous risks, victimization, dismissal, mobbing, and in extreme cases even physical danger, which is why an effective system for legal protection of whistleblowers is essential. Assembly of the Council of Europe has, in recommendations of the Resolution 1729 (2010), urged all member states to reconsider their regulations on the protection of “whistleblowers” and ensure comprehensive legal protection.

Legal provisions that regulate the reporting of threats to public interests in Montenegro are as follows: Law on the Prevention of Corruption, Labour Law, Law on Civil Servants and State Employees, the Criminal Code, but also a number of other laws that, in an indirect way, include measures for protection of persons who report corruption. Together, these ought to enable effective protection of whistleblowers, but significant gaps still remain. None of these laws are in themselves comprehensive enough, or include solutions to any of the real problems the whistleblowers are facing.

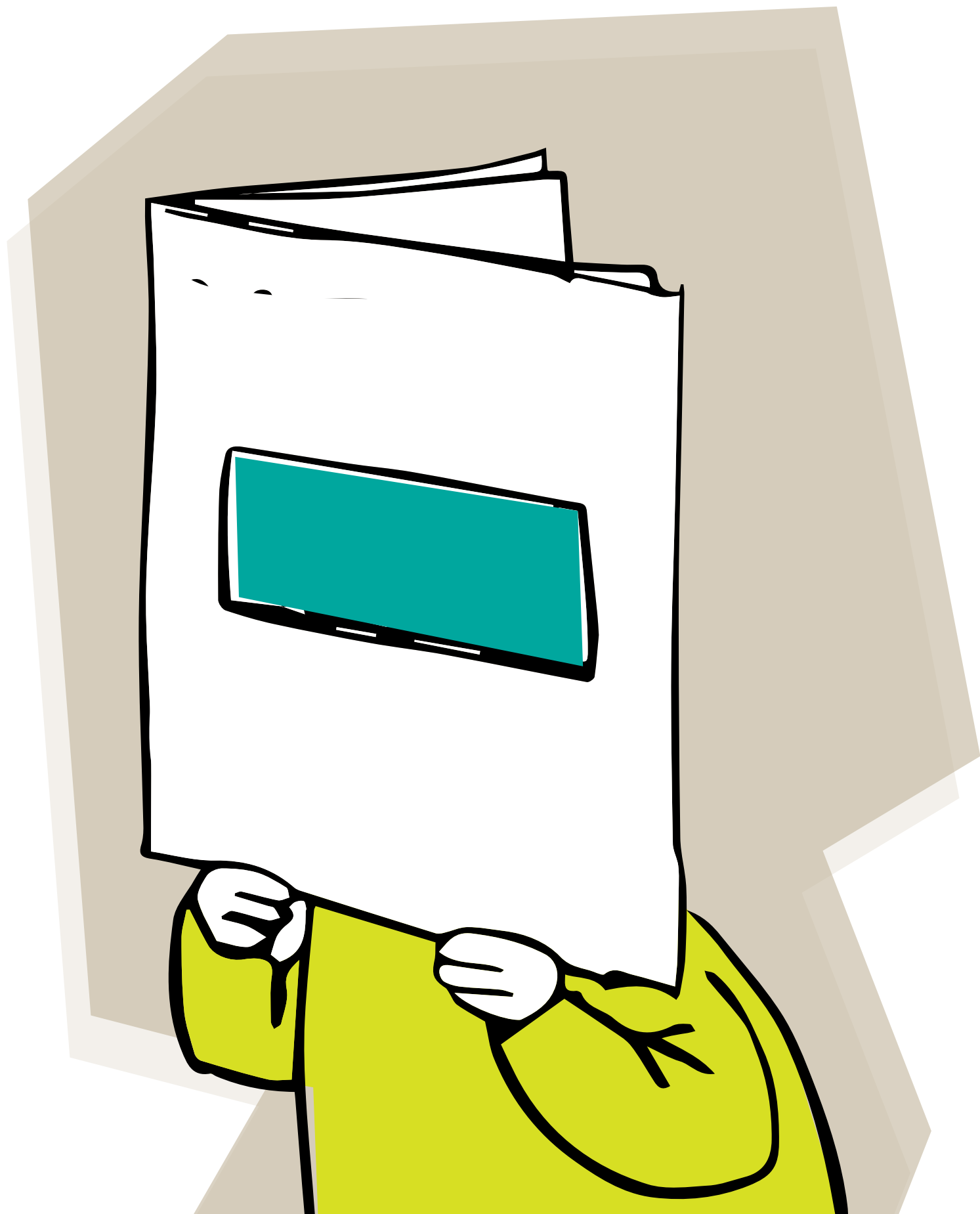
Action Plan for implementation of the Strategy for the fight against corruption and organized crime for 2013-2014 stipulates, among other, semi-annual analysis of the implementation of the measures protecting the person who report corruption, as well the collection of information on the number of reports of corruption in the private and public sectors, number of investigations initiated, number of indictments, court decisions, as well as the number of persons who have suffered for reporting corruption. However, the relevant authorities have not to date carried out any such analysis.

### ***Strengthening confidence in the electoral process***

In late May 2013 the Parliament of Montenegro established the Working Group for building confidence in the electoral process, which was to prepare draft amendments to the Law on the Electoral Rolls, Law on Identity Cards, Law on Registry of Residence, Law on Election of Councillors and Representatives, Law on Financing of Political Parties and Law on Montenegrin Citizenship. After 35 sessions which yielded no results, at the end of 2013 the Working Group was disbanded and the task entrusted to the College of the President of the Parliament of Montenegro. With the help of experts from Brussels, the College prepared draft amendments to the Law on Financing of Political Parties, Law on Single Electoral Roll, Law on Identity Cards and Law on Local Self-Governments, adopted in February 2014, and Law on the Election of Councillors and Representatives, adopted in March.

As the Law on Financing of Political Subjects was superseded by the Law on Financing of Political Parties, uncertainty remains regarding the status and regulation of financing of electoral coalitions.

In addition to the usual problem of parties themselves setting the rules to regulate their own financing, the process of adoption of the law on financing of political parties was additionally affected by significant politicisation which led to suboptimal legislative results. The solutions adopted are largely inconsistent with recommendations of the international community, GRECO and the ODIHR. A significant part of the Law on Financing of Political Parties was annulled by the Constitutional Court, on the initiative of MPs of the Democratic Party of Socialists, Bosniak Party and Croatian Civil Initiative. In late September 2014, the Government of Montenegro put forth another draft of the Law on Financing of Political Parties and Campaigns, submitting it for discussion to the parliamentary Working Group responsible for oversight of the implementation of electoral laws.



# HUMAN RIGHTS IN MONTENEGRO THROUGH THE ASSESSMENTS OF INTERNATIONAL REPORTS

*“Human rights are not a privilege granted by the few, they are a liberty entitled to all, and human rights, by definition, include the rights of all humans, those in the dawn of life, the dusk of life, or the shadows of life.” - Key Granger*

Since the renewal of independence in 2006, Montenegro has made significant efforts in order to align its legal system with regional and international standards in all areas. Although some progress has been achieved and noted, especially since opening of accession negotiations with the European Union in 2012, there are still serious shortcomings when it comes to realization of human rights and freedoms. Progress, particularly in relation to the rights of marginalized groups (such as LGBT persons, followed by persons with disabilities, Roma, etc.), but also in matters of gender equality and freedom of expression, is still limited and a lot needs to be done thereon, starting from legal and social change and implementation, to raising awareness of the need to build a society of culture of human rights. These, but other issues as well, are recognized by relevant international reports<sup>178</sup> from the various aspects.

## US State Department report on state of human rights in Montenegro for 2013<sup>179</sup>

Report for 2013<sup>180</sup> highlights three key problems that Montenegrin society is facing. As the main problem, pervasive corruption is specified– marked by nepotism, political favoritism, and weak controls over conflicts of interest in all branches of the government. Furtheron, discrimination and violence against minorities, including the LGBT community, and the Romani, Ashkali, and Egyptian, as ethnic minorities, which had the effect of stigmatizing these groups. Finally, the report highlights a chilling effect on freedom of expression created by the continuing harassment of journalists and the failure to resolve several past cases of violence and threats against journalists and government critics.

In addition, the Report states numerous other human rights violations such as: abuse of power by police in custody; overcrowded and dilapidated prisons and pretrial detention conditions threatening health of those situated there; instances of lengthy pretrial detention; warrantless government surveillance that violated citizens' privacy rights; limits on the freedom of assembly; the unresolved legal status of thousands of refugees from the Balkan conflicts of the 1990s; tensions between religious groups over property issues and status; several instances of vandalism of religious symbols and property; denial of residency permits and visas to some clergy of the Serbian Orthodox Church; denial of access to information of public importance; forced marriage among Roma; discrimination against persons with disabilities; trafficking in persons, infringement of workers' rights and of child labor.

In its first section, Report deals in detail with the *right to integrity of the person*, including the issue of arbitrary or unlawful deprivation of liberty, and in this regard, among other things, still unprosecuted war crimes. Emphasis is also placed on cases of torture and other forms of cruel, inhuman or degrading treatment or punishment. Although the Constitution and laws prohibit such conduct, however, certain cases are identified, especially by police particularly during arrest and interrogation, and allegations about them remain under-explored, while manner of acting upon complaints by the Department for Internal Control of Police Operations does not inspire confidence of citizens to report police misconduct. Furthermore, the report describes in detail prison and detention conditions, detainees' complaints and the manner of their prosecution, findings of independent monitoring, and actions conducted by the authorities in order to improve the situation in this area. When it comes to the right to a fair trial, it is stated that for the first time reports on work of judiciary and prosecution did not acquire majority necessary for adoption in the Parliament of Montenegro, since the MPs were reserved to the data presented in these reports. There are also emphasized critics from NGO sector about absence of constitutionality in the election of judges for misdemeanors,

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<sup>178</sup> Given that the Montenegro Progress Report for 2014 is processed through other parts of the publication, the same is not a subject of this chapter

<sup>179</sup> <http://www.state.gov/documents/organization/220523.pdf>

<sup>180</sup> Published during 2014



as well as the inefficiency of the Constitutional Court. Special attention was given to the issue of restitution. Concern is also caused by instances of violation of the right to privacy, family, home and correspondence by the Agency for National Security, as indicated by NGOs.

The second section, related to *civil liberties*, focuses on freedom of speech and media. Numerous problems are stated, especially when it comes to functioning of the media, and including, in addition to various attacks on journalists and media assets, various forms of political pressure and financial exhaustion of independent media, which is proven by the NGOs' findings. It is noted that a deep division between pro-government and opposition media prevented the establishment of a functional and unified self-regulation mechanism. When it comes to freedom of assembly, it was noted that two pride parades were held, and that the police ensured safety of participants. A particular subsection is dedicated to problems that refugees are facing.

In the third section related to *political rights* and the *right of citizens to change their government*, elections and political participation were described, and especially presidential elections, which were held in the reporting year, and that were followed by numerous turbulences, including opening of the affair "Recording". Underrepresentation of women and minorities in the electoral process and consequently the results of the same is being processed with a special attention.

The fourth section is dedicated to issues of *corruption and lack of transparency in Government*, within which exists a section on the protection of whistleblowers, as well as the availability of information of public importance.

The fifth section provides an overview of the *governmental attitude regarding international and nongovernmental investigation related to alleged violations of human rights*, and sixth of *discrimination, abuse and trafficking in persons*. It is in this section precisely that the present discrimination against women in various forms is described, although they are formally and legally equal to men in the Montenegrin society. This includes violence against women, long trials in which women are trying to reach the justice, economic dependency in which they live and which is substantially limiting them in their social positioning, still present traditional and patriarchal concepts of gender and women's subordination to men, low awareness of sexual harassment, etc. Children's rights are analyzed in detail, whereby a particular problem of forced marriages among the RAE population is identified. Also, persons with disabilities in addition to the legal framework that prohibits discrimination are suffering the same in practice, starting from the accessibility, through employment, inadequate health care and material and housing support, etc, which makes this population one of the most vulnerable in society. In addition to them, the Roma, Ashkali and Egyptians who suffer multiple forms of discrimination are also in an extremely bad position. Members of the LGBT population are also in a similar position.

## The Freedom House report Nations in Transit 2014<sup>181</sup>

Freedom House Report for 2013, published in mid-2014, noted a slight decline in the index of democracy, therefore Montenegro had a total of 3.86 points (compared to the year 2012 when it had 3.82 points<sup>182</sup>).

In the part regarding *democratic governance*, the progress of Montenegro in the process of negotiations is commended, as well as the openness of that process towards public and stakeholders, and especially the fact that representatives of civil society were involved in working groups for preparation of negotiations. However, attention is drawn to limitations of administrative capacities of the Government and lack of a more significant progress in the reform of public administration. In addition, it is noted that domestic political scene was marked by a series of scandals, disagreements within the ruling coalition over political and economic issues, etc.

*The electoral process* has declined in terms of mark, referring to the then held presidential elections in which a small number of votes was decisive, which led to tensions in the night of declaration of election when both candidates announced their victory. A particular shadow on the regularity of elections was also thrown by the affair "Recording" and its inadequate prosecuting.

In the part of *civil society*, it is stated that Montenegro has diverse and influential non-nongovernmental organizations (NGOs), as well as that cooperation between the Government and NGOs is improving, with a series of accompanying

181 <https://freedomhouse.org/report/nations-transit/2014/montenegro#.VSw5UmTLeCI>

182 This methodology of evaluation goes from 1 to 7, with 1 being the best and 7 the worst score

legislative proposals that affect the improvement of this relation. However, a concern is expressed over the sustainability of civil society in the context of public funding that decreases for years.

A separate chapter deals with *independence of media*, with the remark that number of attacks on the media in the second half of this year has increased, and that the weight of many earlier unsolved cases remained, as well as privileged position of a number of media when it comes to financing from public funds. It is stated that the low level of media self-regulation and professionalism, especially when it comes to the personal data protection, as well as administering comments that contain defamatory and discriminatory language on internet portals. In addition, the political divisions also influence the media division.

Challenges in the work of *local selfgovernments constitute a separate section, as well as judicial framework and independence*, wherein it is specifically indicated a slow pace of reforms, insufficiently clear and functional criteria of selection of judicial officials, the backlog of court cases and a modest progress in the prosecution of war crimes, all of which in total leads to a decrease of public confidence in the judiciary.

Finally, this Report deals with pervasive *corruption* in particular, as one of the key challenges in democratization of the Montenegrin society. In addition to improving the framework for fight against corruption, the practical problems in implementation are identified, lack of efficiency and allegations of serious abuse of state resources, accompanied by modest progress in prosecuting corruption, especially at high level. In addition, it is estimated that the authorities responsible for law enforcement lack capacities and are highly politicized.

### The state of the world's human rights, the International report 2014/15, Amnesty International<sup>183</sup>

Amnesty International in its overview expresses special concern concerning inconsistency of decisions in war crimes cases with international law, as well as with the fact that independent journalists were subject to attacks and threats, and that impunity of police officers suspected of torture and other inhumane treatment persisted to be a problem.

When it comes to *crimes defined by international law*, Amnesty International reminds that the Committee against Torture and the UN Working Group on Enforced Disappearances have determined that courts had failed to fully apply domestic law and had misinterpreted international humanitarian law in decisions in cases prosecuted since 2008. In particular, the allegations of war crimes cases known as “Kaluderski laz” and “Morinj” are stated. It is also stated that, in August 2014, Montenegro has signed a regional declaration on missing persons, and committed itself to establishing the fate and whereabouts of 61 missing people.

It is stated in the part relating to *freedom of expression* that following the establishment of a Commission to monitor police investigations, cases of attacks and threats against journalists, murders of journalists and attacks on media property in 2013 were reopened during 2004 (Vijesti and Dan).

Amnesty International states that *discrimination against LGBT people*, including threats and physical attacks, has continued. Perpetrators were rarely identified, and where prosecutions took place, attacks were generally classified as misdemeanors. Legislative provisions introduced in 2013 allowing for the hate motive to be considered in sentencing were not applied in verdicts. The authorities failed to conduct effective investigations and bring perpetrators to justice in relation to 26 attacks against the LGBTIQ social centre in Podgorica. Regardless of that, the Podgorica Pride was held in November, with adequate police protection; on the occasion of which 10 counter-protestors were arrested.

*Discrimination against Roma, Ashkali and Egyptians*, is also cited as a problem especially in cases of displaced persons who have arrived from Kosovo in 1999 and who are even nowadays living in poor conditions. In November, the foundation stone was laid for the construction of adequate housing at Konik. In May, Roma families who had been under threat of eviction in Zverinjak for three years were promised adequate housing in 2015.

In May 2013, the European Committee for the Prevention of Torture reported that persons detained or invited for “informative talks” by the police ran an “appreciable risk” of ill-treatment. They urged that law enforcement officers

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<sup>183</sup> <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>

be regularly informed of prevention of *ill-treatment* and illegality of the same. In October 2014, three police officers were convicted and sentenced to the minimum of three months' imprisonment for assisting in the ill-treatment of Aleksandar Pejanović in the detention unit in 2008, although this has not fully elucidated this case.

Finally, when it comes to *refugees' and migrants' rights*, In July, eight persons were acquitted of the unlawful transportation to Italy of 70 Roma refugees from Kosovo in 1999, during which 35 of the refugees drowned when the boat capsized in Montenegrin waters. Around a third of the 16,000 refugees in Montenegro, including the majority of 4,000 that constitute the Roma, Ashkali and Egyptians displaced from Kosovo, remain at risk of statelessness. Only a few had acquired the status of "foreigner with permanent residence", while the remainder had not yet applied or is facing barriers to obtaining personal documents, required to apply for the status before the December 2014 deadline. Montenegro still remains a transit country for migrants and asylum-seekers, while procedures concerning asylum are not effective; only two people were granted asylum.

### Report of the Reporters Without Borders for 2015<sup>184</sup>

International non-governmental organization Reporters Without Borders (Reporters sans frontières), according to the latest annual index, positions Montenegro on 114 place (with 34.63 points), from 180 countries that are the subject of analysis when it comes to media freedom. According to the annual report of this organization, the situation has not changed compared with 2014.

The report takes into account several factors: the level of abuse of media, degree of pluralism, media independence, environment and self-censorship, legal framework, as well as transparency and infrastructure.

Regionally, the best positioned are Slovenia (35th place), Croatia (58th place), Bosnia and Herzegovina (66th place), Serbia (67th place) and Kosovo (87th place) which are all significantly better results than Montenegro. The only country in the region that is positioned lower than Montenegro is Macedonia which is on 117th place.

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<sup>184</sup> <http://index.rsrf.org/>



# REGIONAL CHALLENGES IN THE CREATION OF CULTURE OF HUMAN RIGHTS: EXPERIENCE OF SERBIA

Since the downfall of Slobodan Milošević in 2000, the entire region begins to deal with the consequences of a decade of stagnation due to wars, with jeopardised democracy, weak institutions and consequences of massive violations of human rights. On one hand, instead of surpassing communist and socialist period through a severe but continued period of transition, like most of the states of the Eastern Bloc did, former Yugoslav states were forced to put on hold the creation of institutions and the rule of law. On the other hand, period of conflicts from the nineties was followed by further collapse of human rights and war crimes that still have not seen an adequate epilogue.

Given the fact that Serbia was the only state that was a part of every war, had significant role in the incitement of hatred and instigation of conflicts, governed paramilitary formations that were involved in many harsh violations of human rights - development of democracy, accompanied by the increase (or decrease) in the level of respect of human rights on regional level can be measured based on the example of Serbia. Former Yugoslav states still change in line with the principle of communicating vessels. It is impossible to speak about the democratisation of one state without taking into consideration other states in region. As human rights are inseparably connected with strengthening of institutions, the rule of law and overall democratisation, their respect or disrespect, also, has a strong regional character.

The House for Human Rights and Democracy in Belgrade, consisted of Civic initiatives, Lawyers Committee for Human Rights, Belgrade Centre for Human Rights, Helsinki Committee for Human Rights and Policy Center, conducts regular monitoring of the institutional framework and state of human rights in Serbia. Evaluation of application of key laws regarding human rights and key challenges in the realisation of individual human rights that are emphasised in this text are based on the researches and reports that were issued during the last few years.

## Institutional and legal framework of human rights in Serbia

### *Legal framework*

In addition to areas that require more adequate definition, numerous initiatives for the change of constitutional framework, particularly in the area of protection of human rights, principle of the Constitution of Republic of Serbia guarantees respect of human rights. Criticism regarding human rights relates to deviations from human rights in state of emergency and state of war, absence of protection against unjustified dismissal of Ombudsman by National Assembly, lack of constitutional definition of the institution of Commissioner for information of public importance and Commissioner for protection of equality, definition of marriage as the union between a man and a woman, endangered principle of immediate applicability of Constitutionally guaranteed human rights with constant reference to laws, reduced rights of women to abortion compared to previous Constitutional solutions and similar. With all of the deficiencies, the Constitution remains a framework for the respect of human rights that is still insufficiently used in order to improve the situation in this area.<sup>185</sup>

Key laws which define the area of human rights are: Law on Free Access to Information of Public Importance<sup>186</sup>, Law on Ombudsman<sup>187</sup>, Law on Prevention of Discrimination against Persons with Disabilities<sup>188</sup>, Law on Protection of Personal Data<sup>189</sup>, Law on Prohibition of Discrimination<sup>190</sup> and Law on Gender Equality<sup>191</sup>. If we take 2000 as the starting year for democratisation of Serbia, we can see, based on the dynamics of adoption of these laws, that

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185 More information in the report of Lawyers Committee for Human Rights, Constitution at Bay [http://yucom.org.rs/upload/vestgalerija\\_74\\_5/1329908421\\_GS0\\_Ustav%20na%20prekretnici.pdf.pdf](http://yucom.org.rs/upload/vestgalerija_74_5/1329908421_GS0_Ustav%20na%20prekretnici.pdf.pdf)

186 [http://www.paragraf.rs/propisi/zakon\\_o\\_slobodnom\\_pristupu\\_informacijama\\_od\\_javnog\\_znacaja.html](http://www.paragraf.rs/propisi/zakon_o_slobodnom_pristupu_informacijama_od_javnog_znacaja.html), adopted in 2004

187 [http://www.paragraf.rs/propisi/zakon\\_o\\_zastitniku\\_gradjana.html](http://www.paragraf.rs/propisi/zakon_o_zastitniku_gradjana.html), adopted in 2005

188 [http://www.paragraf.rs/propisi/zakon\\_o\\_sprecavanju\\_diskriminacije\\_osoba\\_sa\\_invaliditetom.html](http://www.paragraf.rs/propisi/zakon_o_sprecavanju_diskriminacije_osoba_sa_invaliditetom.html), adopted in 2006

189 [http://www.paragraf.rs/propisi/zakon\\_o\\_zastiti\\_podataka\\_o\\_licnosti.html](http://www.paragraf.rs/propisi/zakon_o_zastiti_podataka_o_licnosti.html), adopted in 2008

190 [http://www.paragraf.rs/propisi/zakon\\_o\\_zabrani\\_diskriminacije.html](http://www.paragraf.rs/propisi/zakon_o_zabrani_diskriminacije.html), adopted in 2009

191 [http://www.paragraf.rs/propisi/zakon\\_o\\_ravnopravnosti\\_polova.html](http://www.paragraf.rs/propisi/zakon_o_ravnopravnosti_polova.html), adopted in 2009

human rights were not the priority of any government policy of that time. The laws were adopted slowly, with great pressure from civil sector and very often great resistance from majority of political parties, the public and religious communities. Even though their disrespect affects all Serbian citizens, human rights are still perceived by many as something artificial, imported from the West or as an ideology of non-governmental organisations. None of these laws is applied in its entirety, and laws themselves also have flaws. For instance, according to Ombudsman, the flaws of the Law on Gender Equality are reflected primarily in insufficient efficiency of institutional mechanisms for the application of those regulations in the field, or in local self-governments where people in practice achieve gender equality.<sup>192</sup>

## State bodies and independent institutions that deal with human rights

### *Office for human and minority rights*

After different solutions from 2000, which include service for human rights within one ministry and an entire ministry that dealt with human rights, the Office for human and minority rights of Government of Serbia<sup>193</sup> was formed in August 2012. According to the Decree of the Government on the establishment of Office for human and minority rights, this office “performs professional duties for the needs of the Government and competent ministries that relate to: protection and improvement of human and minority rights; monitoring of compliance of national legislation with international agreements and other international law acts on human and minority rights and initiation of amendments of domestic regulations; general issues regarding the position of ethnic minority members; monitoring the position of ethnic minority members who live on the territory of Republic of Serbia and achievement of minority rights; realisation of connections of ethnic minorities with mother countries.”

Establishment of the Office of the Government of Serbia can be viewed as an improvement in comparison to administration positioned within one ministry and has rational basis for the coordination of work of all ministries and bodies that deal with human rights. On the other hand, the work on human rights of the new Government remained illogically allocated in different ministries and bodies, whereby adequate proposal and application of strategies and policies in the area of protection of human rights is disabled, coordination of actions with independent institutions and conducting of particular measures and activities focused on improvement of position of minority and marginalised groups and strengthening of culture of human rights in Serbia. Besides, the competency of Office for human rights is very restricted and it practically relates only to the improvement and protection of ethnic minority members and realisation of minority rights. One of the key documents, adopted in coordination with the Office for human and minority rights is the Strategy for prevention and protection from discrimination, whose application has yet to begin. Although the adoption of such document is a positive step, its application will depend on the coordinated work of all ministries and state institutions.

### *The Ombudsman*

The Law on Ombudsman defines the establishment of an independent institution essential for human rights in Serbia. Protector of citizens or Ombudsman looks after the protection of human and minority rights and freedoms, controls the work of state bodies and other institutions with public authorities, has the right to propose laws and is authorised to file the initiative for the amendment of laws and other regulations, as well as to initiate the adoption of new laws when it deems it important for the realisation and protection of human rights. Also, it is authorised to initiate the proceeding for the evaluation of constitutionality and legality of legal acts before the Constitutional Court<sup>194</sup>. The Ombudsman issues regular annual, as well as special, reports based on which is possible to monitor the state of human rights in some of the key areas.

The latest published report of Ombudsman (for 2013) indicates there is deterioration of state of human rights in Serbia. As stated in the report “*the supremacy of political will and populism over the rule of law, weak institutions compared to strong political centres of power and personalities of officials, weakness and inefficiency of judiciary, media manipulation, atrophied economy and unreformed administration pose the biggest obstacles and challenges on the path to a more complete achievement of rights of citizens in the Republic of Serbia.*” In addition, the Ombudsman defines the

<sup>192</sup> <http://zastitnik.rs/index.php/lang-sr/2011-12-25-10-17-15/3690-2015-02-04-18-00-42>

<sup>193</sup> <http://www.ljudskaprava.gov.rs/images/pdf/Godisnji%20izvestaj%20o%20radu%20Kancelarije.pdf>

<sup>194</sup> [http://www.paragraf.rs/propisi/zakon\\_o\\_zastitniku\\_gradjana.html](http://www.paragraf.rs/propisi/zakon_o_zastitniku_gradjana.html)



most endangered groups: “*extremely poor, children, persons with disabilities, ethnic minority members (Roma being the most endangered of them all), persons deprived of liberty (including psychiatric patients), persons diagnosed with serious illnesses, women, refugees and IDPs, asylum seekers and irregular migrants, LGBT groups and individuals, organisations and human right advocates, organisations and individuals critics of government (journalists and other)*”.<sup>195</sup> Report from 2014<sup>196</sup>, also, expresses concerns over the human rights state of affairs in Serbia and contains similar assessments.

#### *Commissioner for the protection of equality*

Commissioner for the protection of equality is an independent institution formed by the Law on Prohibition of Discrimination. Commissioner for the protection of equality is authorised to conduct a proceeding on complaints in cases of discrimination, provide opinion and recommendations in particular discrimination cases and file criminal charges for discrimination. The Commissioner monitors situation in the area of protection of equality and, most often, alerts the public on the most common, typical and severe cases of discrimination, as well as initiates the adoption or change of regulations in order to implement or improve protection from discrimination. The Commissioner submits the annual report to the National Assembly.

The latest annual report of Commissioner (from 2013), concludes following: “*15 recommendations were provided in Regular annual report (previous author’s remark) for 2012, conducting of which would contribute to a more effective and efficient prevention and suppression of discrimination. Majority of these recommendations were also contained in the report from 2011. In the conclusion regarding the consideration of Regular annual report for 2012 of the Commissioner for protection of equality, adopted on 1 July 2013, the National Assembly concluded that the duty of all state bodies and public officials is to respect the recommendations of Commissioner and contribute to prevention of all forms of discrimination. Conclusion pointed out to the need of Government and other state bodies to improve cooperation with the Commissioner in the process of preparing of draft laws and other regulations that relate to prevention of discrimination. During the past year, recommendations from Commissioner pertaining to concrete cases of discrimination were mostly conducted. However, like in previous years, the recommendations contained in Regular annual report for 2012, as well as the recommendations of general character, regarding the undertaking of measures for suppression of discrimination and improvement of equality, were only partially conducted.*”<sup>197</sup> Also, according to data from the same report, the number of complaints for discrimination, compared to last year, increased for 65%. Although it is not stated explicitly, as in the Ombudsman’s report, according to this report as well, the state of human rights is not characterised by obviously needed improvement.

#### *Commissioner for information of public importance and personal data protection*

Commissioner for information of public importance and personal data protection is an independent institution whose competence is defined in two of the abovementioned laws. Commissioner protects the realisation of right to free access to information of public importance by acting on complaints, as well as by independent supervision over the work of state bodies in this area. Within the scope that relates to protection of personal data, the Commissioner has two types of authorities - to act as second instance body in complaint procedure and to act as supervising body when conducting law. The Commissioner, also, submits a report to the National Assembly on an annual level.

According to the latest Commissioner’s report, (for 2013) from the moment the Law was adopted the improvement in the area of access to information of public importance is constant. However, the report states that “*the fact that, in spite of clear, legally determined obligations, the Government did not force the execution of Commissioner’s decision when it was needed, and that the Ministry of Justice and Public Administration (for the third consecutive year) has not prosecuted neither one of numerous offenders, objectively presents almost an invitation to violate the law.*” The situation in the other area of Commissioner’s work - personal data protection, was characterised as troublesome. In addition to failing to provide the recourses to the Commissioner so that it could perform its authorities “*the Government and other state bodies did not perform their tasks, prescribed by Law on personal data protection, which, in addition to already bad situation, resulted in very adverse effects.*” The key reproach relates to failure to adopt action plan for implementation of Strategy on personal data protection, which was adopted in 2010, with the obligation of adopting the action plan within three months period. The report, also, states that “*even five years after the application of the Law, although it is*

<sup>195</sup> [http://zastitnik.rs/attachments/3237\\_Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202013%20%20godinu.pdf](http://zastitnik.rs/attachments/3237_Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202013%20%20godinu.pdf)

<sup>196</sup> [http://www.ombudsman.rs/attachments/3733\\_Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202014.pdf](http://www.ombudsman.rs/attachments/3733_Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202014.pdf)

<sup>197</sup> <http://www.ravnopravnost.gov.rs/images/files/Poverenik%20za%20zastitu%20ravnopravnosti%20-%20Izvestaj%202013.doc>

obliged to do so, and was repeatedly warned by the Commissioner to this fact, the Government has not adopted a decree on protection of particularly sensitive data which is why a special protection of particularly sensitive data of a large number of persons of different categories guaranteed by the law also remained only an empty proclamation.”<sup>198</sup>

## Human rights in practice - some of the individual challenges

### Violation of human rights and extremism

In recent years, Serbia saw strengthening of extreme right wing through acting of right wing groups (both formal and informal), media close to Serbian Progressive Party (SPP) and statements of certain officials pointed against all minority and marginalised groups. Extremist groups were also encouraged by series of court decisions in Serbia, after SPP came to power, primarily by decisions of Constitutional Court of Serbia and Appellate Court in Belgrade in 2012. Namely, the Constitutional Court of Serbia refused the Prosecution's request to ban Serbian national movement 1389 and association of citizens "Naši from Arandjelovac"<sup>199</sup>. The court ruled that it cannot reliably determine if there were constitutional reasons for the prohibition of work of these associations. Regarding the similar case, the prohibition of patriot movement Obraz, the Constitutional Court issued a completely different ruling on 11 June 2012<sup>200</sup> the Appellate Court adopted several decisions that conveyed a message of impunity for hate speech and violence of extremist groups. By decisions of this court, verdicts to one of the leaders of Partizan fans Aleksandar Vavić were annulled, sentencing him to one year of imprisonment due to assault with knife<sup>201</sup>, whereas sentence to killers of Brice Taton<sup>202</sup> was reduced by a half of serving time, and sentence to Dragan Marković Palma, ruling party official, was cancelled, for hate speech in his statement that members of LGBT population are sick<sup>203</sup>. The attention was also drawn to the decision of the Appellate Court to cancel the verdict for racial and other discrimination against Mladen Obradović, leader of prohibited movement Obraz.<sup>204</sup>

Organisation Naši, made a list of non-governmental organisations which should be banned because they violate the Constitution, incite the disintegration of country and hatred speech against Serbs<sup>205</sup>. List that was titled as the "*Black list of non-governmental organisations*" contains the list of 17 civil society organisations. Organisation Naši is a part of local government in Arandjelovac, and the president of the organisation Ivan Ivanović was recently appointed as Acting Director of the municipal library<sup>206</sup>. Naši also announced the "*white book of criminal offenses of non-governmental organisations*"<sup>207</sup>. In addition to organisations, the extremists had their eyes on eight media whose ban they requested, with an explanation that they were financed with "*dirty money of Albanian and Croatian mafia*"<sup>208</sup>. B92, Blic, Danas, Peščanik, Vreme, Republika, Voice of America and Slobodna Evropa can be found on the list.

Most often, prominent fighters for human rights can be found on lists of extremists and media, such as Nataša Kandić, Sonja Biserko, Borka Pavićević, Woman in black and similar. Physical assaults were also recorded, such as the beating up of Woman in black in Valjevo in July 2014<sup>209</sup>. Assaults on civil society organisations come from highest officials, who increasingly use the familiar rhetoric from nineties when non-governmental were declared as enemies and foreign mercenaries. Representatives of Humanitarian Law Fund (HLF) were faced with severe attacks from government after announcing record of "*Rudnica*", mass grave of Albanians in Serbia that indicates the responsibility of the Chief of Staff of the Army of Serbia Ljubiša Diković<sup>210</sup>.

The right to freedom of assembly is guaranteed by the Constitution of the Republic of Serbia, and violation of this

198 <http://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2013/gizvestaj2013.docx>

199 The decision of the CCS is available on site: : <http://www.ustavni.sud.rs/page/view/156-101728/ustavni-sud-odbio-predlog-za-zabranu-rada-udruzenja-graana-srpski-narodni-pokret-1389-iz-beograda-i-udruzenja-graana-snp-nasi-iz-aranelovca>

200 Decision available on site: [http://www.ustavni.sud.rs/page/view/0-101638/ustavni-sud-doneo-odluku-o-zabrani-rada-udruzenja-graana-otacastveni-pokret-obraz?\\_qs=%D0%BE%D0%B1%D1%80%D0%B0%D0%B7](http://www.ustavni.sud.rs/page/view/0-101638/ustavni-sud-doneo-odluku-o-zabrani-rada-udruzenja-graana-otacastveni-pokret-obraz?_qs=%D0%BE%D0%B1%D1%80%D0%B0%D0%B7)

201 <http://www.novosti.rs/vesti/naslovna/aktuelno.291.html:402931-Ukinuta-presuda-vodji-quotAlkatrazquot>

202 <http://www.novosti.rs/vesti/naslovna/aktuelno.291.html:363923-Zasto-su-umanjene-kazne-Tatonovim-ubicama>

203 <http://www.021.rs/Info/Srbija/Sud-oslobodio-Palmu-optuzbi-za-homofobiju.html>

204 <http://www.novosti.rs/vesti/naslovna/aktuelno.291.html:406102-Ukinuta-presuda-Mladenu-Obradovicu>

205 <http://www.novimagazin.rs/vesti/snp-nasi-objavio-spisak-nvo-koje-mrze-srbe-i-srbiju-a-finansiraju-ih-strane-sluzbe>

206 <http://www.blic.rs/Vesti/Tema-Dana/352684/Elkstremisti-bi-hтели-da-od-Srbije-prave-Severnu-Koreju>

207 Ibid

208 <http://www.blic.rs/Vesti/Tema-Dana/356124/Pokret-Nasi-trazi-zabranu-pojedinih-medija>

209 <http://www.blic.rs/Vesti/Drustvo/479310/Navijaci-i-Cetnici-napali-Zene-u-crnom-u-Valjevu>

210 [http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=01&dd=29&nav\\_id=952342](http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=01&dd=29&nav_id=952342)

right mostly relates to LGBT community. Although Pride parade was held in 2014, this right was flagrantly violated year after year, except during the Pride parade in 2010. Decisions by which Pride parades were prohibited have been usually made on the basis of imprecise security assessment of people and property damage. Pride parade was prohibited in 2012 and 2013 even though the decision of Constitutional Court of Serbia from 2011 already existed, whereby the prohibition of Pride parade was declared as unconstitutional in 2009.<sup>211</sup> Last year, Pride parade was held because of the strong pressure from international community and European integrations process, but the number of police and gendarmerie units, as well as of inappropriate and discriminatory statements of the majority of politicians all show that this right remains insufficiently guaranteed. Also, the discourse of public debate, that is lead every year around the time when Pride parade needs to be held, clearly indicates rights of LGBT persons in all areas of life are constantly violated.

#### *Social and economic rights*

If we put aside occasional opening of the issue of creating of social cards, no other indications show that the subject of realisation of socio-economic rights of Serbian citizens will become the priority of Government any time soon. The Law on Social Protection<sup>212</sup> was adopted on 31 March 2011 after long and comprehensive public debate. All by-laws that should enable adequate application of this law have not yet been passed. It is hard to apply basic principles of the new concept of social protection without these documents - decentralisation, deinstitutionalisation and pluralism of service providers.

By the end of 2014, the Ministry of Labour, Employment, Veteran and Social Policy allocated 2,000.000.00 EUR to civil society organisations dealing with social protection services. Competition was characterised by series of irregularities, out of which key one was the allocation of funds to organisations founded shortly before or during the competition. According to Civil Initiatives' research, more than 60 organisations were founded in this period by persons connected with Ministry, centres for social work or local self-governments. Based on the collected evidence, a criminal report was filed to prosecution against unknown perpetrator and change of the competent minister was requested. Even though the competition was cancelled, misuses have still not been acknowledged and this story has still not seen any legal or political epilogue.

#### *Endangering independent institutions*

During 2014, different levels of authorities refused to cooperate with the Ombudsman, which is obligatory according to Law on Ombudsman, or in the best case, they just ignored his recommendations. Belgrade City Administration of, Ministry of Justice, Military Security Agency (MSA) are just some of the institutions that refused to execute recommendations or enable control over their work by Ombudsman. Simultaneously, the statements made by the heads of these bodies and other officials, that ranged from personal insults to denial of the institution's authorities, present an unprecedented pressure on the work of this independent body. Parliamentary Committee for the control of security services has also, in spite of clearly defined legal provisions, supported the MSA in not allowing the Ombudsman to gain insight in documents and adequate control of this service. In addition, the Parliamentary Committee ordered the Ombudsman not to go public if there are interferences in work with security services in conducting of its authorities, or irregularities it notices during the control, but to address this committee. This represents flagrant disrespect of the law by the ones who have key legislative and control role.

One of the first moves this government made was the change in the leadership of National Bank of Serbia (NBS). This institution has constitutionally guaranteed independency, which is further elaborated in the Law on National Bank.<sup>213</sup> The Governor of the NBS is elected for the period of 6 years, whereby the concurrence of his and the mandate of Parliament and Government is avoided. This presents another one of guarantees that the Governor is independent and that he should not be subject to pressures of new parliamentary majority. In current practice, none of the Governors of National Bank was a party official (this practice was even respected by the government of Slobodan Milošević). New government has seriously violated the independence of Central Bank, by immediately announcing the change of its Governor. Apart from the fact that legal provisions, which regulate when the governor is dismissed, were circumvented, this move created serious legal precedent. By following this practice, and with simple changes in laws, every future majority can envisage the dismissal of every official, head of independent institution. Thereby, the independence of these institutions becomes pointless and legal order in the state is greatly jeopardised. European Union and International Monetary Fund evaluated negatively the changes of the Law on NBS and manner in which the governor was replaced. After several strong pressures from European

211 [http://www.danas.rs/danasrs/drustvo/zabrana\\_parade\\_neustavna\\_55.html?news\\_id=231204](http://www.danas.rs/danasrs/drustvo/zabrana_parade_neustavna_55.html?news_id=231204)

212 [http://paragraf.rs/propisi/zakon\\_o\\_socijalnoj\\_zastiti.html](http://paragraf.rs/propisi/zakon_o_socijalnoj_zastiti.html)

213 [http://www.paragraf.rs/propisi/zakon\\_o\\_narodnoj\\_banci\\_srbije.html](http://www.paragraf.rs/propisi/zakon_o_narodnoj_banci_srbije.html)

Commission, the Government proposed new amendments to the Law on NBS which were adopted in November 2012, whereby recommendations of European Commission were partially adopted, but the damage to the rule of law remained<sup>214</sup>.

### *Transitional justice and regional cooperation*

An important precondition for determining the truth on serious violations of human rights during the wars from nineties and the responsibility of perpetrators, as well as for the enabling of reparation to victims and creating conditions to prevent the crimes from occurring again, is a constant and committed work of government regarding the establishment of sustainable regional cooperation.

Relationships in Western Balkans region remain burdened with heavy legacy of past, including the genocide in Srebrenica, numerous war crimes, different points of view about the character and the results of wars from nineties, issue of Kosovo, serious internal problems in Bosnia and Herzegovina, unresolved border issues between great number of states (Serbia-Croatia, Serbia-Bosnia and Herzegovina, Croatia-Bosnia and Herzegovina). Mutual complaints for the genocide of Serbia and Croatia before the International Court of Justice welcomed their long awaited epilogue in January 2015, when neither one of states was convicted of genocide, whereas these complaints over the course of years indicated (and deteriorated) poor regional relations. In this type of situation, political messages from highest state officials play a great role, whereby they often questioned interstate relations (even to the verge of incidents) or strengthened them. During the 2008-2012 period, the relationship between Serbia and Croatia, and even Bosnia and Herzegovina was characterised by better cooperation and dialogue. According to undivided public opinion and international community, this significantly eased the relations between Serbia and Croatia and contributed to relative normalisation of relations.

Tomislav Nikolić, new President of Serbia, to a great extent, led to disruption of relations between the two states. In an interview for German magazine F.A.Z., while answering the question whether he knew there are more Serbs today in Vukovar than 15 years ago, and that more Serbs are returning compared to Croats, he told: *"That is because Vukovar was a Serbian town, Croats have no reason to return there"*.<sup>215</sup> After the verdict of the Hague Tribunal, whereby Croatian Generals Ante Gotovina and Mladen Markač were found not guilty for the crimes during operation "Storm", among other things, the following was stated in the official statement from President Nikolić: *"With today's decision of Hague Tribunal, Croatia can legitimately celebrate the biggest persecution in the world after the Second World War. State that does not allow families of missing Serbs to determine where bodies of their dearest can be found"*.<sup>216</sup> Prime minister of Serbia estimated that it is now clear that Hague Tribunal is not a court, while former Speaker of the Parliament and Vicepresident of SPP Nebojša Stefanović estimated that the verdict is: *"more political than legal, as well as degrading, primarily for the victims of a horrific crime and the biggest genocide after the Second World War"*.<sup>217</sup> President Nikolić also said Croats are "people on the wrong path" and *"I admit to say that - that is the understanding of the truth of God and of justice in the two nations - Serbian and Croatian."*<sup>218</sup>

President Nikolić denied the genocide in Srebrenica.<sup>219</sup> In the statement of Macedonian television Sitel, Nikolić gives his opinion on the future of Bosnia and Herzegovina, stating how *"Bosnia is slowly dying out before our eyes"*. This statement additionally provoked the reaction from a member of Bosnian presidency, Bakir Izetbegović, who sent an open letter to Nikolić accusing him of violently attacking Bosnia and Herzegovina and offending its citizens.<sup>220</sup> Rhetoric between Serbian and Croatian authorities intensified after the release from prison of Hague defendant Vojislav Šešelj, which resulted in declaration of Croatian Parliament, but also in Resolution of European Parliament where they asked Government of Serbia to officially distance itself from his statements.<sup>221</sup>

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214 Law on amendments of the Law on National Bank of Serbia, Official Gazette of Republic of Serbia, no 106/12

215 <http://www.faz.net/aktuell/politik/ausland/wahl-in-serbien-die-serben-durften-nicht-entscheiden-wo-sie-leben-wollen-11750937.html>

216 <http://www.rts.rs/page/stories/sr/story/135/Hronika/1212324/Reagovanja+na+presudu+hrvatskim+generalima.html>

217 *Ibid*

218 <http://www.kurir-info.rs/tomislav-nikolic-srbija-je-spremna-da-bude-clanica-eu-clanak-527449>

219 [http://www.rtv.rs/sr\\_lat/politika/nikolic-u-srebrenici-nije-bilo-genocida\\_322678.html](http://www.rtv.rs/sr_lat/politika/nikolic-u-srebrenici-nije-bilo-genocida_322678.html)

220 [http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=10&dd=23&nav\\_category=11&nav\\_id=654361](http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=10&dd=23&nav_category=11&nav_id=654361)

221 <http://www.balkaninsight.com/en/article/evropski-parlament-usvojio-rezoluciju-o-%C5%A1e%C5%A1elju>

The described atmosphere, to a large extent, hinders the respect of human rights and disables the adequate application of legislative framework. Most endangered groups are marginalised for years, without visible improvements in the realisation of their rights. Roma minority still remains most discriminated with a life below any threshold of poverty - floods in 2014 further influenced unfavourable socio-economic position alongside even more visible discrimination during providing of temporary accommodation and reconstructing. According to data of Republican Institute of Statistics, approximately 14 per-mille of children dies in Roma settlements in Serbia by the age of 5.<sup>222</sup> Bosnian and Albanian national minority remain non-integrated in Serbian society as a consequence of wars from nineties, while municipalities where they live are on the list of the poorest ones. Rights of women are still on a very low level, with an increase in number of cases of domestic violence and deadly outcomes. Only in January 2015, four women were killed in cases of domestic violence, and the fifth one was poured with gas and set on fire, while the Counselling against violence received reports on 375 cases of violence.<sup>223</sup>

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222 Research on multilevel indicators on position of women and children in Serbia, 2014

223 [http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=02&dd=06&nav\\_category=12&nav\\_id=955514](http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=02&dd=06&nav_category=12&nav_id=955514)





**Ombudsman of Montenegro**  
**81000 Podgorica, Svetlane Kane Radević 3 St**

You need to fill out the form legibly, explain your problem concisely and clearly, stating the circumstances and evidence that substantiate your claim on violation of rights or irregularities of bodies. If you run out of space on this form, you can attach an additional paper.

***COMPLAINT***

**1. PERSONAL DATA**

**First name:**

**Last name:**

**Profession:**

**Address:**

**Town:**

**Phone/Mobile number:**

**Fax/E-mail:**

**Name and last name of representative, his address and phone number:**

(If the complaint is filed by an authorised person, an appropriate certified authorisation or permission must be enclosed)

**2. NAME AND SEAT OF THE BODY YOUR COMPLAINT RELATES TO**

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**3. DESCRIPTION OF VIOLATION OF YOUR RIGHTS AND FREEDOMS**

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**4. FACTS AND EVIDENCE THAT SUBSTANTIATE YOUR COMPLAINT**

**1.**

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**2.**

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**3.**

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**4.**

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**5.**

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**6.**

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(Enclose photocopies of appropriate documents which prove your claims)

**5. HAVE YOU INITIATED A PROCEDURE REGARDING THIS CASE BEFORE ANY OTHER BODY? STATE BEFORE WHICH ONE?**

**6. DO YOU AGREE TO DISCLOSE YOUR NAME IN THE PROCEEDINGS**

**Yes**

**No**

(Circle one of the two answers)

**Signature of  
complainant or authorized  
person**

**Date:**\_\_\_\_\_

**Important notes:**

- Procedure before the Ombudsman is free.
- Complaint is filed within six months from the day on which he/she learns about the violation of human rights and freedoms, or within one year from the date of the violation.
- Filing a complaint to Ombudsman does not prevent you from using regular legal procedures for achievement your rights before the competent court or administration body, nor does it cancel deadlines determined in the law for filing the complaints, objections, appeals, demands or other legal means before the courts or administration bodies.
- You will be notified on the acting of Ombudsman upon complaint.

**Constitutional Court of Montenegro**

2000 - Podgorica

Njegoševa no. 2

***Constitutional complaint***

***I - Information on the complainant***

(See part I of the Instructions for filling out the constitutional complaint form)

A) for physical person

1. First and last name \_\_\_\_\_
  2.                      Unique                      Master                      Citizen                      Number  
\_\_\_\_\_
  3. Permanent or temporary residence \_\_\_\_\_
  4. Address \_\_\_\_\_
  5. Nationality \_\_\_\_\_
- (only for foreign citizens)

B) for legal person

1. Title \_\_\_\_\_
2.    Seat    of  
Office \_\_\_\_\_
3.                      Registration                      number                      in                      the  
CRBE \_\_\_\_\_
4. Legal representative \_\_\_\_\_

C) for authorised person (representative)

(only if complainant has a representative)

1. First and last name/title of legal person (representative) \_\_\_\_\_

2. Address \_\_\_\_\_

***II - Information on individual act being challenged***

(See Part II of the Instructions)

A) Individual act that is being challenged, and against which all legal remedies have been exhausted

1. Maker of individual act \_\_\_\_\_

2. Title of individual act, the code (number) of the Act and the date of enactment \_\_\_\_\_

3. Procedure during which the individual act was enacted \_\_\_\_\_

4.           Date           of           receipt           of           the           individual  
act \_\_\_\_\_

5. Have all legal remedies been exhausted or other legal means for its protection have not been envisaged (present evidence)

Note: If, by using the constitutional complaint, you challenge other individual acts adopted in the same case, list the information for those acts           (same as for previously challenged individual act)

***III Human right and freedom guaranteed by the Constitution considered to have been violated***

(See Part III of the instructions)

1. List the human right and freedom that you believe has been violated or denied

\_\_\_\_\_  
\_\_\_\_\_

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***IV Facts and reasons based on which the claim on the violation of constitutional right is founded***

(See Part IV of the Instructions)

1. Describe facts and list the reasons considered to be important for the claim that human right and freedom guaranteed by the Constitution has been violated or denied



Note: If the blank space in this part of the form is not sufficient for stating of facts and reasons, they can be added on additional piece of paper or stated entirely on an additional piece of paper, and then attached to the form, as an integral part of the constitutional complaint

***V - Request on which the Constitutional court should decide***

(See part V of the Instructions)

***VI –Annexes to the constitutional complaint***

(See part VI of the Instructions)

I enclose (circle the enclosed):

1. Three copies of the constitutional complaint
2. A certified copy of an individual act in triplicate
3. Proof that all legal remedies, to which you were entitled in accordance with the law, were exhausted
4. Proof that the constitutional complaint was filed timely (filed in the period of 60 days from the day of submitting individual act that is being challenged)
5. Authorisation for filing of constitutional complaint (if the complaint was lodged by another person)
6. Agreement of complaint submitter (if the constitutional complaint was filed by Ombudsman)
7. Proof of the reasons for missing the deadline for filing of the constitutional complaint (if restitution is required)
8. Proof of the occurrence of certain unavoidable adverse consequences (if the constitutional complainant requires suspension of execution of an individual act)
9. Other proof of significance for decision-making

***VII - Personal signature of constitutional court complainant***

(See part VII of the Instructions)

Place\_\_\_\_\_

Date\_\_\_\_\_

Constitutional court complainant

\_\_\_\_\_

Contact number/fax/e-mail\_\_\_\_\_

## Notes for filling in the application form

### I. What you should know before filling in the application form

#### What complaints can the Court examine?

The European Court of Human Rights is an international court which can only examine complaints from persons, organisations and companies claiming that their rights under the European Convention on Human Rights have been infringed. The Convention is an international treaty by which a large number of European States have agreed to secure certain fundamental rights. The rights guaranteed are set out in the Convention itself, and also in Protocols Nos. 1, 4, 6, 7, 12 and 13, which only some of the States have accepted. You should read these texts, all of which are enclosed.

The Court cannot deal with every kind of complaint. Its powers are defined by the admissibility criteria set out in the Convention which limit who can complain, when and about what. More than 90% of the applications examined by the Court are declared inadmissible. You should therefore check that your complaints comply with the admissibility requirements described below.

The Court can only examine your case where:

- the complaints relate to **infringements of one or more of the rights** set out in the Convention and Protocols;
- the complaints are **directed against a State which has ratified** the Convention or the Protocol in question (*not all States have ratified every Protocol so check the list of ratifications on the Court's website at [www.echr.coe.int/applicants](http://www.echr.coe.int/applicants)*);
- the complaints relate to matters which involve the responsibility of a public authority (legislature, administrative body, court of law etc.); the Court cannot deal with complaints directed against private individuals or private organisations;
- the complaints concern **acts or events occurring after the date of ratification** by the State of the Convention or the Protocol in question (*see the dates for each State on the list of ratifications on the Court's website at [www.echr.coe.int/applicants](http://www.echr.coe.int/applicants)*);
- you are **personally and directly affected** by the breach of a fundamental right (you have "victim status");
- you have given the domestic system the opportunity to put right the breach of your rights ("exhaustion of domestic remedies"); this generally means that before applying to the Court **you must have raised the same complaints in the national courts**, including the highest court. This involves complying with national rules of procedure, including time-limits. You do not have to make use of remedies which are ineffective or apply for special discretionary or extraordinary remedies outside the normal appeal procedures;
- you have lodged your complete application with the **Court within six months from the final domestic decision** in the national system. The six-month period normally runs from the date on which the decision of the highest competent national court or authority was given, or was served on you or your lawyer. Where there is no available effective remedy for a complaint, the six-month period runs from the date of the act, event or decision complained about. The six-month period is only interrupted when you send the Court a complete application which complies with the requirements of Rule 47 of the Rules of Court (see the text set out in the Application Pack). The period ends on the last day of the

six months even if it is a Sunday or public holiday. To sum up, the application form, together with all the required information and documents, must be dispatched to the Court on or before the final day of the six-month period, so make sure you send them through the post in good time;

- your complaints are based on solid evidence; **you have to substantiate your claims** by telling your story clearly and supporting it with documents, decisions, medical reports, witness statements and other material;
- you are able to show that the matters about which you complain have interfered unjustifiably with a fundamental right. You cannot just complain that a court's decision was wrong or that a domestic tribunal made a mistake; the Court is not a court of appeal from national courts and cannot annul or alter their decisions;
- your complaints have not already been examined by the Court or another international body.

You should also be aware that the Court receives tens of thousands of complaints every year. It does not have the resources to examine trivial or repeated complaints which have no substance and which are not the kind of cases an international supervisory body should be looking into. Such complaints may be rejected as being an abuse of petition, as can also happen where applicants use offensive or insulting language.

Where the matter complained about does not cause an applicant any real harm or significant disadvantage, raises no new human rights issues that need to be addressed at international level and has already been looked at by a domestic court, the case may also be rejected.

For further information on these criteria, you can consult a lawyer or go to the Court's website, which gives information about admissibility criteria and answers to frequently asked questions.

## II. How to fill in the application form

- BE LEGIBLE. Preferably you should type.
- FILL IN ALL FIELDS APPLICABLE TO YOUR SITUATION. If not, your application form is not complete and will not be accepted.
- Do not use symbols or abbreviations: explain your meaning clearly in words.
- BE CONCISE.

### Language

The Court's **official languages** are English and French but alternatively, if it is easier for you, you may write to the Registry in an official language of one of the States that have ratified the Convention. During the initial stage of the proceedings you may also receive correspondence from the Court in that language. Please note, however, that at a later stage of the proceedings, namely if the Court decides to ask the Government to submit written comments on your complaints, all correspondence from the Court will be sent in English or French and you or your representative will also be required to use English or French in your subsequent submissions.

### Notes relating to the fields in the application form

**Reminder: For an application to be accepted by the Court, all applicable fields must be completed in the manner indicated and all the necessary documents must be provided as set out in Rule 47. Please bear this in mind when filling in the form and attaching your supporting documents.**

## The application form – section by section

Please note that the terms used in the application form and notes are based on the Convention – any lack of gender-sensitive language is not meant to exclude anyone.

### Box for the barcode

**If you have already been in correspondence with the Court on the same matter and have been given a set of barcode labels, you should stick a barcode label in the box on the left-hand side near the top of the first page of the application form.**

### A. The applicant (Individual)

This section applies to an applicant who is an individual person, as opposed to a legal entity such as a company or association (section B).

**1-8.** If there is more than one individual applicant, this information must be provided for each additional applicant, on a separate sheet. Please number the individual applicants if there are more than one. See also the section below on “Grouped applications and multiple applicants”.

### B. The applicant (Organisation)

This section concerns applicants that are legal entities such as a company, non-governmental organisation or association, etc.

**9-15.** The identity and contact details of the applicant organisation must be filled in. If there is more than one such applicant, this information must be provided for each additional applicant, on a separate sheet. Please number the applicants if there are more than one.

Identification number: please indicate the official identification number or number assigned to the organisation in the official register or record, if any.

The date of registration, formation or incorporation of the entity should also be included for ease of identification, where such a procedure has been followed.

### Grouped applications and multiple applicants

Where an applicant or representative lodges complaints on behalf of two or more applicants whose applications are based on different facts, a separate application form should be filled in for each individual, giving all the information required. The documents relevant to each applicant should also be annexed to that individual's application form.

Where there are more than five applicants, the representative should provide, in addition to the application forms and documents, a table setting out the required identifying details for each applicant, an example of which may be downloaded from the Court's website (see [www.echr.coe.int/applicants](http://www.echr.coe.int/applicants)). Where the representative is a lawyer, this table should also be provided in electronic form (on a CD-ROM or memory stick).

In cases of large groups of applicants or applications, applicants or their representatives may be directed by the Registry to provide the text of their submissions or documents by electronic or other means. Other directions may be given by the Registry as to the steps required to facilitate the effective and speedy processing of applications.

Failure to comply with directions by the Registry as to the form or manner in which grouped applications or applications by multiple applicants are to be lodged may lead to the cases not being allocated for examination by the Court (see Rule 47 § 5.2).

**C. Representative(s) of the applicant****Non-lawyer**

**16-23.** Some applicants may choose not to, or may not be able to, take part in the proceedings themselves for reasons such as health or incapacity. They may be represented by a person without legal training, for example a parent representing a child, or a guardian or family member or partner representing someone whose practical or medical circumstances make it difficult to take part in the proceedings (e.g. an applicant who is in hospital or prison). The representative's reason for representing the applicant or relationship with the applicant must be indicated, together with his or her identity and contact details.

**Official representative or person competent to act on behalf of an applicant organisation**

**16-23.** An applicant organisation must act through an individual with whom the Court can correspond, such as an officer of a company, chairperson or director. This person should, where possible, provide documentary proof of his or her entitlement to bring the case on behalf of the organisation.

**Lawyer**

**24-30.** Details identifying the lawyer who is acting on behalf of the applicant before the Court must be provided, with full contact information. An applicant does not have to instruct a lawyer at the stage of lodging the application, although it may be advisable to do so. The applicant is informed if the case reaches a stage of the proceedings where representation by a lawyer is required. At this point – after a decision by the Court to give notice of the application to the Government concerned for written observations – you may be eligible for free legal aid if you have insufficient means to pay a lawyer's fees and if the grant of such aid is considered necessary for the proper conduct of the case. Information is sent to applicants about this at the relevant time.

**Authority**

**31.** An individual applicant must sign the authority empowering the representative to act on his or her behalf, unless, for example, the applicant is a child or lacks legal capacity and is unable to sign. If a representative who is not a lawyer has instructed a lawyer on behalf of an applicant who is unable to sign, the representative should sign the authority on the applicant's behalf.

**31.** The representative of an applicant organisation must sign here to authorise a lawyer to act on behalf of the organisation.

**32.** The date required is the date of signature by the individual applicant, or by the representative of an applicant organisation.

**D. State(s) against which the application is directed**

**33.** Tick the box(es) of the State(s) against which the application is directed.

This is the State which you consider is responsible for the matters about which you are complaining. Please bear in mind that complaints before the Court can be brought only against the countries listed, which have all joined the Convention system.

**E., F. and G.: Subject matter of the application**

**34-40.** Be concise. Put down the essential information concerning your case: the key facts and decisions, and how your rights have been violated, without irrelevant background or side issues. Do not include lengthy quotations: you can always give a reference to an accompanying document. The



facts of your case and your complaints should be set out in the space provided in the application form so as to enable the Court to determine the nature and scope of the application without reference to any other material.

While an applicant may make additional submissions on the facts and complaints and append them to the application form, they must not exceed 20 pages in total (this does not include accompanying decisions and documents). Please note that if a case is communicated to the respondent Government for observations, the applicant is given an opportunity to submit detailed arguments in reply.

All submissions must:

- be wholly legible;
- if typed, be set out in a font size of at least 12 pt in the body of the text and 10 pt in the footnotes;
- in the case of annexes, be set out in A4 page format with a margin of not less than 3.5 cm;
- have pages numbered consecutively;
- be divided into numbered paragraphs.

As a general rule, any information contained in the application form and documents which are lodged with the Registry, including information about the applicant or third parties, will be **accessible to the public**. Moreover, such information may be accessible on the Internet via the Court's HUDOC database if the Court includes it in a statement of facts prepared for the notification of the case to the respondent Government, a decision on admissibility or striking out, or a judgment. Accordingly, you should only provide such details concerning your private life or that of third parties as are essential for an understanding of the case.

In addition, if you do not wish your identity to be disclosed to the public, you must say so and set out the reasons for such a departure from the normal rule of public access to information in the proceedings. The Court may authorise **anonymity** in exceptional and duly justified cases.

#### **E. Statement of the facts**

**34-36.** Be clear and concise. Give exact dates.

Be chronological. Set out events in the order in which they occurred.

If your complaints relate to a number of different matters (for example different sets of court proceedings), please deal with each factual matter separately.

You must provide documents to support your case, in particular copies of relevant decisions or documentary records of any measures about which you complain: for example, a notice of eviction or a deportation order. You must also provide documentary evidence to support your claims, such as medical reports, witness statements, transcripts, documents of title to property, or records of periods spent in custody. If you cannot obtain copies of particular documents you should explain why not.

#### **F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments**

**37.** For each complaint raised, you must specify the Article of the Convention or Protocol invoked and give brief explanations as to how it has been infringed.

Explain as precisely as you can what your complaint under the Convention is. Indicate which Convention provision you rely on and explain why the facts that you have set out entail a violation of that provision. Explanations of this kind must be given for each individual complaint.

**Example:**

*Article 6 § 1: the civil proceedings concerning my claim for compensation for an injury took an unreasonable length of time as they lasted over ten years, from 10 January 2002 until 25 April 2012.*

**G. Information concerning exhaustion of domestic remedies and the six-month time-limit (Article 35 § 1 of the Convention)**

**38.** Here you must show that you have given the State a chance to put matters right before having recourse to the international jurisdiction of the Court. This means you must explain that you have used the available effective remedies in the country concerned.

For each complaint raised under the Convention or the Protocols, please state the following:

- the exact date of the final decision, the name of the court or tribunal and the nature of the decision;
- the dates of the other lower court or tribunal decisions leading up to the final decision;
- the case file number in the domestic proceedings.

Remember to append copies of all the decisions taken by courts or other decision-making bodies, from the lowest to the highest; you must also provide copies of your claims or applications to the courts and your statements of appeal so that you can show that you raised the substance of your Convention complaints at each level.

You must also show that you have lodged each complaint with the Court within six months of the final decision in the process of exhausting domestic remedies for that complaint. So it is crucial to identify the date of the final decision. You must provide proof of this, either through a copy of the decision containing the date or, if you did not receive a copy of the final decision on the date it was delivered or made public, proof of the date of service, e.g. evidence of the date of receipt, or a copy of the registered letter or envelope. Where no appropriate remedies were available, you must show that you have lodged the complaint within six months of the act, measure or decision complained of and submit documentary evidence of the date of the act, measure or decision.

**39-40.** Here you should state if there was an available remedy which you did not use. If so, you should give the reasons why you did not make use of it.

Further useful information about exhaustion of domestic remedies and compliance with the six-month time-limit may be found in the Practical Guide on Admissibility Criteria ([www.echr.coe.int/applicants](http://www.echr.coe.int/applicants)).

**H. Information concerning other international proceedings (if any)**

**41-42.** You must indicate whether you have submitted the complaints in your application to any other procedure of international investigation or settlement, for example a United Nations body such as the ILO or the UN Human Rights Committee, or an international arbitration panel. If you have, you should give details, including the name of the body to which you submitted your complaints, the dates and details of any proceedings which took place and details of any decisions that were taken. You should also submit copies of relevant decisions and other documents.

**43-44.** Previous or pending applications before the Court:

You should also specify whether you as an applicant have, or have had, any other applications before the Court and, if so, give the application number(s). This is vital to assist the Court in filing, retrieving and processing the different applications under your name.

**I. List of accompanying documents**

**45.** You must enclose a numbered and chronological list of all judgments and decisions referred to in sections E., F., G. and H. of the application form, as well as any other documents you wish the Court to take into consideration as evidence supporting your claims of a violation of the Convention (transcripts, witness statements, medical reports etc.).

You should enclose full and legible *copies* of all documents.

**No documents will be returned to you. It is thus in your interests to submit copies, not originals.**

You MUST:

- arrange the documents in order by date and by procedure;
- number the pages consecutively;
- NOT staple, bind or tape the documents.

**REMINDER:** It is the applicant's responsibility to take steps in good time to obtain all the information and documents required for a complete application. If you do not provide one or more of the necessary documents your application will not be regarded as complete and it will not be examined by the Court, unless you have given an adequate explanation of why you were unable to provide the missing document(s).

**Declaration and signature**

**47-48.** The applicant, or the authorised representative, must sign the declaration. No one else can do so.

**49. Confirmation of correspondent**

The Registry will only correspond with one applicant or one representative, so if there are a number of applicants and no representative has been appointed, one applicant should be identified as the person with whom the Registry should correspond. Where the applicant is represented, the Registry will only correspond with one representative. So, for example, an applicant who has more than one lawyer must identify the lawyer who will conduct the correspondence with the Court.

**III. Information on lodging the application and how it is processed****A. Means of lodging the application**

Applications to the Court may be made only by post (not by telephone). This means that the paper version of the application form with the original signatures of the applicant(s) and/or the authorised representative(s) must be sent by post. The receipt of a faxed application is not counted as a complete application as the Court needs to receive the original signed application form. **No purpose will be served by your coming to Strasbourg in person to state your case orally.**

The application form may be downloaded from the Court's website [www.echr.coe.int/applicants](http://www.echr.coe.int/applicants).

**Send the application form to:**

**The Registrar  
European Court of Human Rights  
Council of Europe  
67075 STRASBOURG CEDEX  
FRANCE**

**B. Processing of the application**

A file will be opened and correspondence and documents stored by the Court only where a complete application form with supporting documents has been received.

On receipt of the application form, the Registry of the Court will verify that it contains all the information and documents required. If it does not, you will receive a reply stating that Rule 47 has not been complied with, that no file has been opened and no documents have been kept. It is open to you to submit a fresh application: this means submitting a completed application form and all relevant documents and decisions, even if you have sent some of the information previously. No partial submissions will be accepted.

The Registry cannot provide you with information about the law of the State against which you are making your complaint or give legal advice concerning the application and interpretation of national law.

When sending off your application, you should keep a copy of the form as you have filled it in, together with the original documents, so that if the Registry informs you that the application was incomplete you will be able, if you wish, to resubmit a fresh and complete application without difficulty or undue delay. There is no guarantee that if an application form is rejected as incomplete there will be enough time for an applicant to submit a new application before the six-month time-limit. For that reason, you should take care to submit a complete application form together with all the necessary supporting documents in good time.

If the application form submitted is complete, you may receive a reply from the Registry telling you that **a file (the number of which must be mentioned in all subsequent correspondence) has been opened in your name** and sending you a set of barcodes which you should attach to any future correspondence.

The Registry may also contact you with a request for further information or clarifications. It is in your interests to reply rapidly to any correspondence from the Registry as a newly opened file which is inactive will be destroyed after six months. Furthermore, you should note that where a case has been allocated for examination by the Court, any delay or failure to reply to correspondence from the Registry or to provide further information or documents may be taken to mean that you no longer wish to pursue your case. This may then result in the application not being examined by the Court or being declared inadmissible or struck out of the Court's list of cases.

**C. No court fees**

Your case will be dealt with **free of charge**. You will automatically be informed of any decision taken by the Court.

## Application Form

### About this application form

This application form is a formal legal document and may affect your rights and obligations. Please follow the instructions given in the Notes for filling in the application form. Make sure you fill in all the fields applicable to your situation and provide all relevant documents.

Warning: If your application is incomplete, it will not be accepted (see Rule 47 of the Rules of Court). Please note in particular that Rule 47 § 2 (a) provides that: "All of the information referred to in paragraph 1 (d) to (f) [statement of facts, alleged violations and information about compliance with the admissibility criteria] that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document."

#### Barcode label

If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

#### Reference number

If you already have a reference number from the Court in relation to these complaints, please indicate it in the box below.

### A. The applicant (Individual)

This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to Section B.

1. Surname

2. First name(s)

3. Date of birth

D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2012

4. Nationality

5. Address

6. Telephone (including international dialling code)

7. Email (if any)

8. Sex

☐ male

☐ female

### B. The applicant (Organisation)

This section should only be filled in where the applicant is a company, NGO, association or other legal entity.

9. Name

10. Identification number (if any)

11. Date of registration or incorporation (if any)

D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2012

12. Activity

13. Registered address

14. Telephone (including international dialling code)

15. Email

**C. Representative(s) of the applicant**

If the applicant is not represented, go to Section D.

**Non-lawyer/Organisation official**Please fill in this part of the form if you are representing an applicant but *are not a lawyer*.

In the box below, explain in what capacity you are representing the applicant or state your relationship or official function where you are representing an organisation.

16. Capacity / relationship / function

17. Surname

18. First name(s)

19. Nationality

20. Address

21. Telephone (including international dialling code)

22. Fax

23. Email

**Lawyer**Please fill in this part of the form if you are representing the applicant *as a lawyer*.

24. Surname

25. First name(s)

26. Nationality

27. Address

28. Telephone (including international dialling code)

29. Fax

30. Email

**Authority****The applicant must authorise any representative to act on his or her behalf by signing the authorisation below (see the Notes for filling in the application form).**

I hereby authorise the person indicated to represent me in the proceedings before the European Court of Human Rights, concerning my application lodged under Article 34 of the Convention.

31. Signature of applicant

32. Date

D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2012



**D. State(s) against which the application is directed**

33. Tick the name(s) of the State(s) against which the application is directed

- |   |  |
|---|--|
| <input type="checkbox"/> ALB - Albania                | <input type="checkbox"/> ITA - Italy                                       |
| <input type="checkbox"/> AND - Andorra                | <input type="checkbox"/> LIE - Liechtenstein                               |
| <input type="checkbox"/> ARM - Armenia                | <input type="checkbox"/> LTU - Lithuania                                   |
| <input type="checkbox"/> AUT - Austria                | <input type="checkbox"/> LUX - Luxembourg                                  |
| <input type="checkbox"/> AZE - Azerbaijan             | <input type="checkbox"/> LVA - Latvia                                      |
| <input type="checkbox"/> BEL - Belgium                | <input type="checkbox"/> MCO - Monaco                                      |
| <input type="checkbox"/> BGR - Bulgaria               | <input type="checkbox"/> MDA - Republic of Moldova                         |
| <input type="checkbox"/> BIH - Bosnia and Herzegovina | <input type="checkbox"/> MKD - "The former Yugoslav Republic of Macedonia" |
| <input type="checkbox"/> CHE - Switzerland            | <input type="checkbox"/> MLT - Malta                                       |
| <input type="checkbox"/> CYP - Cyprus                 | <input type="checkbox"/> MNE - Montenegro                                  |
| <input type="checkbox"/> CZE - Czech Republic         | <input type="checkbox"/> NLD - Netherlands                                 |
| <input type="checkbox"/> DEU - Germany                | <input type="checkbox"/> NOR - Norway                                      |
| <input type="checkbox"/> DNK - Denmark                | <input type="checkbox"/> POL - Poland                                      |
| <input type="checkbox"/> ESP - Spain                  | <input type="checkbox"/> PRT - Portugal                                    |
| <input type="checkbox"/> EST - Estonia                | <input type="checkbox"/> ROU - Romania                                     |
| <input type="checkbox"/> FIN - Finland                | <input type="checkbox"/> RUS - Russian Federation                          |
| <input type="checkbox"/> FRA - France                 | <input type="checkbox"/> SMR - San Marino                                  |
| <input type="checkbox"/> GBR - United Kingdom         | <input type="checkbox"/> SRB - Serbia                                      |
| <input type="checkbox"/> GEO - Georgia                | <input type="checkbox"/> SVK - Slovak Republic                             |
| <input type="checkbox"/> GRC - Greece                 | <input type="checkbox"/> SVN - Slovenia                                    |
| <input type="checkbox"/> HRV - Croatia                | <input type="checkbox"/> SWE - Sweden                                      |
| <input type="checkbox"/> HUN - Hungary                | <input type="checkbox"/> TUR - Turkey                                      |
| <input type="checkbox"/> IRL - Ireland                | <input type="checkbox"/> UKR - Ukraine                                     |
| <input type="checkbox"/> ISL - Iceland                |  |

**Subject matter of the application**

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E., F. and G.) (Rule 47 § 2 (a)). The applicant may supplement this information by appending further details to the application form. Such additional explanations must not exceed 20 pages (Rule 47 § 2 (b)); this page limit does not include copies of accompanying documents and decisions.

**E. Statement of the facts**

34.

*Please ensure that the information you enter into this section does not exceed the size limit and review your text accordingly. If you wish to submit supplementary information see the "Notes for filling in the application form".*

**Statement of the facts (continued)**

35.

*Please ensure that the information you enter into this section does not exceed the size limit and review your text accordingly. If you wish to submit supplementary information see the "Notes for filling in the application form".*

**Statement of the facts (continued)**

36.

*Please ensure that the information you enter into this section does not exceed the size limit and review your text accordingly.  
If you wish to submit supplementary information see the "Notes for filling in the application form".*

[illegible]



☐ Yes

☐ No

[illegible]

41. Have you raised any of these complaints in another procedure of international investigation or settlement?

☐ Yes

☐ No

☐ Yes

☐ No




### I. List of accompanying documents

**You should enclose full and legible *copies* of all documents.**

**No documents will be returned to you. It is thus in your interests to submit copies, not originals.**

**You MUST:**

- arrange the documents in order by date and by procedure;
- number the pages consecutively;
- NOT staple, bind or tape the documents.

45. In the box below, please list the documents in chronological order with a concise description.

Do you have any other comments about your application?

## 46. Comments

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

47. Date

e.g. 27/09/2012

The applicant(s) or the applicant's representative(s) must sign in the box below.

48. Signature(s) ☐ Applicant(s) ☐ Representative(s) - tick as appropriate

[illegible]

If there is more than one applicant or more than one representative, please give the name and address of the one person with whom the Court will correspond.

49. Name and address of ☐ Applicant ☐ Representative - tick as appropriate


The Registrar  
European Court of Human Rights  
Council of Europe  
67075 STRASBOURG CEDEX  
FRANCE



# LITERATURE

## *Laws*

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## ***Strategies, action plans and reports***

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Commissioner for Information of Public Importance and Personal Data Protection: <http://www.poverenik.rs/>  
Fund for protection and realization of minority rights Montenegro: <http://www.fzm.me/1/index.php?lang=en>  
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Government of Montenegro: <http://www.gov.me/naslovna>  
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Ministry of Foreign Affairs and European Integration of Montenegro: <http://www.mvpei.gov.me/ministarstvo>  
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Human Resources Management Authority of Montenegro: <http://www.uzk.co.me>  
State Audit Institution of Montenegro: <http://www.dri.co.me/1/index.php?lang=sr>  
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NGO Centre for Development of NGOs: <http://www.crnvo.me>  
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